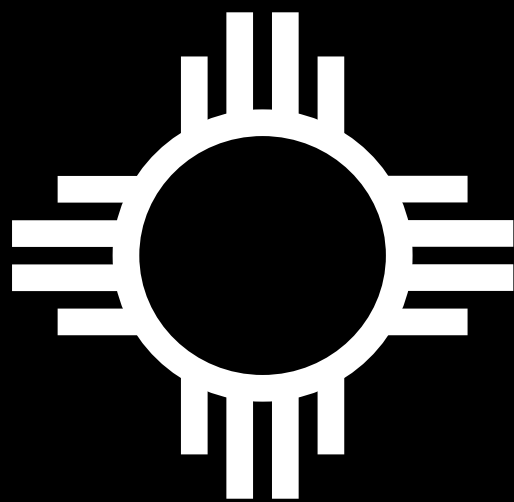


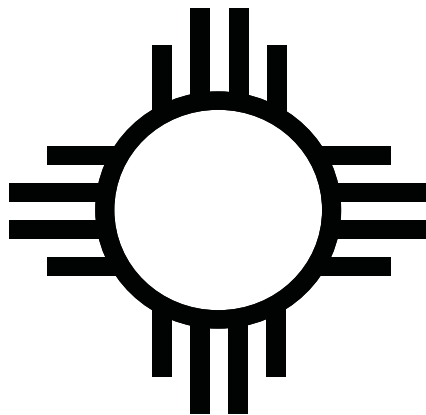
**NEW
MEXICO
REGISTER**



Volume XXIII
Issue Number 15
August 15, 2012

New Mexico Register

**Volume XXIII, Issue Number 15
August 15, 2012**



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

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Administrative Law Division
Santa Fe, New Mexico
2012

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New Mexico Register

Volume XXIII, Number 15

August 15, 2012

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

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Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.25.2 NMAC, "Drug And Alcohol Testing Of Employees." The hearing will be held on September 17, 2012 at 9:00 a.m. in the auditorium of the Harold Runnels Building located at 1190 St. Francis Drive in Santa Fe, New Mexico.

The hearing will be conducted to receive public comments regarding proposed adoption of these rules related to drug and alcohol testing of direct health care provider employees in Department-operated health care facilities as required by NMSA 1978, § 9-7-18. A copy of the rule may be obtained by request in writing, and written comments may be submitted, by email sent to: Ty.Ryburn@state.nm.us. Alternatively, you may mail the request or comments to:

Mr. Ty Ryburn
DOH Human Resources Bureau Chief
1190 St. Francis Dr., Suite N-3078
Santa Fe, NM 87502

The Department will accept written comments through the close of 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 Mr. Ryburn by email, or via the address above, or call (505) 827-2740. The Department requests at least ten (10) days advance notice for special accommodations requests.

NEW MEXICO DEPARTMENT OF HEALTH DIVISION OF HEALTH IMPROVEMENT

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 16.12.20 NMAC "Hearing Requirements For Certified Nurse Aides." The Hearing will be held at 9:00 a.m. on September 25, 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 correct the appeal provision to indicate that appeals of final decisions by the Department should be to the District Court in Santa Fe, not to the Court of Appeals. There are also revisions to the existing rule to clarify or make the rule gender neutral.

A copy of the proposed rule can be requested in writing from, and written comments may be submitted to:

Delfinia Sandoval
Division of Health Improvement
New Mexico Department of Health
2040 South Pacheco St., 2nd Fl., Rm. #413
Santa Fe, New Mexico 87505

Or by email to: Delfinia.Sandoval@state.nm.us

Written comments will be accepted up to the close of 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 Delfinia Sandoval by telephone at 505-476-9025. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO STATE PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Santa Fe, New Mexico on Friday, October 12, 2012. The hearing will be held during the Board's regular business meeting beginning at 9:00 a.m. at the State Personnel Office, Willie Ortiz Building at 2600 Cerrillos Road, Santa Fe, New Mexico 87505.

The purpose of the Rule Hearing is to consider amending SPB Rules and Regulations related to: **Drug and Alcohol Abuse, Subsection M of 1.7.8.7 NMAC.**

A final agenda for the board meeting will be available at the Board office on October 2, 2012.

Persons desiring to present their views on the proposed changes may appear in person at said time and place or may submit written comments no later than 5:00 p.m. September 17, 2012, to the Board Office, 2600 Cerrillos Road, Santa Fe, New Mexico, 87505, attention, Katie Thwaites. Copies of the proposed rule changes are available on request from the Board office at the address listed above, by phone (505) 476-7752, or on the Internet at www.spo.state.nm.us/ beginning August 15, 2012.

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

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**Case No. 12-00144-UT
IN THE MATTER OF A DECOUPLING AMENDMENT TO THE COMMISSION'S
ENERGY EFFICIENCY RULES**

**Casse No. 12-00250-UT
IN THE MATTER OF THE COMMISSION'S ENERGY EFFICIENCY RULES
RULES AT 17.7.2 NMAC INCLUDING PROPOSED RULES ON ENERGY
DECOUPLING**

ORDER CLOSING DOCKET IN CASE No. 12-00144-UT

AND ISSUING NEW NOTICE OF PROPOSED RULEMAKING

THIS MATTER comes before the New Mexico Public Regulation Commission (the “Commission”) on its own motion. The Commission, being duly informed in the premises, **FINDS AND CONCLUDES:**

1. On May 17, 2012, the New Mexico Public Regulation Commission (“Commission”) issued a Notice of Proposed Rulemaking (“NOPR”) in Case No. 12-00144-UT, titled “In the Matter of a Decoupling Amendment to the Commission’s Energy Efficiency Rules.” The NOPR proposed to amend the language of 17.7.2 NMAC (as adopted January 1, 2007) (the “2007 Rule”), by modifying language at 17.7.2.9(K) NMAC regarding incentives for utility energy efficiency programs and adding new language at 17.7.2.19 NMAC providing for revenue decoupling, a method to mitigate regulatory disincentives to energy efficiency.

2. On June 12, 2012, the New Mexico Attorney General filed a request for extension of procedural schedule which was granted on June 21, 2012. Additionally, a June 25, 2012 notice rescheduled the public hearing in this matter to September 13, 2012.

3. Staff filed a Motion to Dismiss or Vacate Schedule on June 29, 2012.

4. On July 27, 2011, the New Mexico Supreme Court annulled and vacated the Commission’s Final Order in Case 08-00024-UT (the “2010 Amended Rule”), finding that the Commission’s adoption of rules in that case providing for energy efficiency incentives and disincentive mitigation adder rates was arbitrary and unlawful. *Attorney General v. N.M. Pub. Reg. Comm’n*, 2011-NMSC-034, paragraph 18, 150 N.M. 174, 258 P.3d 453 (2011). Ambiguity now exists as to the current legal status of the 2007 Rule because 2010 Amended Rule vacated by the Supreme Court remains currently published in the Administrative Code, rather than the 2007 Rule.

5. The NOPR in Case 12-00144-UT did not show its proposed language changes relative to the 2007 rule. That NOPR also did not publish for comment rule language from Case 08-00024-UT pertaining to matters other than the adders that the Commission believes are in the public interest to consider for adoption in a new final rule. The other matters included changes necessitated by the 2007 amendments to the Efficient Use of Energy Act, as well as changes that would improve the review process; for example, adding a requirement that utilities discuss whether they used competitive bidding to secure vendor contracts for energy efficiency programs.

6. The Commission also finds that it should solicit comment on rule language addressing energy efficiency incentives through a rate of return-based mechanism.

7. Therefore, the Commission finds it should close the rulemaking initiated in Case No. 12-00144-UT and issue a new Notice of Proposed Rulemaking that provides notice of all of the proposed language to be included in a newly promulgated Rule 17.7.2 NMAC.

IT IS THEREFORE ORDERED AND NOTICE IS HEREBY GIVEN:

A. The rulemaking proceeding in NMPRC Case No. 12-00144-UT is hereby closed.

B. The Commission hereby commences a new rulemaking proceeding for the purpose, after notice and comment, of issuing an entirely new Rule 17.7.2 NMAC based on all or part of the language included with this order as Attachment A. As is the Commission’s practice, the Commission will consider alternative approaches to any of the language in the Attachment A, made via comments to this NOPR. (Purely and entirely as a matter of convenience to the public in evaluating the new proposed rule, the text of the new proposed 17.7.2 NMAC in Attachment A is shown in relation to the text of 17.7.2 NMAC as previously adopted in the 2007 Rule).

C. The Commission seeks comment on whether the proposed rule should apply equally to gas utilities, and on whether a general rate case is a prerequisite for putting a decoupling rider into effect.

D. A series of public workshop sessions for the purpose of developing a consensus on the new proposed rule will commence at **1:00 P.M. on Friday, August 24, 2012** at the offices of the Commission, at the following location:

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

E. The workshops will be held to receive oral comment on the new proposed rule. All persons providing public comment at the workshops are encouraged to provide specific comments on the proposed rule. Commenters are also encouraged to address any other topic that may be relevant to this rulemaking.

F. Interested persons should contact the Commission to confirm the date, time, and place of any public workshop, because workshops are ongoing and occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the workshop should contact Ms. Cecilia Rios at (505) 827-4501 at least 48 hours prior to the commencement of the workshop.

G. At the earliest possible opportunity, this *Notice of Proposed Rulemaking*, including Attachment A, shall be mailed to all persons who have made a written request for advance notice and shall be published without Attachment A in at least two newspapers of general circulation in New Mexico and in the NEW MEXICO REGISTER. Affidavits attesting to the publication of this *Notice of Proposed Rulemaking* as described above shall be filed in this Docket.

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

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

J. Copies of any forthcoming final order in this rulemaking proceeding shall be mailed, along with copies of any resulting final rule, to all persons and entities appearing on the Certificate of Service as it exists at the time of issuance of the final order in this Docket, to all commenters in this case, and to all individuals requesting such copies.

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

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 26th day of July, 2012.

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

NEW MEXICO PUBLIC REGULATION COMMISSION
 INSURANCE DIVISION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

Case No. 11-00283-IN

**IN THE MATTER OF ADOPTION OF A PROPOSED RULE ESTABLISHING
 UNIFORM DEFINITIONS AND STANDARDIZED METHODOLOGIES FOR
 CALCULATION OF THE MEDICAL LOSS RATIO**

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of the Insurance Division of the New Mexico Public Regulation Commission (Superintendent) proposes to adopt a new rule for the purpose of establishing uniform definitions and standardized methodologies for calculation of the medical loss ratio which will be codified in the New Mexico Administrative Code (NMAC) at 13.10.27 (Proposed Rule). This matter comes before the Superintendent upon his own Motion and, having reviewed the record and being duly advised,

THE SUPERINTENDENT FINDS AND CONCLUDES:

1. The Superintendent has jurisdiction over the subject matter and the parties in this proceeding pursuant to the New Mexico Insurance Code, 1978 NMSA Section 59A-1-1 *et seq.* (Insurance Code).

2. The federal Affordable Care Act (ACA) amended the Public Health Service Act (PHSA) to, among other things, bring down the cost of health care coverage. To achieve this objective, section 2718 of the PHSA requires the public reporting of expenditures of policyholder premium dollars and the establishment of medical loss ratio (MLR) standards for issuers. These MLR standards are intended to help ensure policyholders receive value for their premium dollars and to include uniform definitions of terms and standardized methodologies for calculating annual MLRs.

3. The Superintendent docketed this case for the purpose of adopting a New Mexico rule concerning the MLR, to be promulgated pursuant to NMSA 1978 Sections 8-8-4; 59A-2-9; 59A-22-50; 59A-23C-10; 59A-46-51 and 59A-47-46.

4. Two workshops have been conducted concerning the Proposed Rule on August 4, 2011 and March 15, 2012. The Proposed Rule represents a consensus MLR rule, arrived at by those parties who took part in the workshops.

5. The Proposed Rule is attached to and incorporated into this Notice of Proposed Rule (NOPR) by reference as Exhibit A.

6. The Superintendent will accept written comments on the rule contained in Exhibit A and proposed in this NOPR from any interested person. The public is encouraged to file written comments although oral comments will be accepted at the public hearing in this case. Interested persons shall file their written comments on the proposed rules no later than **September 12, 2012**. Any response comments shall be filed no later than **September 19, 2012**. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes, shall cite to any state or federal law, or other materials, referred to in the comment and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be in legislative format. All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and docket number contained at the top of this NOPR.

7. All pleadings, including comments, shall bear the caption and case number contained at the top of this NOPR. Written comments or written response comments shall be filed by sending original copies to:

Melanie Sandoval
Records and
Docketing
Division
New Mexico
Public Regulation
Commission
Attention: Case No.
11-00283-IN
1120 Paseo de Peralta
Santa Fe, NM 87504

8. Copies of the proposed rules may be downloaded from the New Mexico Public Regulation's web site, www.nmCommission.state.nm.us.

9. The Superintendent will review all timely submitted written comments and will hold a public comment hearing beginning **at 1:30 p.m. on October 2, 2012**, at the Superintendent of Insurance, Public Regulation Commission Hearing Room, Ground Floor Hearing Room, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

10. Any person with a disability requiring special assistance in order to participate in a hearing should contact Patricia Warwick at 505-827-4297 at least 48 hours prior to the commencement of the hearing.

11. 1.2.3.7(B) NMAC (Ex Parte Communications) draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as *ex parte* communications. In order to assure compliance with 1.2.3.7(B) NMAC, the Superintendent should set a date on which it will consider the record to be closed. The Superintendent finds that date shall be the earlier of thirty (30) days following the Public Hearing; that is, **November 2, 2012**, or the date a Final Order is issued in this case. The setting of that record closure date will permit the Superintendent to conduct follow-up discussions with parties who have submitted initial or response comments to the Superintendent's proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

12. Copies of this Notice should be sent to all persons on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. The Proposed Rule, attached to this NOPR as Exhibit A, is proposed for adoption as a permanent rule as provided by this NOPR.

B. This NOPR shall

constitute due and lawful notice to all potentially interested parties.

C. Initial, written comments on the proposed rule must be filed by **September 12, 2012** and written response comments must be filed by **September 19, 2012**.

D. A **Public Hearing** on the proposed rule amendments shall be held beginning at 2:00 p.m. on **September 19, 2012** at the offices of the Superintendent, at the following location:

**Superintendent of Insurance
Ground Floor - Public Regulation Commission Hearing Room
1120 Paseo de Peralta
Santa Fe, New Mexico 87501
Tel. 1-888-4ASK-PRC (1-888-427-5772)**

E. Pursuant to 1.2.3.7(B) NMAC, the record in this case will be closed on the earlier of thirty (30) days following the public hearing; that is, November 2, 2012, or the date a Final Order is issued in this case.

F. Persons providing public comment and/or participating in this public hearing are encouraged to provide specific comment on the proposed rule and cite specifically to any federal or state laws or other materials referenced in a comment. Those wishing to make comments are also encouraged to address any other topic that may be relevant to this rulemaking.

G. Interested persons should contact the Superintendent to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the Hearing should contact Patricia Warwick at 505-827-4297 at least 48 hours prior to the commencement of the public hearing in this case.

H. The Superintendent designates Aaron Ezekiel, Insurance Division Hearing Officer, to preside over this matter and to take all action necessary and convenient thereto within the limits of the hearing officer's authority and consistent with applicable procedural rules.

I. In accordance with NMSA 1978, Section 8-8-15(B), this NOPR, including Exhibit A, shall be mailed at least thirty days prior to the first hearing date to all persons who have made a written request for advance notice.

J. In addition, copies of this NOPR, including Exhibit A, shall be e-mailed to all persons on the attached Certificate of Service if their e-mail addresses are known. If their e-mail addresses are not known, then the same materials shall be mailed to such persons via regular mail.

K. This NOPR, without Exhibit A, pursuant to NMSA 1978 14.4.7.1.B(1), shall be published in at least two newspapers of regular circulation in the State of New Mexico, and in the New Mexico Register. Affidavits attesting to the publication of this NOPR as described above shall be filed in this docket.

L. In addition, this NOPR shall be posted on the Superintendent's official Web site.

M. This NOPR is effective immediately.

DONE AND ORDERED this 26th day of July, 2012

JOHN G. FRANCHINI, Superintendent of Insurance

**NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION**

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE ADOPTION)
OF A PROPOSED RULE FOR THE)
REGISTRATION OF PRIVATE HEALTH)
INSURANCE COOPERATIVES AND)
COOPERATIVE EMPLOYEES)**

Case No. 12-00229-IN

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of the Insurance Division of the New Mexico Public Regulation Commission (Superintendent) proposes to adopt a new rule for the purpose of registering private health insurance cooperatives and cooperative employees which will be codified in the New Mexico Administrative Code (NMAC) at 13.10.26 (Proposed Rule). This matter comes before the Superintendent upon his own

Motion and, having reviewed the record and being duly advised,

**THE SUPERINTENDENT
FINDS AND CONCLUDES:**

1. The Superintendent has jurisdiction over the subject matter and the parties in this proceeding pursuant to the New Mexico Insurance Code, NMSA 1978, §59A-1-1 *et seq.* (Insurance Code).

2. The New Mexico Legislature, in the first regular session of the 50th Legislature (2011), passed Senate Bill 89 (2011 New Mexico Law Chapter 34), which was signed into law by Governor Susana Martinez on April 2, 2011.

3. Senate Bill 89 amends NMSA 1978, §59A-23-3 (Laws 1984, Chapter 127, Section 462, as amended) to provide for the creation and registration of Health Insurance Purchasing Cooperatives among Employers, effective June 17, 2011.

4. Section 3 of Senate Bill 89 states that the Superintendent shall adopt rules to govern the registration of health insurance cooperatives, including the registration of cooperative employees.

5. Pursuant to this directive, the Superintendent submits a Proposed Rule establishing a system for registering health insurance cooperatives, including cooperative employees. The Proposed Rule is substantially the same as the rule adopted by the Superintendent in his *Final Order to Promulgate Rule for the Registration of Health Insurance Cooperatives and Cooperative Employees*, dated January 13, 2012, in Docket No. 11-00233 and is attached to and incorporated into this Notice of Proposed Rulemaking (NOPR) by reference as Exhibit A.

6. The Superintendent will accept written comments on the rule contained in Exhibit A and proposed in this NOPR from any interested person. The public is encouraged to file written comments although oral comments will be accepted at the public hearing in this case. Interested persons shall file their written comments on the proposed rules no later than September 12, 2012. Any response comments shall be filed no later than September 19, 2012. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes, shall cite to any state or federal law, or other materials, referred to in the comment and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be in legislative format. All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and docket number contained at the top of this NOPR.

7. Written comments or written response comments shall be filed by

sending original copies to:

Melanie Sandoval
Records and Docketing
Division
New Mexico Public
Regulation Commission
Attention: Case No.
12-00229-IN
1120 Paseo de Peralta
Santa Fe, NM 87504

8. Copies of the proposed rules may be downloaded from the New Mexico Public Regulation's web site, www.nmprc.state.nm.us/

9. The Superintendent will review all timely submitted written comments and will hold a public comment hearing beginning at 1:30 p.m. on September 26, 2012, at the Superintendent of Insurance, Public Regulation Commission Hearing Room, 4th Floor, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

10. Any person with a disability requiring special assistance in order to participate in a hearing should contact Patricia Warwick at 505-827-4297 at least 48 hours prior to the commencement of the hearing.

11. 1.2.3.7(B) NMAC (Ex Parte Communications) draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as ex parte communications. In order to assure compliance with 1.2.3.7(B) NMAC, the Superintendent should set a date on which it will consider the record to be closed. The Superintendent finds that date shall be the earlier of thirty (30) days following the Public Hearing; that is, October 26, 2012, or the date a Final Order is issued in this case. The setting of that record closure date will permit the Superintendent to conduct follow-up discussions with parties who have submitted initial or response comments to the Superintendent's proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

12. Copies of this Notice should be sent to all persons on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. A rulemaking proceeding should be, and hereby is, instituted in this Docket to provide for the creation and registration of Health Insurance Purchasing Cooperatives Employees. The proposed rule, attached to this NOPR as Exhibit A, is proposed for adoption as a permanent rule as provided by this NOPR.

B. This NOPR shall

constitute due and lawful notice to all potentially interested parties.

C. Initial, written comments on the proposed rule must be filed by September 12, 2012 and written response comments must be filed by September 19, 2012.

D. A public hearing on the proposed rule amendments shall be held beginning at 1:30 p.m. on September 26, 2012 at the offices of the Superintendent, at the following location:

Superintendent of
Insurance
4th Floor - Public
Regulation Commission
Hearing Room
1120 Paseo de Peralta
Santa Fe, New Mexico
87501
Tel. 1-888-4ASK-PRC
(1-888-427-5772)

E. Pursuant to 1.2.3.7(B) NMAC, the record in this case will be closed on the earlier of thirty (30) days following the public hearing; that is, October 26, 2012, or the date a Final Order is issued in this case.

F. Persons providing public comment and/or participating in this public hearing are encouraged to provide specific comment on the proposed rule and cite specifically to any federal or state laws or other materials referenced in a comment. Those wishing to make comments are also encouraged to address any other topic that may be relevant to this rulemaking.

G. Interested persons should contact the Superintendent to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the hearing should contact Patricia Warwick at 505-827-4297 at least 48 hours prior to the commencement of the public hearing in this case.

H. The Superintendent designates Aaron Ezekiel, Insurance Division Hearing Officer, to preside over this matter and to take all action necessary and convenient thereto within the limits of the hearing officer's authority and consistent with applicable procedural rules.

I. In accordance with NMSA 1978, § 8-8-15(B), this NOPR, including Exhibit A, shall be mailed at least thirty days prior to the first hearing date to all persons who have made a written request for advance notice.

J. In addition, copies of this NOPR, including Exhibit A, shall be e-mailed to all persons on the attached Certificate of Service if their e-mail addresses are known. If their e-mail addresses are not known, then the same materials shall be mailed to such persons via regular mail.

K. This NOPR, without Exhibit A, pursuant to NMSA 1978 14.4.7.1.B(1), shall be published in at least two newspapers of regular circulation in the State of New Mexico, and in the New Mexico Register. Affidavits attesting to the publication of this NOPR as described above shall be filed in this docket.

L. In addition, this NOPR shall be posted on the Superintendent's official Web site.

M. This NOPR is effective immediately.

DONE AND ORDERED this 30th day of July, 2012.

JOHN G. FRANCHINI
Superintendent of Insurance

**NEW MEXICO
DEPARTMENT OF
TRANSPORTATION**

**THE NEW MEXICO DEPARTMENT
OF TRANSPORTATION**

NOTICE OF PUBLIC HEARINGS

The New Mexico Department of Transportation (NMDOT) will hold public hearings for the purpose of receiving oral and written public comment on Rule Number 18.21.5 NMAC, New Mexico Department of Transportation Outdoor Advertising Requirements. The purpose of the proposed rule change is to establish procedures and standards for all off-premises outdoor advertising in New Mexico, including the use of changeable electronic variable message signs, to amend the current fee structure, to update and clarify the rule where necessary, including definitions and permit-related processes, correct inconsistencies with federal regulations, and to make formatting, organizational and language changes throughout the rule to conform to New Mexico rulemaking requirements.

The first hearing is scheduled on September 19, 2012, from 1:00 p.m. to 5:00 p.m. at the New Mexico Department of Transportation, General Office, Training Rooms 1 and 2, located at 1120 Cerrillos Road, Santa Fe, New Mexico. A second hearing is scheduled for September 24, 2012, from 1:00 pm to 5:00 p.m. at the Dona Ana County Commission chambers, located at the Dona Ana County Government Center, 845 N. Motel Blvd., Las Cruces, New Mexico. A third hearing is scheduled for September 27, 2012 from 12:30 p.m. to 4:30 p.m. at the New Mexico Department of Transportation,

District 3 Auditorium, located at 7500 Pan American Blvd., Albuquerque, New Mexico. Please contact Michael Otero, Outdoor Advertising Program Manager, New Mexico Department of Transportation, P.O. Box 1149, G.O. Room 201, Santa Fe, New Mexico 87504-1149, Telephone (505) 827-5460 to request a copy of the rule.

The hearings will be held before Rick Padilla, NMDOT Traffic Services Engineer. Interested persons may also present their views by written statements submitted on or before September 10, 2012, to New Mexico Department of Transportation, P.O. Box 1149, SB-4 Second Floor, Santa Fe, New Mexico 87504-1149, Telephone (505) 827-5460.

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearings, or who needs copies of the proposed rule in an accessible form may contact Michael Otero at (505) 827-5460 at least ten (10) days before any of the scheduled hearings.

**End of Notices and Proposed
Rules Section**

Adopted Rules

NEW MEXICO ATHLETIC COMMISSION

**TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 6 BOXING, WRESTLING, AND MARTIAL ARTS
PART 20 MIXED MARTIAL ARTS CONTESTS AND EXHIBITIONS**

15.6.20.1 ISSUING AGENCY:
New Mexico Athletic Commission.
[15.6.20.1 NMAC - N, 08-26-2012]

15.6.20.2 SCOPE: The provisions in Part 20 apply to all licensees of the commission.
[15.6.20.2 NMAC - N, 08-26-2012]

15.6.20.3 STATUTORY AUTHORITY: Part 20 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.); specifically Section 60-2A-4, which authorizes the New Mexico athletic commission to adopt reasonable rules and regulations to implement the purposes of the commission.
[15.6.20.3 NMAC - N, 08-26-2012]

15.6.20.4 DURATION: Permanent.
[15.6.20.4 NMAC - N, 08-26-2012]

15.6.20.5 EFFECTIVE DATE: August 26, 2012, unless a later date is cited at the end of a section.
[15.6.20.5 NMAC - N, 08-26-2012]

15.6.20.6 OBJECTIVE: The objective of Part 20 of Chapter 6 is to set forth commission regulations regarding mixed martial arts contests and exhibitions.
[15.6.20.6 NMAC - N, 08-26-2012]

15.6.20.7 DEFINITIONS: [RESERVED]
[15.6.20.7 NMAC - N, 08-26-2012]

15.6.20.8 MIXED MARTIAL ARTS INVOLVING FULL CONTACT; USE OF OFFICIAL RULES; DUTIES OF SPONSORING ORGANIZATION OR PROMOTER; APPROVAL OF COMMISSION REQUIRED:

A. All full-contact martial arts are forms of unarmed combat.

B. The provisions pertaining to licenses, fees, dates of programs and disciplinary action in the laws and regulations on unarmed combat apply to events of such martial arts.

C. A contest or exhibition of mixed martial arts must be conducted pursuant to the official rules for the particular art. The sponsoring organization or promoter must file a copy of the official rules with the commission before it will be approved to hold the events.
[15.6.20.8 NMAC - N, 08-26-2012]

15.6.20.9 CONDUCT OF CONTESTS AND EXHIBITIONS; APPLICABILITY OF PROVISIONS:

A. All events of mixed martial arts must be conducted under the supervision and authority of the commission.

B. With prior approval from the commission, a promoter may request the following special rules for each amateur contest:

- (1) no elbow strikes to the head;
- (2) no knees to the head;
- (3) three minute rounds; or
- (4) any other rules deemed appropriate for the safety and protection of the amateur unarmed combatant.

[15.6.20.9 NMAC - N, 08-26-2012]

15.6.20.10 REQUIREMENTS FOR CAGE OR FENCED AREA; USE OF VIDEO SCREENS:

A. Mixed martial arts events shall be held in a fenced area.

B. A fenced area used in a contest or events exhibition of mixed martial arts must meet the following requirements.

(1) The fenced area must be circular or have equal sides and must be no smaller than 14 feet wide and no larger than 32 feet wide.

(2) The floor must be padded with ensolite or other similar closed-cell foam, with at least a 1-inch layer of foam padding, with a top covering of canvas, duck or similar material tightly stretched and secured to the platform of the fenced area. Material that tends to gather in lumps or ridges must not be used.

(3) The platform must not be more than four feet above the floor of the building and must have suitable steps for the use of the unarmed combatants.

(4) Fence posts must be made of metal, not more than six inches in diameter, extending from the floor of the building to between five and seven feet above the floor of the fenced area, and must be properly padded in a manner approved by the commission.

(5) The fencing used to enclose the fenced area must be made of a material that will prevent an unarmed combatant from falling out of the fenced area or breaking through the fenced area onto the floor of the building or onto the spectators, including,

without limitation, chain link fence coated with vinyl.

(6) Any metal portion of the fenced area must be covered and padded in a manner approved by the commission and must not be abrasive to the unarmed combatants.

(7) The fenced area should have no more than two entrances. One entrance is at the discretion of the commission.

(8) There must not be any obstruction on any part of the fence surrounding the area in which the unarmed combatants are to be competing.
[15.6.20.10 NMAC - N, 08-26-2012]

15.6.20.11 DURATION:

A. A non-championship contest or exhibition of mixed martial arts may last up to five rounds in duration.

B. A championship contest of mixed martial arts must be five rounds in duration.

C. A period of unarmed combat in a contest or exhibition of mixed martial arts must be three or five minutes in duration. A period of rest following a period of unarmed combat in a contest or exhibition of mixed martial arts must be one minute in duration.
[15.6.20.11 NMAC - N, 08-26-2012]

15.6.20.12 WEIGHT CLASSES OF UNARMED COMBATANTS; WEIGHT LOSS AFTER WEIGH-IN:

A. The classes for unarmed combatants competing in contests or exhibitions of mixed martial arts and the weights for each class are shown in the following schedule.

- (1) Flyweight: up to 125 lbs.
- (2) Bantamweight: over 125 to 135 lbs.
- (3) Featherweight: over 135 to 145 lbs.
- (4) Lightweight: over 145 to 155 lbs.
- (5) Welterweight: over 155 to 170 lbs.
- (6) Middleweight: over 170 to 185 lbs.
- (7) Light heavyweight: over 185 to 205 lbs.
- (8) Heavyweight: over 205 to 265 lbs.
- (9) Super heavyweight: all over 265 lbs.

B. Weight loss of up to two lbs. is allowed. Unarmed combatants have up to one hour to lose weight. The weight loss described must not occur later than one hour after the initial weigh-in.

[15.6.20.12 NMAC - N, 08-26-2012]

15.6.20.13 PROPER ATTIRE AND PHYSICAL APPEARANCE FOR UNARMED COMBATANTS: An unarmed combatant competing in a contest or exhibition of mixed martial arts.

A. Must wear shorts approved by the commission or the commission's representative.

B. May not wear shoes or any padding on his feet during the contest however tape is allowed with approval of the commission, to knees, ankles or feet.

C. All male fighters must wear an approved groin protector.

D. All female fighters must.
(1) Wear a sports bra type garment.
(2) Have hair secured in a manner that does not interfere with the vision or safety of either unarmed combatants.

(3) Use a minimum of cosmetics.

E. All fighters must wear fitted mouthpieces.

F. The commission reserves the right to disapprove of any or all uniforms or garments to be worn.

G. Gloves.

(1) All gloves must be of a professional quality and must be approved by the commission's representative. All gloves worn shall fit the hands of the fighter. Gloves cannot be less than four ounces and not more than eight ounces.

(2) The make and type of all gloves must be approved in advance by the commission's representative. Gloves must be put on in the presence of the deputy inspector and he must approve any tape used on the gloves.

(3) Gloves may not be squeezed, manipulated, kneaded, crushed or altered to change the original shape.

H. Hand wraps: Hand wraps/bandages are for the protection of the unarmed combatant's hands during a contest from injury. All mixed martial arts contestants shall be required to gauze and tape their hands prior to all contests.

(1) In all weight classes, the bandages on each contestants hand shall be restricted to soft gauze not more than 20 yards in length and no more than two inches in width, held in place by not more than 10 feet of surgeons adhesive tape, no more than one and one half inch in width, for each hand.

(2) The tape may be placed directly on and may cross the back of the hand twice, but may not extend within three-fourths of an inch of the knuckles when the hand is clenched to make a fist. The bandages shall be evenly distributed across the hand. Building of wraps is prohibited. After gauze has been applied tape still may not be within three-fourths of an inch of knuckles when hand is clinched to make a fist.

(3) Only one strip of tape between the fingers, not to exceed one quarter inch in

width, shall be allowed.

(4) Any wrap or tape applied to the hand, knee, ankle or foot must be approved by the commission representative/inspector, as well as signed off prior to unarmed combatant entering the cage. All wraps must be applied in the presence of the commission representative/inspector. No exceptions.

(5) Any gauze/tape approved by the commission representative/inspector once applied to combatant's hands may not be altered or tampered with in any way, shape or form to include, but not limited to the application of: water, plaster, ointments, vaseline and glues to the hand wraps or bandages.

(6) Either unarmed combatant may waive his privilege of witnessing the bandaging of his opponent's hands.

(7) Inspectors or the commission may request any hand bandages or gloves be removed and reapplied should there be any doubt regarding the legality of any applications. Any gloves or hand wraps may be confiscated by the commission for any reason.

(8) The commission reserves the right to allow or disallow name brand products on a case by case basis.

I. Unarmed combatants shall not apply any foreign substance to the hair, body, clothing or gloves immediately prior to or during a contest or exhibition that could result in an unfair advantage.

(1) Each contestant must be free of grease or any other foreign substance, including without limitation, grooming creams, lotions or sprays, colognes, may not be used on the face, hair or body of a contestant.

(2) The referee or the commission representative/inspector shall cause any foreign substance to be removed.
[15.6.20.13 NMAC - N, 08-26-2012]

15.6.20.14 METHOD OF JUDGING:

A. Each judge of a contest or exhibition of mixed martial arts that is being judged shall score the contest or exhibition and determine the winner through the use of the following 10 point must system.

(1) The better unarmed combatant of a round receives 10 points and his opponent proportionately less.

(2) If the round is even, each unarmed combatant receives 10 points.

(3) No fraction of points may be given.

(4) Points for each round must be awarded immediately after the end of the period of unarmed combat in the round.

B. After the end of the contest or exhibition, the announcer shall pick up the scores of the judges from the commission's desk.

C. The majority opinion is conclusive. If there is no majority, the decision is a draw.

D. When the commission's representative has checked the scores, he shall inform the announcer of the decision. The announcer shall inform the audience of the decision over the speaker system.
[15.6.20.14 NMAC - N, 08-26-2012]

15.6.20.15 ACTS CONSTITUTING FOULS: The following acts constitute fouls in a contest or exhibition of mixed martial arts:

A. butting with the head;
B. eye gouging of any

kind;

C. biting;
D. hair pulling;
E. fish hooking;
F. groin attacks of any

kind;

G. putting a finger into any orifice or into any cut or laceration on an opponent;

H. small joint manipulation;
I. striking to the spine or the back of the head;

J. striking downward using the point of the elbow;

K. throat strikes of any kind, including, without limitation, grabbing the trachea;

L. clawing, pinching or twisting the flesh;

M. grabbing the clavicle;
N. kicking the head of a grounded opponent;

O. kneeling the head of a grounded opponent;

P. stomping a grounded opponent;

Q. kicking to the kidney with the heel;

R. spiking an opponent to the canvas on his head or neck;

S. throwing an opponent out of the ring or fenced area;

T. holding the shorts or gloves of an opponent;

U. spitting at an opponent;

V. engaging in any unsportsmanlike conduct that causes an injury to an opponent;

W. holding the ropes or the fence;

X. using abusive language in the ring or fenced area;

Y. attacking an opponent on or during the break;

Z. attacking an opponent who is under the care of the referee;

AA. attacking an opponent after the bell has sounded the end of the period of unarmed combat;

BB. flagrantly disregarding the instructions of the referee;

CC. timidity, including, without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury;

DD. interference by the corner; or

EE. throwing in the towel during competition.

[15.6.20.15 NMAC - N, 08-26-2012]

15.6.20.16 F O U L S ; DEDUCTION OF POINTS:

A. If an unarmed combatant fouls his opponent during a contest or exhibition of mixed martial arts, the referee may penalize him by deducting points from his score, whether or not the foul was intentional.

B. When the referee determines that it is necessary to deduct a point or points because of a foul, he shall warn the offender of the penalty to be assessed.

C. The referee shall, as soon as is practical after the foul, notify the judges and both unarmed combatants of the number of points, if any, to be deducted from the score of the offender.

D. Any point or points to be deducted for any foul must be deducted in the round in which the foul occurred and may not be deducted from the score of any subsequent round.

[15.6.20.16 NMAC - N, 08-26-2012]

15.6.20.17 F O U L S ; ACCIDENTAL:

A. If a contest or exhibition of mixed martial arts is stopped because of an accidental foul, the referee shall determine whether the unarmed combatant who has been found can continue or not. If the unarmed combatant's chance of winning has not been seriously jeopardized as a result of the foul and if the foul did not involve a concussive impact to the head of the unarmed combatant who has been fouled, the referee may order the contest or exhibition continued after a recuperative interval of not more than five minutes. Immediately after separating the unarmed combatants, the referee shall inform the commission's representative of his determination that the foul was accidental.

B. If the referee determines that a contest or exhibition of mixed martial arts may not continue because of an injury suffered as the result of an accidental foul, the contest or exhibition must be declared a no contest if the foul occurs during:

(1) the first two rounds of a contest or exhibition that is scheduled for three rounds or less; or

(2) the first three rounds of a contest or exhibition that is scheduled for more than three rounds.

C. If an accidental foul

renders an unarmed combatant unable to continue the contest or exhibition after:

(1) the completed second round of a contest or exhibition that is scheduled for three rounds or less; or

(2) the completed third round of a contest or exhibition that is scheduled for more than three rounds, the outcome must be determined by scoring the completed rounds and the round during which the referee stops the contest or exhibition.

D. If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the contest or exhibition stopped because of the injury, the outcome must be determined by scoring the completed rounds and the round during which the referee stops the contest or exhibitions.

[15.6.20.17 NMAC - N, 08-26-2012]

15.6.20.18 RESULTS OF CONTEST: A contest of mixed martial arts may end under the following results.

A. Knockout (KO): as soon as a fighter becomes unconscious due to strikes, his opponent is declared the winner (because MMA rules allow ground fighting, the fight is stopped to prevent further injury to an unconscious fighter).

B. Submission: a fighter may admit defeat during a match by:

(1) tapping three times on his opponent's body;

(2) tapping three times on the mat or floor; or

(3) verbal announcement.

C. Technical knockout (TKO).

(1) Referee stoppage: the referee may stop a match in progress if:

(a) a fighter becomes dominant to the point where the opponent is unable to intelligently defend himself from attacks (this may occur as quickly as a few seconds);

(b) a fighter appears to be unconscious from a grappling hold; or

(c) a fighter appears to have developed significant injuries (such as a broken bone) in the referee's view.

(2) Doctor stoppage: the referee will call for a time out if a fighter's ability to continue is in question as a result of apparent injuries (such as a large cut). The ring doctor will inspect the fighter and stop the match if the fighter is deemed unable to continue safely, rendering the opponent the winner. However, if the match is stopped as a result of an injury from illegal actions by the opponent, either a disqualification or no contest will be issued instead. In order to avoid doctor stoppages, fighters employ cut men, whose job is to treat cuts and hematomas between rounds to prevent them from becoming significant enough to cause a doctor stoppage.

D. Decision: if the match

goes the distance, then the outcome of the bout is determined by three judges. The judging criteria are organization-specific via the scorecards, including:

(1) unanimous decision;

(2) split decision;

(3) majority decision;

(4) draw; or

(5) technical decision.

E. Forfeit: a fighter or his representative may forfeit a match prior to the beginning of the match, thereby losing the match.

F. Disqualification: a "warning" will be given when a fighter commits a foul or illegal action or does not follow the referee's instruction. Three warnings will result in disqualification. Moreover, if a fighter is injured and unable to continue due to a deliberate illegal technique from his opponent, the opponent will be disqualified.

G. No Contest: in the event that both fighters commit a violation of the rules, or a fighter is unable to continue due to an injury from an accidental illegal technique, the match will be declared a "no contest".

[15.6.20.18 NMAC - N, 08-26-2012]

15.6.20.19 CERTAIN RULES APPLICABLE:

A. There may be three licensed cornermen for all non-title fights or four for a title fight, positioned in a designated area by a cage or fenced area or positioned in each corner.

B. Two cornermen may enter the cage or fenced area to tend a fighter between rounds and at the end of the fight. At no time will more than two cornermen be allowed in the cage with the fighter, if a cut man is being utilized then only one cornermen will be allowed in the cage with the fighter. Cut man counts as a cornerman during the bout.

C. There may be no loud yelling or profanity from anyone working the corner.

D. Any person violating any rule working the corner may be disqualified for the remainder of the event and may be suspended.

E. Weigh in rules meeting shall be conducted before or immediately following the weigh-in of contestants to communicate certain rules and procedures for the event, not limited to such things as hand wraps, arrival times, garments, or uniforms.

F. Pre-fight rules meeting shall be held in both a group setting, where rules are reviewed by referees contracted, as well as any individual question and answer sessions as needed, per fighter.

[15.6.20.19 NMAC - N, 08-26-2012]

15.6.20.20 MUAY THAI FIGHTING: Muay thai fighting is considered a mixed martial art. Most commonly known as the "art of eight limbs" All rules stated herein apply to the combative sport of muay thai fighting with the exception of 15.6.20.1 NMAC -15.6.20.27 NMAC unless this section conflicts with another rule stated herein. If a conflict occurs, this section prevails. The sponsoring organization or promoter must file a copy of the official rules with the commission before it will approve the holding of the contest or exhibition.

A. Muay thai is form of mixed martial arts competition in which a person utilizes punches, elbows, and knees. Muay thai also involves the practicing of pre-fight rituals performed by each contestant prior to the start of the contest and such rituals must be permitted with a limit of no more than three minutes per fighter. (The rambuling).

B. It is permissible to strike an opponent's legs, arms, body, face, and head using the shin, knee, gloved fist or elbow.

C. Contests will be scheduled for no more than five rounds, no longer than five minutes with maximum one minute rest periods. The commission reserves the right to allow three minute rounds with one minute rest periods.

D. Contestants must wear gloves weighing not less than eight oz.

E. Ankles may be taped or wrapped with approved non-metallic athletic medical wrap.

F. Male contestants must wear a foul-proof groin protector. Female contestants shall wear a sports bra type garment. Female contestants may use a foul proof breast protector if desired.

G. Spinning back fist blows are allowed, so long as contact is made only with the padded part of the glove.

H. The following tactics are fouls and may result in disqualification or the deduction of one or more points, at the discretion of the referee:

- (1) head butts;
- (2) striking a downed opponent;
- (3) kicks, punches or any strikes to the groin, kidneys or spine;
- (4) eye gouging, pricking or pressing or attacking eyes;
- (5) spitting or biting;
- (6) striking the throat area;
- (7) hair pulling;
- (8) wrestling or throwing opponent to the ground;
- (9) performing any illegal holding or wrestling technique not part of muay thai;
- (10) holding or stepping on one of the ropes while fighting, elbowing or striking;
- (11) any un-sportsmanlike

conduct;

- (12) attacking on the break;
- (13) attacking after the bell has sounded; or
- (14) throwing in the towel during competition.

I. The determination of the winner shall be as follows:

- (1) knockout;
- (2) technical knockout;
- (3) points on judges' scorecards, with at least two rounds of five-round fights being completed, if both fighters are injured or counted out, and are unable to continue;
- (4) referee stopping a match based upon a ring physician's advice;
- (5) referee stopping a match when one fighter is outclassing the other;
- (6) contestants corner stopping the bout; or

(7) referee disqualifying a contestant for a violation of the rules.

J. Weight classes: it is recommended that the unwritten custom of the one pound allowance for non-title bouts be continued, but only if provided for in the written bout contract or by regulation:

- (1) mini flyweight from: 100 pounds but not over 105 pounds;
- (2) light flyweight must be over: 105 pounds but not over 108 pounds;
- (3) flyweight must be over: 108 pounds but not over 112 pounds;
- (4) super flyweight must be over: 112 pounds but not over 115 pounds;
- (5) bantamweight must be over: 115 pounds but not over 118 pounds;
- (6) super bantamweight must be over: 118 pounds but not over 122 pounds;
- (7) featherweight must be over: 122 pounds but not over 126 pounds;
- (8) super featherweight must be over: 126 pounds but not over 130 pounds;
- (9) lightweight must be over: 130 pounds but not over 135 pounds;
- (10) super lightweight must be over: 135 pounds but not over 140 pounds;
- (11) welterweight must be over: 140 pounds but not over 147 pounds;
- (12) super welterweight must be over: 147 pounds but not over 154 pounds;
- (13) middleweight must be over: 154 pounds but not over 160 pounds;
- (14) super middleweight must be over: 160 pounds but not over 168 pounds;
- (15) light heavyweight must be over: 168 pounds but not over 175 pounds;
- (16) cruiserweight must be over: 175 pounds but not over 190 pounds;
- (17) super cruiserweight must be over: 190 pounds but not over 210 pounds;
- (18) heavyweight must be over: 210 pounds but not over 230 pounds;
- (19) super heavyweight 230 pounds and up.

K. No unarmed combatants may engage in a contest or exhibition, without the approval of the commission or the commission's representative if the difference in weight between unarmed combatants exceeds the allowance shown in the following schedule:

- (1) up to 118 lbs: not more than three lbs.;
- (2) 118 lbs to 126 lbs not more than five lbs.;
- (3) 126 lbs.-160 lbs: not more than seven lbs.;
- (4) 175 lbs.-195 lbs: not more than 12 lbs.;
- (5) 195 lbs. and over no limit.

L. Muay thai scoring will be on a 10 point must system.

(1) A round is to be scored as a 10-10 round when both contestants appear to be fighting evenly and neither contestant shows dominance in a round.

(2) A round is to be scored as a 10-9 round when a contestant wins by a close but clear margin, landing the greater number of effective legal strikes and other maneuvers.

(3) A round is to be scored as a 10-8 round when a contestant wins a round by a wide margin and damages his opponent.

(4) A round is to be scored as a 10-7 round when a contestant totally and completely dominates in a round and damages his opponent.

[15.6.20.20 NMAC - N, 08-26-2012]

15.6.20.21 MUAY THAI FOULS:

A. Direct kicks (side kick style) to the front of the fighter's legs.

B. Hip throws:

(1) over the hip throws such as in Japanese arts like judo, jujitsu, karate, sambo, or san shou;

(2) a fighter is not allowed to step across or in front of an opponent's leg with his/her own leg and bring the opponent over his/her hip;

(3) a fighter is not allowed to twist and pull an opponent over the side of his/her body and then land on top;

(4) it is an intentional foul when a fighter plans, with the sole intention of falling on top of his/her opponent, to either strike with the knee or to intentionally hurt the opponent while down, by contriving to make it look like an accident; or

(5) stepping on a fallen opponent.

C. Trips. The leg must clear immediately after the opponent is pulled or tripped over the knee. Clear means that the leg must be moved out of the way before the opponent hits the canvas by skipping the leg or slightly jumping to the side, as long as it is moved from the original position. Taking out an opponent's footing is legal only if the tripping leg is withdrawn from contact as he/she falls to the ground. The following shall

be illegal trips:

(1) if a fighter positions a foot next to the opponent and twists him/her over the leg, it is an illegal trip unless the leg is cleared as the opponent falls;

(2) if a fighter spins or pulls the opponent over the inside or outside of the leg and dumps him/her on the ground, it is an illegal trip when the leg being used to manipulate and dump the opponent stays in that position as he/she goes down; or

(3) if the leg is set and stays in that position, it is an illegal throw or trip.

D. Neck wrestling:

(1) if in a clinch with arms around each other's shoulder, such as to deliver or defend from an elbow

strike, twisting the opponent using the upper body in such a way that he/she will fall to the ground is allowed;

(2) by using neck and shoulder manipulation, it is legal for a fighter to spin and throw/dump an opponent to the canvas without using any part of his/her body as a barrier.

E. Lifting: It is illegal in any way to lift an opponent off the ground and throw the opponent on the canvas.

F. Hand wraps: Unless otherwise specified, hand wraps are subject to the same provisions as in 15.6.20.13 NMAC with the exception that under no circumstances is 'topping up' allowed. New hand wraps shall be applied using soft gauze and tape at each fight, and the commission reserves the right to confiscate any hand wraps applied at the end of each contest. [15.6.20.21 NMAC - N, 08-26-2012]

15.6.20.22 FIRST AID EQUIPMENT:

A. No spirits of ammonia may be used in the ring/cage.

B. Only discretionary use of petroleum jelly may be used on the face prior to start of fight. Namman muay is not allowed.

C. In case of cuts, only the following are allowed and all other solutions are prohibited:

(1) a sealed solution of adrenaline 1/1000 at ringside;

(2) aventine;

(3) thrombin.

D. All first-aid equipment used by a second, trainer, or manager shall in all cases and at all times be subject to inspection by the commission or its representative, or the assigned physician and the decision as to the use shall be final.

E. No prescribed inhalers or any other type of aerosol inhaler may be used in the corner of any fighter. A prescribed inhaler may be given to the ringside physician prior to the start of the bout. [15.6.20.22 NMAC - N, 08-26-2012]

15.6.20.23 REPORTING

RESULTS: All results of all fights shall be reported to the fightfax.com, mixedmartialarts.com or any other national or industry recognized by the New Mexico athletic commission. Results must be reported within 72 hours of the event. [15.6.20.23 NMAC - N, 08-26-2012]

HISTORY OF 15.6.20 NMAC: [RESERVED]

NEW MEXICO ATHLETIC COMMISSION

This is an amendment to 15.6.1 NMAC, Sections 7, 9, 13, 16, 19 and 20, effective 8-26-12.

15.6.1.7 DEFINITIONS:

A. "Board" means the medical advisory board.

B. "Commission" means the New Mexico athletic commission.

C. "Broadcast" means any audio or visual image sent by radio, [or] television or internet signals including podcast, webcast, streaming media, internet and any other electronic transmission.

D. "Closed circuit telecast" means any telecast that is not intended to be available for viewing without the payment of a fee for the privilege of viewing the telecast and includes, but is not limited to, the term "pay-per-view". This definition includes, but is not limited to, telecasts, podcast, webcast, streaming media, internet or any electronic transmission to arenas, bars, lounges, clubs, entertainment or meeting centers and private residences.

E. "Contact exhibition" means any exhibition in which the participants intend, are allowed, or are expected to hit, punch or contact each other in any way.

F. "Counted out" means that a participant has been knocked down and the referee and knockdown timekeeper have performed the appropriate count as set forth in the rules, and the completion of such count signifies that the participant has been knocked out.

G. [RESERVED]

H. "Department" means the New Mexico regulation and licensing department.

I. "Event" means any [professional] contest or portion of a fight card, bout, or exhibition in any form of unarmed combat, including but not limited to boxing, wrestling, or martial arts regulated by the commission, conducted, held, televised on closed circuit, or given within New Mexico.

J. "Face value" means the dollar value of a ticket that the customer

is required to pay or, for complimentary tickets, would have required payment. It shall include any charges or fees, such as dinner, gratuity, parking, surcharges, or any other charges or fees that must be incurred in order to be allowed to view the match. However, if the ticket specifies the amount of admission charges attributable to state or federal taxes, such taxes shall not be included in the face value.

K. "Fight card" means a program of [matches] unarmed contests.

L. "Foreign co-promoter" means a promoter who has no place of business in this state.

M. [RESERVED]

N. "He" or "his" shall also mean "she" or "her".

O. [RESERVED]

P. "Main event" means the principal match or matches within a program of matches.

Q. "Mixed martial arts" means unarmed combat involving the use, subject to any applicable limitations set forth in this chapter, of a combination of techniques from different disciplines of the martial arts, including, without limitation, grappling, kicking and striking.

[Q] R. "Professional contest" means any professional boxing, wrestling, or martial arts contest or exhibition, whether or not an admission fee is charged for admission of the public.

[R. "Professional Boxer" or "Professional Wrestler" means an individual who competes for money, prizes or purses or who teaches, pursues or assists in the practice of boxing, wrestling or martial arts as a means of obtaining livelihood or financial gain.

S. "Program of Matches" means collectively, all of the matches that are scheduled or proposed to be scheduled under the same permit.]

[T] S. "Promoter" means any person, and in the case of a corporate promoter includes any officer, director or stockholder of the corporation, who produces or stages any [professional] unarmed combat, including but not limited to boxing, wrestling or martial arts contest, exhibition or closed circuit television show.

[U. "Purse" means the financial guarantee or any payment, or part thereof, for which professional boxers or professional wrestlers are participating in a contest or exhibition, and includes the participant's share of any payment received for radio-broadcasting, television or motion picture rights.]

[V] T. [RESERVED]

[W] U. "[Ring] Official" means any person who performs an official function during the progress of a contest or exhibition.

V. "Technical zone" the

area between the ring, cage or fenced area and fans. The area must have a separate divider and be at least 12 feet from the ring, cage or fenced area. If there is not a solid barrier then uniform security must be present.

W. "Timekeeper signal" means the appropriate mechanism used to signal the end of the round.

X. "Unarmed combat" means boxing, wrestling, martial arts or any form of competition in which a blow is usually struck which may reasonably be expected to inflict injury.

Y. "Unarmed contest" means an unarmed combatant competing in an unarmed combat approved and sanctioned by a state commission or a duly constituted and functioning tribal commission which provides the unarmed combatants with the minimum protection afforded by the commission.

[15.6.1.7 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.1.9 LICENSEE RECORDS SUBJECT TO COMMISSION INSPECTION:

All the books and records of any licensee of this commission; or of any corporation of which the licensee is an officer, director or stockholder; and which directly or indirectly concern unarmed combat, including but not limited to boxing, wrestling, or martial arts, shall at all times be subject to the inspection of the commission at such times and under such circumstances as the commission may direct.

[15.6.1.9 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.1.13 AMENDMENT OF RULES:

The ~~[rules of this]~~ commission may ~~[be suspended, amended, revised or re-codified]~~ suspend, amend, revise or re-codify the rules in compliance with the Uniform Licensing Act (NMSA 1978 Sections 61-1-1 through 61-1-33). Any amendment of the rules shall be published by the commission as required by law, and in a bulletin, and shall be available at the commission's office. [15.6.1.13 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.1.16 INSPECTION OF PUBLIC RECORDS:

The commission operates in compliance with the Inspection of Public Records Act, NMSA 1978 Sections 14-2-1 through 14-2-16. The commission's administrator is the custodian of the ~~[board's]~~ commission's records. The commission may provide copies of public records upon request and upon payment of a reasonable copying fee. No person shall remove commission documents from the commission office. The commission maintains files for all applicants. Information in the applicant's file is a matter

of public record except for the following:

A. ~~medical reports, records of chemical dependency, physical or mental examinations;~~

B. ~~complaints, and investigative files obtained during the course of an investigation or processing of a complaint, and before the vote of the commission as to whether to dismiss the complaint or to issue a notice of contemplated action as provided in the Uniform Licensing Act, NMSA 1978, Section 61-1-1 et seq., and in order to preserve the integrity of the investigation of the complaints, records and documents that reveal confidential sources, methods, information or licensees accused, but not yet charged with a violation, such records shall include evidence in any form received or compiled in connection with any such investigation of the complaint or of the licensee by or on behalf of the commission by any investigating agent or agency; upon the completion of the investigation or processing of the complaint, AND upon the decision of the commission to dismiss the complaint or to issue a notice of contemplated action, the confidentiality privilege shall dissolve, and the records, documents or other evidence pertaining to the complaint and to the investigation of the complaint shall be available for public inspection; and~~

C. ~~any other records excepted from disclosure pursuant to the Inspection of Public Records Act.~~

[15.6.1.16 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.1.19 CODE OF CONDUCT FOR COMMISSION MEMBERS:

In accordance with the provisions of the Governmental Conduct Act, Sections 10-16-1 to 10-16-18, NMSA 1978, each commission member shall annually sign a commission member *code of conduct* and the ~~[board]~~ commission shall annually adopt said executed document which shall then be forwarded to the New Mexico secretary of state by the commission administrator.

[15.6.1.19 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.1.20 COSTS OF DISCIPLINARY ACTIONS:

Licensees shall bear all costs of disciplinary proceedings unless they are excused by the ~~[board]~~ commission from paying all or part of the costs or if they prevail [a] at the hearing and an action specified in Section 61-1-3 NMSA 1978 is not taken by the commission.

[15.6.1.20 NMAC - N, 03-23-2002; A, 08-26-2012]

NEW MEXICO ATHLETIC COMMISSION

This is an amendment to 15.6.2 NMAC, Sections 9, 10, 12, 13, 14, 16, 18, 19, 20, 21, 22 and 24, effective 8-26-12.

15.6.2.9 AGE REQUIREMENTS:

The commission may require a birth certificate or equally bona fide certification of age.

A. Professional [Boxers] unarmed combatants must be at least eighteen (18) years of age.

B. Managers must be at least twenty-one (21) years of age.

C. Seconds must be at least eighteen (18) years of age.

[15.6.2.9 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.2.10 EXECUTION OF CONTRACTS:

Contracts between ~~[a-boxer]~~ an unarmed combatant and a manager, or between ~~[a-boxer]~~ an unarmed combatant or manager and a licensed promoter, shall be executed on printed contract forms approved by the commission. If printed contract forms are unavailable, the commission may approve notarized contracts.

[15.6.2.10 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.2.12 USE OF THE [BOXER'S] UNARMED COMBATANT'S TRUE NAME IN SIGNING CONTRACTS:

The commission will not approve any contract for the services of ~~[a-boxer]~~ an unarmed combatant unless such contract is signed by the ~~[boxer]~~ unarmed combatant under his true, legal and complete name.

[15.6.2.12 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.2.13 CONTRACT FILING:

A copy of any contract entered into between a manager and ~~[a-boxer]~~ an unarmed combatant must be placed on file with the commission for approval.

A. A contract becomes null and void if at any time during its term the manager or the ~~[boxer]~~ unarmed combatant loses his license as a result of an action by the commission or by failure of the manager or ~~[boxer]~~ unarmed combatant to renew his license.

B. A manager is not allowed to participate in more than 33-1/3 percent of the ring earnings of the ~~[boxer]~~ unarmed combatant.

C. The commission must approve and consent to any assignment of any part of the ~~[boxer's]~~ unarmed combatant or manager's interest in a contract.

[15.6.2.13 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.2.14 VALIDATION OF THE CONTRACT:

A. Unless otherwise directed by the commission, both parties to the contract, the manager and the ~~[boxer]~~ unarmed combatant, or an approved representative for either party, must appear before the commission at the same time to have the contract approved and validated by the commission.

B. No contract between a manager and ~~[a-boxer]~~ an unarmed combatant will be approved for more than a three-year term.

[15.6.2.14 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.2.16 [~~B-O-X-E-R-S~~] UNARMED COMBATANT DEFAULT OF CONTRACT:

A. If ~~[a-boxer]~~ an unarmed combatant claims that his failure to fulfill the terms of his contract was caused by illness or injury or by conditions over which he had no control, he shall submit such claim in writing to the commission.

B. The commission may then decide whether such default requires the imposition of any penalty or disciplinary action.

C. In the event that either no claim is made, or that it is made and rejected by the commission:

(1) the commission may suspend or revoke the license of the ~~[boxer]~~ unarmed combatant in default and award to the opponent the amount of any forfeit posed under the terms of the contract; and

(2) the commission may declare the defaulting ~~[boxer]~~ unarmed combatant ineligible for any other ~~[boxing]~~ unarmed combat contest in the state of New Mexico until such terms of the breached contract are fulfilled.

D. If the commission finds that the default was excusable, the defaulting ~~[boxer]~~ unarmed combatant must fulfill the terms of the contract by an adjourned date subject to the approval of the commission. Subject to penalty of suspension or revocation of his license, the ~~[boxer]~~ unarmed combatant shall not ~~[box]~~ combat in any other ~~[boxing]~~ unarmed combat contest or for any other promoter without the approval of the commission.

[15.6.2.16 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.2.18 CONDITION FOR APPROVAL OF ~~[BOXING]~~ UNARMED COMBAT CONTEST CONTRACTS:

The commission will not approve contracts for ~~[a-boxing]~~ unarmed combat contest unless both ~~[boxers]~~ unarmed combatants

have signed contracts with the same licensed promoter.

[15.6.2.18 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.2.19 TIME LIMITS FOR FILING ~~[BOXING]~~ UNARMED COMBAT CONTEST CONTRACTS:

The promoter must meet the following conditions for filing boxing contest contracts with the commission.

A. All main events and semi-main event contracts between a promoter and any ~~[boxer]~~ unarmed combatant or manager of a ~~[boxer]~~ unarmed combatant, effecting or calling for the services of a main event or semi-main event ~~[boxer]~~ unarmed combatant, shall be filed within seven (7) days after the execution of the contract, and at least seven (7) days prior to any ~~[boxing]~~ unarmed combat contest to which the contract relates.

B. All contracts for preliminary ~~[boxers]~~ unarmed combatants shall be filed no later than twenty-four (24) hours prior to any match to which they relate. [15.6.2.19 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.2.20 COMPENSATION OF ~~[BOXERS]~~ UNARMED COMBAT IS REQUIRED:

A. Payment may be made only to persons set forth by the commission unless the commission has approved, in advance, all the details of payment to another party.

B. All ~~[boxers]~~ unarmed combatants participating in a ~~[boxing]~~ unarmed combat contest shall be paid, directly or through their licensed managers, who shall issue a receipt for such payment.

C. Payment shall be made only to the duly recognized manager or to the contestant himself, if he has no recognized manager.

D. Unless otherwise agreed to by the commission, all participants must be paid immediately following the conclusion of the final bout.

E. Promoters shall pay the agreed amount to the contestants.

F. No professional contestant shall be paid less than \$25.00 for each round scheduled in any contest.

G. Contestants shall not kickback any part of the amount paid them to any manager, second, promoter, or matchmaker.

H. None of the parties involved in an event or match shall accept a kickback offered to him by any contestant.

[15.6.2.20 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.2.21 CONTRACTS FOR BROADCAST OR TELECAST OF

~~[BOXING]~~ UNARMED COMBAT CONTEST:

A. All contracts entered into by any licensee of the commission, or any and all amendments, changes or modifications calling for or referring to any motion picture, telecast or radio broadcast of any ~~[boxing]~~ unarmed combat contest, exhibition or match must be promptly filed with the commission for approval.

B. No person or party may announce or conduct any such broadcast or telecast of any ~~[boxing]~~ unarmed combat contest, exhibition or match conducted under the jurisdiction of the commission without first obtaining the approval of the commission.

[15.6.2.21 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.2.22 PROHIBITIONS TO ENTER INTO CONTRACT:

The commission prohibits any licensed matchmaker, promoter, manager, contestant, person or party employed or connected with a licensed promoter, to enter into a contract or commence negotiations for any ~~[boxing]~~ unarmed combat contest or exhibition with any other licensee whose license is currently suspended or revoked by the commission.

[15.6.2.22 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.2.24 CONTRACTS FOR STATE CHAMPIONSHIP ~~[BOXING]~~ UNARMED COMBAT CONTESTS: All contracts for state championship ~~[boxing]~~ unarmed combat contests must be signed at a commission meeting.

A. Posting forfeit monies: On the date of the contract signing, the two contestants and the licensed corporation promoting the ~~[boxing]~~ unarmed combat contest will each post forfeit money with the commission.

(1) The contestants, the champion title holder and the challenger, will each deposit \$50, if their purses are not more than \$5,000.

(2) If the title bout purse for either contestant is more than \$5,000, that contestant must post a deposit of 10% of his guaranteed purse.

(3) The promoter of the title contest must deposit an amount equal to the highest amount deposited by either contestant.

B. Posting deposits ensures contestants' appearance: Posting of forfeit monies is to insure that each contestant will appear at the championship contest and will make the proper weight; and that the promoter will fulfill the promoter's obligations.

C. Title bouts authorized by outside sanctioning body: For championship title contests authorized by an outside sanctioning body (IBF, WBA, WBC,

etc.) only the promoter shall be required to post a deposit equal to 10% of the total purse for both of the title bout contestants. The deposit may be waived or readjusted by the commission.

D. If forfeit is declared:

In the event that a forfeit is declared, the deposit or deposits so forfeited will be distributed equally between the non-defaulting depositors and the New Mexico athletic commission.

[15.6.2.24 NMAC - N, 03-23-2002; A, 08-26-2012]

NEW MEXICO ATHLETIC COMMISSION

This is an amendment to 15.6.3 NMAC, Sections 8, 14, 15, 17, and 19, effective 8-26-12.

15.6.3.8 PRINTING OF TICKETS:

Tickets for events regulated by the commission must be printed by a printer approved by the commission.

A. Printing format:

The commission shall direct how the tickets will be printed and in what form they will be printed.

(1) Purchase price of ticket:

All tickets of admission to any ~~[boxing, sparring, or wrestling match]~~ unarmed combat contest or exhibition shall clearly bear the purchase price upon the face of the tickets.

(2) Reserved seat tickets:

Reserved seat tickets shall be printed with a stub to be retained by the purchaser.

(3) General admission tickets:

General admission tickets shall be printed with a stub to be retained by the purchaser, and they shall be consecutively numbered.

(4) Press tickets:

All tickets issued to ringside reporters ~~[and/or]~~ or media photographers, shall be marked MEDIA. The commission will issue media passes on any requests received from the media twenty-four (24) hours in advance of the event.

B. Different prices - different colors:

Different priced tickets must be printed on paper of different, distinctive colors unless otherwise sanctioned by the commission.

C. New tickets - new exhibition:

A new set of tickets shall be printed for every exhibition or contest.

[15.6.3.8 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.3.14 CONDITIONS TO BE MET BEFORE TICKETS ARE SOLD OR PROMOTIONAL ACTIVITIES COMMENCE:

The sale of tickets for any proposed contest or exhibition is prohibited until the following occurs:

A. the commission

through its director, receives and approves a completed event permit from and approves plans and statements showing the seating arrangements and the ticket prices established for each seating area; and

B. the appropriate county or municipal authority approves the aisle spacing, the exit facilities, and the location of fire extinguishers.

[15.6.3.14 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.3.15 O T H E R CONDITIONS FOR SELLING TICKETS:

A. Reserved seats

identified: Promoters and promoter corporations licensed by the commission must have available in their main office, a chart that plainly indicates the location of all reserved seats.

B. Duties of box office employees:

Box office employees of each promoter or promoter corporation licensed by the commission shall assist in the sale of tickets, and cooperate with the commission's representative in the tabulating of receipts, as well as, counting sold and unsold tickets directly after the main ~~[boxing]~~ unarmed combat contest contenders enter the ring.

C. Ticket sale supervision

by treasurer: The treasurer of each promoter or promoter corporation licensed by the commission shall, in addition to other duties that may be prescribed to him, supervise the sale of tickets to the general public and prepare the necessary and proper tax returns as required by law.

D. Signed gate receipts

report required: Failure of the licensee's treasurer to sign the gate receipts report shall result in the suspension of the promoter's permit to stage the next scheduled event, contest or exhibition.

[15.6.3.15 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.3.17 R E P O R T S REQUIRED BY THE COMMISSION:

[A.] Within seventy-two

hours after the close of the event, contest, or exhibition, the authorized representative of the promoter or promoter corporation licensed by the commission must submit to the commission the following written reports.

[~~A.~~] A. An "athletic tax

report" showing the number of each class of tickets sold, unsold or unused; and shall:

[~~(a)~~] (1) permit the commission

or its designated representative to examine the following: all sold and unsold or unused tickets; stubs; coupons; the financial records of the event;

[~~(b)~~] (2) permit the commission or

its designated representative to investigate all other matters relating to the receipts and

conduct of the box office and ticket takers; and

[~~(c)~~] (3) permit the commission or its designated representative to review the ticket tally, which must conform to the manifest issued by the commission-approved printer.

[~~(2)~~] B. An "inspectors' financial statement" for the particular contest or exhibition that must be approved and signed by the following persons:

[~~(a)~~] (1) the commissioner

in attendance or by the commission's designated representative in charge;

[~~(b)~~] (2) the commission inspectors

making the count; and

[~~(c)~~] (3) the authorized

representative of the licensed promoter of the event.

[~~(3)~~] C. An "after contest

report" that shall be submitted within seventy-two hours after the close of the contest, on forms as required by the commission. Information shall include a breakdown of all tickets sold or distributed, including but not limited to tickets sold, exchanged for goods or services, donated or complimentary. The payments made to the competitors and officials, and the manner and form in which they were compensated.

[15.6.3.17 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.3.19 PERSONS EXCUSED FROM HOLDING TICKETS:

Only the following persons are excused from holding tickets for an event, contest, exhibition, or match. For these designated exceptions, appropriate admission tickets may be issued in such number and in such form as approved by the commission.

A. Members of the

commission.

B. Persons designated by

the commission for an official duty.

C. The officials required

to attend under provisions of state laws or the commission's rules and regulations (15.6 NMAC).

D. The principals,

managers and seconds who are involved in the contests or exhibitions ~~[and]~~.

E. The policemen, firemen

and other public officials, actually on duty, shall be admitted to any contest or exhibition.

~~**[F]** Any official, currently~~

~~licensed and in good standing, who is not on duty.]~~

[15.6.3.19 NMAC - N, 03-23-2002; A, 08-26-2012]

NEW MEXICO ATHLETIC COMMISSION

This is an amendment to 15.6.4 NMAC, Sections 8, 10, 11, 12, 16, 18, 20, 21, 23, 24 and 25, effective 8-26-12.

15.6.4.8 DUTY TO SAFEGUARD BUILDING, PREMISES, AND SAFETY OF ATTENDEES:

A. Duty to safeguard premises: All promoters licensed by the commission are required to assure the commission that all necessary arrangements have been made to safeguard the premises where ~~[boxing]~~ unarmed combat contests, wrestling or martial arts exhibitions are to be conducted in order to ensure that adequate protection ~~[has been provided]~~ is provided by state licensed uniformed security guards and companies, law enforcement agency or security guards exempt from licensure pursuant to the Private Investigations Act 61-27B-4 to prevent riot, stampede, or disorderly conduct on the premises.

(1) Any disorderly conduct, act of assault or breach of decorum on the part of any commission licensee is prohibited.

(2) Any violation of this section by a commission licensee shall subject the licensee to penalties as deemed appropriate by the commission.

B. Building equipment and safety requirements: All premises, buildings, or structures used or intended for use in holding or televising unarmed combat boxing, wrestling, or martial arts matches or exhibitions shall:

(1) be properly ventilated;

(2) **[RESERVED]**

(3) provide an adequate fire alert system, fire extinguishers, emergency and fire exits; and

(4) shall, in all manner, conform to the laws, ordinances, building codes and regulations pertaining to buildings in the village, town, city or state where the building is situated.

C. Sale of alcoholic beverages on the premises: Alcoholic beverages may be sold at a match or event only by special permission of the commission.

(1) The commission may allow the sale of alcoholic beverages and limit the content of sales at each event.

(2) If sale of alcoholic beverages at an event is approved by the commission, there must be a valid license to sell alcohol in place issued by the proper state licensing agency.

(3) If an unruly crowd or incident occurs at any event where the sale of alcoholic beverages has been approved by the commission, the official in charge of the event may immediately suspend the sales of

alcoholic beverages.

~~(4) No alcohol is allowed within the technical zone.~~

D. Ambulance at live events: The promoter shall ensure that there is an ambulance on stand-by or medical personnel with appropriate resuscitation equipment at ringside at all live unarmed combat boxing, wrestling, or full contact karate or kickboxing events.

[15.6.4.8 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.4.10 DUTY TO PROVIDE INSURANCE FOR LICENSED CONTESTANTS:

A. Any person, party, or corporation holding a promoter's license issued by the commission shall continuously provide insurance protection for licensed unarmed combat, boxing, wrestling, or martial arts contestants appearing in unarmed combat, boxing contests, wrestling or martial arts exhibitions.

B. Insurance coverage shall provide the licensee reimbursement for medical, surgical, and hospital care for any injuries sustained while participating in a match.

C. The minimum insurance limit shall be ~~[\$1,000.00]~~ 2500.00 for injuries sustained by the contestant while participating in any program, event, match, or exhibition operated under the control of the licensed promoter.

D. Failure by the licensed promoter to provide and pay premiums on insurance as provided in this section shall be cause for the suspension or the revocation of the promoter's license.

[15.6.4.10 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.4.11 DUTY TO INFORM COMMISSION OF CONTESTANT'S ILLNESS:

A. Licensed promoters, matchmakers, and managers have the duty to promptly inform and furnish the commission with all information concerning ~~[a]~~ an unarmed combatant's, boxer's, wrestler's, or martial artist's illness or any other reason affecting his ability to safely compete, and for his failure to fulfill any contract.

B. Such information must be submitted to the commission before it is released to the media.

C. The contestant is in no way relieved from his contractual obligation until the commission has been properly informed, as provided in Subsection A of ~~[this rule]~~ 15.6.4.11 NMAC.

D. Any unarmed combatant, boxer, wrestler, or martial artist who is reported ill to the commission may be placed on the "ill and unavailable list". He will not be reinstated until he has met the

following conditions:

(1) he has been examined and given a medical release by the commission's appointed physician, and

(2) he fulfills all of the commitments pending at the time of his removal from the "available list" by the commission; or

(3) he is released from those commitments by the promoter.

[15.6.4.11 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.4.12 DUTY TO COMPENSATE EVENT PARTICIPANTS:

The promoter of an event will be required to pay all fees due event participants and personnel.

A. Fees set by the commission: The commission shall annually adopt a policy to set fees to be paid to referees, judges, deputy inspectors and timekeepers.

B. Fees set by the medical advisory board: With the approval of the commission, the medical advisory board shall determine fees to be paid to ringside physicians.

C. Negotiated fees: The promoter shall negotiate fees with other event personnel (e.g. security officers, announcers, ticket sellers, ticket takers, doormen, etc.) on an individual basis.

[15.6.4.12 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.4.16 DUTY TO PROVIDE A SURETY BOND:

A. A licensed promoter, whether a person, party or corporation, must furnish to the commission a surety bond to guarantee that he will pay all participants any rents, leasing amounts, utility bills, ticket printing invoices, advertising costs, and any other legitimate expenses incurred in conjunction with each program, event, match, exhibition, or televised viewing promoted by the promoter.

~~[B.]~~ ~~The Commission may approve a certified check, cash, or a letter of credit, in lieu of a Surety Bond.~~

~~[C.]~~ **B.** Before a promoter distributes the receipts of any contest or exhibition, he must first deduct all sums due for the privilege tax due to the state.

~~[D.]~~ **C.** A licensed promoter, whether a person, party, or corporation, in default of any of its debts or obligations, shall be suspended by the commission.

~~[E.]~~ **D.** The commission may reinstate the promoter if the promoter meets the following conditions:

(1) the promoter provides the commission with proof that all the subject debts and obligations have been paid in full; and

(2) ~~[The promoter posts a deposit~~

with the Commission in such amount and for such period as determined by the Commission] the promoter must provide proof of a valid surety bond, in an amount to be determined by the commission.

[15.6.4.16 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.4.18 PROHIBITIONS OF SPECIFIC PROFESSIONAL RELATIONSHIPS OR ACTIVITIES:

A. Charitable organization promotions: Unarmed combats, boxing matches, wrestling programs, or martial arts exhibitions conducted under the auspices or in conjunction with any charitable organization are prohibited by the commission unless the commission grants approval for such activity. The promoter may apply for commission approval by submitting the agreement setting forth the terms and conditions of the program for the commission's review.

B. Licensed matchmaker forbidden to act as manager or assignee of [Boxer] unarmed combatant: Matchmakers are forbidden from acting as the manager or assignee of any [boxer] unarmed combatant; or from participating in any way, directly or indirectly, in the ring earnings or management of any [boxer] unarmed combatant. However, the commission shall license matchmakers as managers employed by licensed promoters, if acceptable to the commission. In such cases:

(1) the matchmaker and the promoter shall be jointly responsible to the commission for any matches conducted;

(2) matches shall be conducted only by a licensed promoter or licensed matchmaker;

(3) matchmakers will be held responsible by the commission if they arrange matches in which one of the principles is outclassed; and

(4) persistent lack of judgment in this matter will be regarded as cause for suspension or revocation of the matchmaker's license, and the matchmaker shall have no further connection with any [boxer] unarmed combatant or stable of [boxers] unarmed combatants.

C. Restrictions on promoter as employer of other commission licensees: Licensed promoters are prohibited from employing, or in any other way having any commercial connection to, any licensed [boxer] unarmed combatant, wrestler, manager or second.

D. Restrictions on other principles with regard to commission licensees:

(1) The commission prohibits any director, officer, employee, or stockholder of any licensed [licensed] promoter from serving or acting, either directly or indirectly,

as the manager, assignee or second to any [boxer] unarmed combatant. Nor shall a promoter or matchmaker participate as an unarmed combatant in an event they are either promoting or matchmaking.

(2) The commission prohibits any director, officer, employee, or stockholder of any licensed promoter from being employed by, or in any other way being connected with, any other promoter, without the approval of the commission.

[15.6.4.18 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.4.20 DUTY TO OBTAIN EVENT PERMITS: A licensed promoter must obtain an event permit prior to each program, match, event or exhibition.

A. The commission will issue a permit upon receipt from the promoter of a completed commission-approved application, and all other required documentation.

B. The application and attachments must be [filed] approved with the commission [or Events Coordinator] not later than [~~seven days~~] seventy-two hours prior to the regularly scheduled meeting before the contest. The application must contain the following information and documentation:

(1) evidence of a current promoter's license;

(2) date of the contest;

(3) copy of the contract for the event location;

(4) proof of contest insurance;

(5) name of the main event participants; [and]

(6) number of scheduled rounds of all [boxing] unarmed combatant contests on the event card;

(7) verification of adequate security;

(8) verification of ambulance and medical technicians; and

(9) report on all unarmed combatants from fightfax.com or mixedmartialarts.com, or other nationally or industry recognized reporting service.

C. The promoter must provide the commission with the signed and witnessed formal contracts for the main event boxing contest executed on forms supplied by the commission and executed in accordance with [Part 2 of the commission's rules and regulations, 15.6 NMAC] 15.6.2 NMAC.

D. Each applicant for an event permit agrees to grant the commission, or its authorized representative, the right to examine the books of accounts and other records of the applicant relating to each event for which an event permit application is made.

[15.6.4.20 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.4.21 APPROVAL OF EVENT PERMITS: Before approving any event permit, the commission, or the two commissioners acting under the commission's delegated authority, will consider the relative merits of the contestants, their past records, and whether or not they are suitable opponents. The commission reserves the right to disapprove any match or [boxing] unarmed combatant contest on the grounds that it is not in the best interest of unarmed combatant boxing, wrestling, or martial arts, or of the health and safety of either of the contestants.

A. Each application for an event permit will be reviewed by the [Events Coordinator] administrator or by commission staff to assure compliance with all application requirements of the commission.

B. When the application is complete, the events coordinator or commission staff will review the event permit request with two commission members to obtain their approval. The two commissioners have the authority to provide final approval. However, if they are unwilling to grant approval of the event permit application, the following shall occur:

(1) the event permit request will be considered at the next regularly scheduled commission meeting; or

(2) [~~If the next regular meeting is not scheduled to occur seven or more days before the event, a Special Meeting of the Commission will be called to review the application~~] the commission reserves the right to not approve an event for failure to submit a timely application; the commission may approve an application that is untimely if the applicant demonstrates extenuating circumstances.

[15.6.4.21 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.4.23 DUTIES REGARDING SCHEDULING OR CANCELING OF EVENTS:

A. Scheduled events may not be cancelled or adjourned without the consent of the commission.

B. Advertisement for an event may not be paid for until and unless the event has been approved by the commission, as set forth in [section 21 of this rule] 15.6.4.21 NMAC.

C. If the commission, for any reason, does not approve an event for which any tickets have been sold, the promoter shall cause all ticket holders to receive a full refund.

[15.6.4.23 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.4.24 LICENSE CARD REQUIRED:

A. All participants,

whether a promoter, corporation, referee, judge, matchmaker, timekeeper, corporation treasurer, unarmed combatant, professional boxer, wrestler, kick boxer or martial artist, manager, trainer, second or announcer, must be licensed by the commission before they may participate, either directly or indirectly, in any unarmed combating, boxing, sparring, wrestling match or kick boxing exhibition.

B. Upon request, any participant must allow inspection of his license and federal identification card by the commission or its delegated representative.

C. Any participant denying inspection of his license card by the commission, or its delegated representative, shall be prohibited by the commission from participating in the event.

[15.6.4.24 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.4.25 PROTOCOL FOR USING ASSUMED NAMES:

A. [A] An unarmed combatant, boxer or wrestler may use, but not be licensed under, an assumed name, provided the commission has approved the use of the assumed name.

B. [A] An unarmed combatant, boxer or wrestler may not assume or be licensed under a name deceptively similar to the name of any other boxer or wrestler.

[15.6.4.25 NMAC - N, 03-23-2002; A, 08-26-2012]

NEW MEXICO ATHLETIC COMMISSION

This is an amendment to 15.6.5 NMAC, Sections 8, 9, 11, 12, 14, 16, 17, 19, 20 and 22, effective 8-26-12.

15.6.5.8 MEDICAL EXAMINATION AND CERTIFICATION OF CONTESTANTS REQUIRED:

A. Medical examination of non-main event or non-championship bout contestants: It shall be the duty of the licensed promoter, whether a person, party, or corporation, conducting a professional boxing, sparring, wrestling or martial arts exhibition, to arrange for the contestants to undergo a uniform pre-bout medical examination performed by a New Mexico licensed physician approved by the commission's medical advisory board.

(1) The pre-bout medical examination shall be conducted within twenty-four (24) hours prior to the contestant's entering the ring in the scheduled match or exhibition.

(2) The pre-bout medical examination shall include: [~~the eyes, weight, temperature, pulse sitting, pulse standing, lungs, heart, blood pressure, venereal disease, infectious eye or skin diseases,~~

~~serotal evidence of hernia, general condition, and any other tests deemed advisable by the physician. Female participants shall be required to provide a current negative pregnancy test at each contest in which they participate.]~~

~~(a) negative HIV;~~

~~(b) negative hepatitis B, surface antigen (SA);~~

~~(c) negative hepatitis C antibody; and~~

~~(d) professional contestants must submit a dilated eye exam performed no later than 24 hours prior to any competition by an ophthalmologist, optometrist or qualified physician;~~

~~[(3) The pre-bout medical examination should also require the review of the results of specified medical tests/ examinations that all participants should be required to keep current in a national data bank (E.g., MRI, EKG, neurological examination, annual complete eye examination including dilation and retinal examination, hepatitis, and drug screens.)]~~

~~[(4) (3) The commission shall require proof of compliance with any medical requirements previously imposed on a participant by another commission prior to giving medical approval for a bout.~~

~~[(5) (4) Immediately following the examination, the physician shall file with the commission a written report of the results of the examination on a form prescribed by the commission. The physician shall certify as to the physical fitness of each contestant scheduled to participate in the match or exhibition; and deliver the completed examination report to the commission's representative and made available to the promoter of the match or exhibition before the commencement of the event~~

~~[(6) (5) The promoter of the match or exhibition shall prohibit any [boxer] unarmed combatant from entering the ring unless he has been certified by the examining physician to be physically fit to engage in the match or exhibition.~~

~~[(7) (6) It shall be unlawful for any physician to certify falsely to the physical condition of any contestant in a professional boxing or sparring match or martial arts exhibition.~~

B. Electrocardiogram, MRI or MRI/MRA: The commission or ringside physician may order an electrocardiogram or MRI or MRI/MRA examination when a contestant:

(1) has lost three or more bouts in a row by KO or TKO;

(2) has lost six bouts in a row; or

(3) has an extensive losing record in the last two years.

C. Test results: The results of an MRI or MRI/MRA examination will be accepted if conducted within the last five years.

(1) When a neurological clearance is needed for a pre-fight examination.

(2) When competing in a five round title fight.

(3) A contestant that is thirty-five years old or older.

D. The commission will not issue or renew the license of any applicants who wishes to compete in any sport regulated by the New Mexico athletic commission who has suffered from any type of cerebral hemorrhage.

E. If any applicant applying for a contestant's license has suffered a serious head injury including but not limited to concussions the applicant must have their application for license reviewed by the commission before any license is issued or renewed.

[B:] F. Medical examination of main event or championship bout contestants: All contestants scheduled for main event or championship boxing contests shall undergo a uniform medical examination at least five days prior to the date of the contest in the same manner and procedure as set forth in subsection A of this rule, 16.6.5.8 NMAC.

[C:] G. Medical examination on the day of the boxing event: All [~~boxers~~] unarmed combatants scheduled for [~~boxing~~] unarmed combat contests in an event shall [~~undergo the same type of examination outlined in Paragraph (2) of Subsection A of 15.6.5.8 NMAC. The examination shall be conducted twice on the day of the bout: (1) at the weigh-in conducted not less than six (6) hours before the scheduled contest, and (2) a short while before the boxing program commences~~] be conducted on the day of the bout.

[D:] H. Cost of the medical examination: The cost of any physical examination shall be prescribed by a schedule of fees established by the commission.

(1) The cost of any medical examinations of event contestants shall be paid directly to the commission by the promoter of the event.

(2) The physician will be paid directly by the promoter in accordance with the fees established by rule by the commission.

[15.6.5.8 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.5.9 CONFIDENTIAL NATURE OF MEDICAL REPORTS:

All medical reports submitted to the commission and all medical records of the commission's medical advisory board or commission relative to the physical examination and medical condition of unarmed combatants boxers, wrestlers, or martial artists, shall be considered confidential in nature. These records shall be open to examination only to the following:

A. to the unarmed combatants, boxer, wrestler, or martial artist wishing to examine his own medical records and upon his written application to the commission to examine said records; or

B. to a court of competent jurisdiction upon subpoena for an appropriate court case.
[15.6.5.9 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.5.11 SPECIFICATIONS FOR HAND BANDAGES ON [BOXERS'] UNARMED COMBATANTS' HANDS:

A. Hand bandages on the hands of a [boxer] unarmed combatant shall be restricted to soft gauze not more than twenty (20) yards in length and two (2) inches in width; and held in place by not more than eight (8) feet of adhesive tape not more than one and one-half (1-1/2) inches for each hand. Wrapping of hands is mandatory.

B. The use of adhesive tape over the knuckles is strictly prohibited. The tape shall not cover any part of the knuckles when the hand is clenched to make a fist. One strip of tape ¼ inch may be placed between each finger to secure the wraps. Tape must be behind the knuckles ½ inch.

C. The use of water or any other liquid or material on the tape is strictly prohibited.

D. The hand bandages shall be placed and adjusted in the dressing room in the presence of a representative designated by the commission and, if requested, one representative of the other [boxer] unarmed combatant.

E. Under no condition are gloves to be placed on the hands of the contestant until the commission representative stamps or signs the commission's approval on the hand bandages.

F. No spirits of ammonia may be used in the ring or cage.

G. Only discretionary use of petroleum jelly may be used on the face prior to the start of the fight.

H. In case of cuts, only the following solutions are allowed:

(1) a sealed solution of adrenaline 1/1000 at ringside;

(2) avetine; and

(3) thrombin.

I. All first aid equipment used by a second, trainer or manager shall in all cases and at all times be subject to inspection by the commission or its representative, or assigned physician and the decision as to the use shall be final.

J. No prescribed inhalers or any other type of aerosol inhaler may be used in the corner of any fighter. A prescribed inhaler may be given to the ringside physician prior to the start of the

bout.

[15.6.5.11 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.5.12 PHYSICIAN IN ATTENDANCE:

A. It shall be the duty of every promoter to have in attendance at every [~~boxing-match~~] unarmed combatant or exhibition, a physician licensed by the state of New Mexico and designated by the commission.

B. The commission may establish a schedule of fees to be paid by the promoter to cover the cost of the physician's attendance.

C. The promoter shall pay the physician directly, in accordance with rules established by the commission.
[15.6.5.12 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.5.14 WHEN A MANDATORY COUNT OF EIGHT IS REQUIRED:

A. In the event that one [boxer] unarmed combatant is knocked-down, the referee shall give a mandatory 8-count. A [boxer] unarmed combatant shall be deemed "down" when any part of his body, except his feet, is on the floor or he is hanging helplessly over or on the ropes.

B. Should a contestant slip, or fall down, or be pushed, he shall be ordered to his feet immediately. Failure to rise may subject him to disqualification.

[15.6.5.14 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.5.16 A U T O M A T I C S U S P E N S I O N O F [BOXER] UNARMED COMBATANT SUFFERING ACTUAL KNOCKOUT:

A. any contestant who has suffered an actual knockout shall be automatically suspended for at least sixty (60) days;

B. the contestant shall surrender his license card to the commission; and

C. the contestant shall not engage in any unarmed combatant, boxing or sparring contest or exhibition during the period of such suspension.

[15.6.5.16 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.5.17 EXAMINATION AND REPORT AFTER SEVERE INJURY OR KNOCKOUT:

A. Any contestant who has sustained any severe injury or actual knockout in a bout or match shall be thoroughly examined within twenty-four (24) hours by a physician approved by the commission's medical advisory board.

B. Upon the medical

advisory board's recommendation, the commission may suspend the [boxer] unarmed combatant beyond the mandatory sixty (60) days until he is fully recovered.

C. In the event that a contestant who has suffered a severe injury or a knockout has been treated by his own personal physician or has been hospitalized, he or his manager must promptly submit a full report from the attending physician or hospital to the commission's medical advisory board.

[15.6.5.17 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.5.19 S P E C I A L M A N D A T O R Y M E D I C A L E X A M I N A T I O N S:

A. Contestant losing six consecutive matches: Any contestant who has lost six consecutive bouts or matches must be automatically suspended and cannot be reinstated until he has submitted to a medical examination of the type specified in Subsection A of 15.6.5.8 NMAC.

B. Physician panel: At the request of the commission, the medical advisory board shall appoint a panel of three physicians to specially examine any licensed unarmed combatant, boxer, wrestler, or martial artist as deemed necessary by the commission.

[15.6.5.19 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.5.20 M A N D A T O R Y R E S T I N G P E R I O D F O R B O X E R S B E T W E E N B O U T S:

A. If [a-boxer] an unarmed combatant has competed anywhere in a six (6) rounds or more bout, he shall not be allowed to box in New Mexico until seven (7) days have elapsed since his last bout.

B. If [a-boxer] an unarmed combatant has competed anywhere in a four (4) round bout, he shall not be allowed to box in New Mexico until four (4) days have elapsed since his last bout.

[15.6.5.20 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.5.22 A M B U L A N C E A T L I V E E V E N T S:

The promoter shall ensure that there is an ambulance on stand-by at all live unarmed combatant, boxing, wrestling, or full contact karate or kickboxing events.

[15.6.5.22 NMAC - N, 03-23-2002; A, 8-16-2012]

NEW MEXICO ATHLETIC COMMISSION

This is an amendment to 15.6.6 NMAC, Sections 7, 8, 10, 13, and 14, effective 8-26-12. This also amends the part name.

PART 6 THE [RING] OFFICIALS

15.6.6.7 DEFINITIONS: "[Ring] Officials" refers to the event referees, announcers, timekeepers, and judges.

[15.6.6.7 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.6.8 REFEREES AND JUDGES ARE ASSIGNED BY THE COMMISSION:

A. Commission assigns [Ring] officials for bouts and exhibitions: The commission shall assign deputy inspectors, physicians, timekeeper, referees and judges to each [~~boxing, wrestling, or martial arts event~~] unarmed combat, bout, program, match, or exhibition conducted by a licensed promoter in New Mexico.

B. [Ring] Officials paid by promoter: All [ring] officials assigned and directed by the commission to be in attendance at any event, bout, program, match, or exhibition shall be paid by the licensed promoter for the event in accordance with the fee schedule furnished by the commission to the promoter.

C. Number and substitution of [Ring] officials: The number of officials required to be in attendance, or the substitution of officials for any reason or at any time during the event, bout, program, match, or exhibition, shall be solely within the power and discretion of the commission. [15.6.6.8 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.6.10 THE [BOXING] UNARMED COMBAT REFEREE:

A. License required: A referee must be licensed by the commission before he will be permitted, assigned, or directed by the commission to assume the duties and powers of a referee.

B. Duties and powers: The [~~boxing~~] unarmed combatant referee shall have the following duties and powers:

(1) Inspecting the ring cage or fighting area per 15.6.7 NMAC.

(1) (2) To instruct the contestants.

(2) (3) To inspect each [~~boxer's~~] unarmed combatant gloves and make sure that no foreign, harmful, or detrimental substances have been applied to either the gloves or to the bodies of the boxers.

(3) (4) To stop a bout or contest at any stage on the grounds that it is too one-

sided. In such an event, the referee may award the bout to the superior contestant as a technical knockout.

(4) (5) To stop a bout or contest at any stage if he determines that one or both of the [~~boxers~~] unarmed combatant are not competing in earnest. In such an event, the referee may disqualify one or both of the contestants. If only one contestant is disqualified, the referee may award the bout as a technical knockout to the other contestant.

(5) (6) To stop a bout or contest at any stage on account of a major foul being committed by either contestant. In such an event, in a boxing contest the referee may award the decision to the boxer who was fouled.

[15.6.6.10 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.6.13 THE [RING] ANNOUNCER:

A. License required: [A ring] An announcer must be licensed by the commission before he will be permitted by the commission to assume the duties of [a ring] an announcer. Unlicensed persons may not be employed by the promoter to act as the [ring] announcer for an event being conducted by the promoter.

B. Introductions: Only introductions approved by the commission shall be made from the ring, cage or fighting area. Announcing from the ring, cage or fighting area the names of any persons not connected with the sport, without prior consent from the commission or its delegated representative, is forbidden.

C. Announcing the contestants: After the announcer completes the introductions, he shall announce the name of each contestant and his correct weight, along with any other announcements that he is directed by the commission to announce.

[15.6.6.13 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.6.14 THE TIMEKEEPER:

A. License required: A timekeeper must be licensed by the commission before he will be permitted by the commission to assume the duties of a timekeeper. Unlicensed persons may not be employed by the promoter to act as timekeepers for an event being conducted by the promoter.

B. Location of the timekeeper: The timekeeper must sit outside the ring, [~~platform~~] cage or fighting area and close to the gong.

C. Tools of the timekeeper: Each timekeeper must have either a whistle or a gong and a stopwatch, which must be submitted for approval by the commission representative in attendance

at the [~~boxing program~~] unarmed combat event.

D. Knockout protocol: In the event that a bout terminates by a knockout during any round, the timekeeper shall inform the announcer of the exact duration of the round.

E. Ten-second signals required: The timekeeper shall signal ten (10) seconds prior to the beginning of any round. At such signal, all seconds must leave the inside of the ring, cage or fighting area and all stools and equipment must be removed from the ring, [~~platform~~] cage or fighting area. The timekeeper must not signal during the progress of a round except to indicate that only ten (10) seconds remain in the round.

F. [~~Striking the Gong~~] Signal end of round: The timekeeper must [~~strike the gong with a metal hammer~~] use the appropriate time keeper signal to indicate the [~~beginning and~~] ending of each round.

[15.6.6.14 NMAC - N, 03-23-2002; A, 08-26-2012]

NEW MEXICO ATHLETIC COMMISSION

This is an amendment to 15.6.7 NMAC, Sections 6, 8, 10, 12 and 16, effective 8-26-12.

15.6.7.6 OBJECTIVE: The objective of Part 7 of Chapter 6 is to set forth all commission requirements for the building premises, facilities, and equipment that are to be used for an event[~~, program, match, bout, or exhibition~~] regulated by the commission.

[15.6.7.6 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.7.8 THE PREMISES AND EQUIPMENT: Any building or premise in which an event[~~, match, program, bout, or exhibition~~] regulated by the commission is to be held must first be approved by the commission. A promoter may only arrange for and hold events, [~~matches, programs, bouts, or exhibitions~~] regulated by the commission in premises and with equipment approved by the commission.

[15.6.7.8 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.7.10 SEATING ACCOMMODATIONS FOR OFFICIALS:

The promoter must ensure [~~that~~] a suitable technical zone, separate ringside, cage or fighting area seats are provided for the judges, the timekeeper, the knockdown counter, the physicians, [~~and~~] the commission representatives and other person(s) identified by the commission.

A. The attending commission representative must approve

seating accommodations prior to the commencement of any [program] event.

B. The promoter must also provide one seat in each contestant's corner for the inspectors on duty to occupy during the [program] event.

C. There shall also be a separate and cordoned-off area for working officials sitting ringside, age or fighting area.

[15.6.7.10 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.7.12 THE RING: Any ring in which [~~a boxing, wrestling, or martial arts contest~~] an unarmed combat contest excluding mixed martial arts or exhibition is to be conducted, must first be inspected and approved by the commission chair or his designee as having met the following requirements.

A. Size: The standard ring shall be at least twenty (20 x 20) square feet within the ropes, but no more than twenty-four (24 x 24) square feet, unless otherwise approved by the commission; and have no less than eighteen (18) inches of unencumbered platform surface extending from the ropes.

B. Elevation: The ring shall not be elevated more than four (4) feet off of the floor, and shall be provided with two sets of suitable steps for use of contestants, coaches, and officials.

C. Ropes: The ring ropes shall be four (4) in number with the bottom rope off-set from the other three. The bottom rope shall be between thirteen (13) and eighteen (18) inches from the ring surface. The ropes shall be no less than one (1) inch in diameter and should be covered with a soft material to avoid injury to the participants.

D. Padding: The ring surface shall have a smooth, firm surface covered with clean canvas or other resilient material stretched [~~taught~~] taut and laced tightly to the ring platform. Between the surface and the cover, there shall be a layer of ensolite padding or similar material, at least one (1) inch thick that extends over the entire surface inside and outside of the ropes.

E. Ring posts: The ring posts shall be four (4) in number and shall extend no more than fifty-eight (58) inches from the surface of the ring. Each post shall be at least eighteen (18) inches distant from the ring ropes. Ring posts and turnbuckles shall be suitably padded to insure the participants' safety.

F. Lighting: The ring shall be amply illuminated by overhead lights that should be so arranged that shadows shall be eliminated and discomfort from heat and glare are minimized for persons in and near the ring.

[15.6.7.12 NMAC - N, 03-23-2002; A, 08-

26-2012]

15.6.7.16 O T H E R EQUIPMENT: The commission or commission representative must approve all equipment used in conjunction with the contest.

A. The gong: The gong must not be less than ten (10) inches in diameter, and it must be adjusted and secured at ringside.

B. Scales: The commission must approve, in advance of any contest, any scale that will be used for any contestant weigh-in.

C. Buckets and bottles: There must be a clean bucket and a clean bottle in each contestant's corner for each bout or event, along with an additional bucket for the disposal of contaminated materials in each corner.

D. Second's stools: The promoter must provide second's stools for each contestant's corner.

E. Miscellaneous equipment: The promoter must provide gloves, water, mats and any other equipment or articles as required by the commission for the proper conduct of any bout or event.

[15.6.7.16 NMAC - N, 03-23-2002; A, 08-26-2012]

NEW MEXICO ATHLETIC COMMISSION

This is an amendment to 15.6.8 NMAC, Sections 13, 17, 21 and 23, effective 8-26-12.

15.6.8.13 NUMBER OF BOXING CONTEST OFFICIALS REQUIRED: There shall be at least one physician in attendance at ringside at all times. In addition, at least the following officials shall be present at each boxing contest:

A. one referee;

B. three judges;

C. one timekeeper; and

~~**D.** One knockdown counter; and~~

E.] D. one announcer.

[15.6.8.13 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.8.17 WEIGHING - IN CEREMONIES:

A. Schedules of ceremonies: The times and places of all weigh-in ceremonies for indoor or outdoor programs shall be determined by the commission. However, all weigh-ins shall take place [~~not less than six (6) hours before the scheduled~~] no later than twelve o'clock noon on the day of the contest.

B. Contestant weigh-ins: All contestants shall be weighed-in

on scales approved by the commission, and in the presence of their opponents[; the ~~matchmaker~~], and the commission representative.

C. Postponement of weigh-in: In the event a boxing contest is postponed, for any reason whatsoever, more than 24-hours prior to the contest, a second weigh-in and additional physical examinations may be required on the day to which the boxing contest has been rescheduled.

[15.6.8.17 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.8.21 INSPECTORS:

A. Appointed by the commission: The commission shall appoint [~~licensed~~] inspectors to be present at boxing contests.

~~**(1)** At least one inspector shall be present at any given contest.~~

(2) Inspectors shall work in cooperation and in conjunction with any police officers as may be detailed for this duty at boxing contests.

B. Prohibitions to [Granting Of Inspector License] assigning officials: The commission will not and shall not [~~issue an inspectors license to any person~~] assign officials who [~~is~~] are directly or indirectly associated with, including but not limited to any financial interest in, the management of any contestant; or who is an individual promoter; or who is a stockholder in, or employee of, a promoter corporation or an unincorporated club or association engaged in the promotion of contests.

[15.6.8.21 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.8.23 O T H E R "ATTRACTIONS" AND "EXHIBITIONS":

A. [~~V a u d e v i l l e~~] Entertainment, numbers, speeches, or exhibitions of any other branch of sport shall not be permitted on any boxing card, with the exception of such events at club dinners or "smokers" not regularly advertised as boxing shows, except as the commission shall specifically approve.

B. There shall be no collections of any sort or for any cause made at boxing contests.

C. "Exhibition" bouts shall not be held unless announced and advertised as an "exhibition".

D. All bouts shall be bona fide "contests".

[15.6.8.23 NMAC - N, 03-23-2002; A, 08-26-2012]

NEW MEXICO ATHLETIC COMMISSION

This is an amendment to 15.6.9 NMAC, Section 11, effective 8-26-12.

15.6.9.11 THE TALLY AND DECISION:

A. The tally: At the conclusion of the [bout] round, each judge must tally up the points he has awarded each contestant and submit the scorecard to the referee.

B. The decision: After the scorecards have all been checked by the commission representative, they must be returned to the announcer who shall announce the decision of the judges from the ring.

C. Main event protocol on announcing the decision: In main events, the announcer shall call out the points awarded by each judge. The decision must then be awarded to the contestant with the greatest number of points on two of the scorecards.

[15.6.9.11 NMAC - N, 03-23-2002; A, 08-26-2012]

NEW MEXICO ATHLETIC COMMISSION

This is an amendment to 15.6.11 NMAC, Sections 14 and 19, effective 8-26-12.

15.6.11.14 REQUIRED OFFICIALS AT WRESTLING EXHIBITIONS: The following officials shall be in attendance at each wrestling exhibition.

A. Referee.

B. [Timekeeper] Event coordinator.

C. Announcer.

D. Physician.

[15.6.11.14 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.11.19 EQUIPMENT REQUIREMENTS AT EXHIBITIONS:

A. Barricade requirements: Barricades around ringside shall be mandatory at all wrestling exhibitions.

B. Wrestling mats: Mats inside the barricades around the ring should be at least one (1) inch thick and cover any exposed ground.

[15.6.11.19 NMAC - N, 03-23-2002; A, 08-26-2012]

NEW MEXICO ATHLETIC COMMISSION

This is an amendment to the part name for 15.6.12 NMAC, effective 8-26-12.

PART 12 C O N T E S T REQUIREMENTS FOR FULL CONTACT KARATE AND KICKBOXING, [AND MARTIAL ARTS]

NEW MEXICO ATHLETIC COMMISSION

This is an amendment to 15.6.13 NMAC, Sections 7, 8, 10, 11, 12 and 13, effective 8-26-12.

15.6.13.7 DEFINITIONS:

A. “[Promoter] Distributor” refers to any person who purchases, acquires, owns and holds the distribution rights for a closed circuit telecast of an event regulated by the commission to be viewed in New Mexico; and who intends to sell, sells, or in some manner extends such distribution rights in part to another person or entity.

B. “Broadcast” means any audio or visual image sent by radio or television signals.

C. “Closed circuit telecast” means any telecast that is not intended to be available for viewing without the payment of a fee for the privilege of viewing the telecast and includes the term “pay-per-view”. This definition includes, but is not limited to, telecasts to arenas, bars, lounges, clubs, entertainment or meeting centers and private residences.

D. “Podcast” (or non-streamed webcast) is a series of digital media files, either audio or video) that are released episodically and often downloaded through web syndication.

E. “Webcast” is a media file distributed over the internet using streaming media technology to distribute a single content source to many simultaneous listeners/viewers. A webcast may either be distributed live or on demand. Webcasting is “broadcast” over the internet.

F. “Streaming media” is multimedia that is constantly received by, and normally presented to, an end-user while being delivered by a streaming provider. The name refers to the delivery method of the medium rather than to the medium itself. Live streaming, more specifically, means taking the video and broadcasting it live over the internet.

[15.6.13.7 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.13.8 REQUIREMENTS FOR CLOSED CIRCUIT TELECASTS:

A. Licensed promoter required: Closed circuit telecasts of [boxing, wrestling, or martial arts] unarmed combat events shall not be telecast, podcast or webcast from, or into, New Mexico except under the auspices of a licensed promoter who shall be responsible for filing

the appropriate reports and tax payments with the commission as referenced herein.

B. Event permit required: The promoter shall complete and submit to the commission a completed application form for an event permit disclosing the dates, locations, and cities intended for closed circuit telecast, podcast or webcast of the commission regulated event in the state of New Mexico. The promoter is prohibited from selling or negotiating the sale of rights to broadcast such closed circuit telecast to any person prior to receiving an event permit from the commission.

C. Tickets required.
(1) Tickets are required for the closed circuit telecast of any event regulated by the commission.

(2) All tickets must be printed by a printer approved by the commission.

(3) All tickets for the event shall be delivered to the commission or the commission’s representative. The tickets shall be delivered in a sealed container along with a manifest certifying the actual number of tickets printed.

(4) The commission or the commission’s representative will audit the tickets before returning them to the promoter.

(5) Tickets may only be sold after they have been audited by the commission or the commission’s representative.

D. Insurance required: The promoter shall furnish to the commission proof of insurance to cover injury to spectators attending the closed circuit telecast event. The promoter shall also have “signal interruption” insurance available, if requested by the commission.

E. Licensing required for all event personnel: All box office employees, ticket takers, and doormen at any closed circuit telecast events shall be licensed by the commission; whether the events are held at arenas, bars, lounges, clubs, entertainment or meeting centers, etc.

F. [RESERVED]

G. Reports required.

(1) A written report on forms provided by the commission shall be filed by any promoter holding, showing, or telecasting any commission-regulated event via closed circuit telecast, podcast or webcast viewed within New Mexico, whether or not the broadcast, podcast or webcast originated in New Mexico.

(2) The report shall state the number of tickets or orders sold, and the amount of gross receipts from the sale of tickets or order, excluding federal and state sales taxes.

H. International sanction rules: The commission must approve international sanctioning body rules that vary from the commission’s rules.

[15.6.13.8 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.13.10 C A B L E TELEVISION SYSTEM PAY-PER-VIEW TELECASTS:

A. Promoter's preliminary report required: A promoter broadcasting a closed circuit telecast utilizing a cable television system's pay-per-view facilities shall file a report with the commission within seventy-two (72) hours following the date of the telecast, and estimating the number of orders sold.

B. Cable system operator's report required: Each cable television system operator whose pay-per-view facilities were utilized to telecast a closed circuit program event program shall file a report with the commission within fifteen (15) calendar days following the date of the telecast, podcast or webcast and stating the number of orders sold.

C. Promoter's final report required: The promoter shall file a final report with the commission within thirty (30) calendar days following the date of the telecast, and stating the number of orders sold. The report will be accompanied by a [tax] fee payment of five percent (5%) of the total gross receipts from all orders sold, excluding federal and state sales taxes. [15.6.13.10 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.13.11 N O N - C A B L E TELEVISION SYSTEM TELECASTS:

A. Promoter's report required: A promoter holding, showing, or telecasting a closed circuit telecast utilizing facilities other than a cable television system's pay-per-view, shall file a report with the commission within seventy-two (72) hours following the date of the telecast.

B. Report and [tax] fee payment to commission: The report shall be accompanied by a [tax] fee payment of five percent (5%) of the total gross receipts derived from the sale of tickets, excluding federal and state sales taxes. [15.6.13.11 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.13.12 HOTEL AND MOTEL TELECASTS:

A. Licensed promoter not required: New Mexico law does not currently require a licensed promoter for closed circuit telecasts, podcast or webcast of [boxing, wrestling, or martial arts] unarmed combat event programs provided in-room by hotels or motels.

B. Report and supervisory fees required: Each hotel or motel facility or establishment providing in-room closed circuit telecasts of boxing, wrestling, or martial arts event programs will be responsible for filing a report with the commission within seventy-two (72) hours after each telecast, podcast or webcast of the

event. The report shall be accompanied by a payment of the appropriate supervisory fee due. [15.6.13.12 NMAC - N, 03-23-2002; A/E, 10-11-2005; A, 08-26-2012]

15.6.13.13 PENALTIES FOR FAILURE TO REPORT OR PAY TAXES:

A. Promoter: The commission shall levy a fine on any promoter who fails to file either or both the report and tax payment within the prescribed time frame for any closed circuit telecast of a commission-regulated event in the state of New Mexico.

(1) The commission shall waive the fine if it determines that the promoter was not at fault for the failure to file either or both the report and tax payment with the commission.

(2) Lost or misdirected mail shall not be grounds for waiving the fine.

B. Hotels and motels: The commission shall levy a fine on any hotel or motel facility or establishment that fails to file either or both the report and supervisory fee payment within the prescribed time frame for any closed circuit telecast, podcast or webcast of a commission-regulated event in the state of New Mexico.

(1) The commission shall waive the fine if it determines that the hotel or motel facility or establishment was not at fault for the failure to file either or both the report and [tax] fee payment with the commission.

(2) Lost or misdirected mail shall not be grounds for waiving the fine.

[15.6.13.13 NMAC - N, 03-23-2002; A/E, 10-11-2005; A, 08-26-2012]

NEW MEXICO ATHLETIC COMMISSION

This is an amendment to 15.6.14 NMAC, Sections 8 and 10, effective 8-26-12.

15.6.14.8 FEES:

A. All fees are non-refundable.

B. Annual licensing fees are set as follows:

- | | |
|------------------------------|-----------------|
| (1) promoters license: | \$250.00 |
| (2) foreign co-promoters: | \$500.00 |
| (3) referees: | \$25.00 |
| (4) timekeeper: | \$25.00 |
| (5) announcers: | \$25.00 |
| (6) seconds: | \$25.00 |
| (7) trainers: | \$25.00 |
| (8) managers: | \$25.00 |
| (9) professional boxer: | \$25.00 |
| (10) professional wrestlers: | \$35.00 |
| (11) booking agent: | \$35.00 |
| (12) matchmaker: | \$35.00 |
| (13) judges: | \$25.00 |
| (14) judge-trainee: | \$10.00 |

C. Regulatory fee: In an amount established semi-annually by the commission sufficient to cover the costs of regulating professional contests, up to four percent (4 %) of the total gross receipts derived by the promoter from any professional contest conducted live in New Mexico.

D. Supervisory fee: In an amount established semi-annually by the commission sufficient to cover the costs of supervising the exhibition of professional contests on a closed-circuit telecast, podcast or webcast or motion picture, up to five percent (5 %) of the total gross receipts derived from the exhibition.

[15.6.14.8 NMAC - N, 03-23-2002; A/E, 10-11-2005; A, 08-26-2012]

15.6.14.10 SUPERVISORY FEE:

A. A supervisory fee is imposed upon any person who charges and receives an admission fee for the privilege of exhibiting any live professional contest by a "closed-circuit telecast" as defined elsewhere in these regulations. The commission shall at a regular or special meeting for which notice has been duly and properly published, establish the amount of the supervisory fee on a semi-annual basis in an amount sufficient to cover the costs of supervising all such exhibitions during that period of time. The amount of the supervisory fee shall not exceed five percent (5 %) of the gross receipts derived from any such exhibition.

B. In establishing the supervisory fee, the commission shall consider its actual and projected revenues and expenses in connection with the supervision of live professional contest by closed circuit telecast, podcast or webcast for the current fiscal year, and during the semi-annual period in question, as well as historical revenues and expenses of the commission, the number and nature of scheduled and projected professional contests that will be telecasted or exhibited during the semi-annual period, alternate funding that may be available to the commission, historical information bearing upon projected revenues and

expenses for the semi-annual period and such other factors as the commission may deem relevant to its determination.

C. Any person who charges and receives an admission fee for exhibiting any live amateur or professional contest on a closed circuit telecast, podcast or webcast shall comply with all requirements for closed circuit telecasts, podcast or webcast contained elsewhere in these regulations. [15.6.14.10 NMAC - N/E, 10-11-2005; A, 08-26-2012]

NEW MEXICO ATHLETIC COMMISSION

This is an amendment to 15.6.15 NMAC, Section 7, effective 8-26-12.

15.6.15.7 DEFINITIONS: [RESERVED]

A. “Alcohol” includes all consumable non-prescriptive substance which contains alcohol, specifically including, without limitation: spirits, wine, malt beverages, intoxicating liquors, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol.

B. “Alcohol abuse” any consumption of a preparation including alcohol (e.g. beverages or medicines).

C. “Controlled substance” includes the following five prohibited classes of drugs: narcotics, depressants, stimulants, hallucinogens and cannabis. A controlled substance includes any chemical substances having the capacity to affect behavior and regulated or prescribed by law with regard to possession, use or distribution.

D. “Covered participant” any athlete who participates in events sanctioned by the New Mexico athletic commission (NMAC).

E. “Drugs” include the following five types of controlled substances: marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines, metabolites of previously identified drugs; or non-prescription substances containing previously identified drugs.

F. “Random sample” random selection must be based on a scientifically valid method(s) that assures that all athletes have an equal chance of being selected for testing. As used in this policy, testing is required for one third of all athletes competing in NMAC sanctioned event. The testing company will provide a notification of those athletes to be tested at the time of the weigh-ins.

G. “Reasonable suspicion” a belief drawn from specific, objective facts which can be articulated and have reasonable inferences drawn from those

facts. The NMAC shall have the authority to request that any specific athlete be tested on a reasonable suspicion basis.

H. “Championship bout” the NMAC shall have the authority to test any athlete participating in a NMAC sanctioned event competing for a state, regional, national or world championship. [15.6.15.7 NMAC - N, 03-23-2002; A, 08-26-2012]

NEW MEXICO ATHLETIC COMMISSION

This is an amendment to 15.6.17 NMAC, Sections 8, 9, 10 and to add sections 14 and 15, effective 8-26-12.

15.6.17.8 [~~L I C E N S E~~ ~~REQUIRED:~~] PREREQUISITE LICENSURE REQUIREMENTS FOR UNARMED COMBATANTS: Applicants must submit the following documentation to the commission.

A. [The ~~Commission~~ must first grant a license to any person participating, either directly or indirectly, in any professional contest regulated by the Commission] Completed application.

B. [All ~~applications~~ for permits and licenses shall be made under oath] A copy of driver's license or state issued identification card proving the applicant is at least 18 years of age.

C. [The ~~Commission~~ may require that anyone applying for a license or permit furnish the Commission with a duplicate set of fingerprints] The applicable license fee as set forth in Subsection B of 15.6.14 NMAC.

[15.6.17.8 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.17.9 PREREQUISITE LICENSURE REQUIREMENTS FOR REFEREES: All applicants for a referee's license must.

A. Submit a completed commission-approved application for licensure [that has been executed under oath and in the presence of a notary public;].

B. Submit proof of [performance or a written reference as to his qualifications to act as a referee] a minimum of ten (10) fights as a referee trainee.

C. Submit the applicable license fee as set forth in Paragraph (3) of Subsection B of 15.6.14 NMAC. [and]

D. [Take and satisfactorily pass a written exam designated by the Commission] Proof of ABC certification.

E. Submit copy of driver's license or state issued identification card proving the applicant is at least 18 years of age.

[15.6.17.9 NMAC - N, 03-23-2002; A, 08-

26-2012]

15.6.17.10 PREREQUISITE LICENSURE REQUIREMENTS FOR JUDGES: All applicants for a judge's license must.

A. Submit a completed commission-approved application for licensure [form that has been executed in the presence of a notary public].

B. Submit the applicable license fee as set forth in Paragraphs (13) or (14) of Subsection B of 15.6.14 NMAC.

C. Take and satisfactorily pass a written exam designated by the commission before being assigned to a required actual training period of no less than three [professional boxing shows] unarmed combat events where he will actually score bouts under the supervision of a commission-designated instructor.

D. The judge applicant shall be designated as a “judge-trainee” until completion of the training period.

E. Submit a copy of driver's license or state issued identification card proving the applicant is at least 18 years of age.

[15.6.17.10 NMAC - N, 03-23-2002; A, 08-26-2012]

15.6.17.14 PREREQUISITE LICENSURE REQUIREMENTS FOR ANNOUNCERS: All applicants for an announcer's license must.

A. Submit a completed commission-approved application for licensure.

B. Submit the applicable license fee as set forth in Subsection B of 15.6.14 NMAC.

C. Submit a copy of driver's license or state issued identification card proving the applicant is at least 18 years of age.

[15.6.17.14 NMAC - N, 08-26-2012]

15.6.17.15 PREREQUISITE LICENSURE REQUIREMENTS FOR TIMEKEEPER: All applicants for a timekeeper's license must.

A. Submit a completed commission-approved application for licensure.

B. Take and satisfactorily pass a written exam designated by the commission before being assigned to a required actual training period of no less than three professional unarmed combat shows where they will actually keep time for bouts under the supervision of a commission-designated instructor.

C. Submit the applicable license fee as set forth in Subsection B of 15.6.14 NMAC.

D. Submit a copy of driver's license or state issued identification

card proving the applicant is a least 18 years of age.

[15.6.17.15 NMAC - N, 08-26-2012]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 4 CHIROPRACTIC PRACTITIONERS PART 20 ADVERTISING

16.4.20.1 ISSUING AGENCY:

New Mexico Board of Chiropractic Examiners, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.20.1 NMAC - N, 8/20/12]

16.4.20.2 SCOPE: All licensed chiropractic physicians.

[16.4.20.2 NMAC - N, 8/20/12]

16.4.20.3 STATUTORY

AUTHORITY: These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Sections 61-4-2, 61-4-4, 61-4-6, 61-4-12 and 61-4-13 NMSA 1978.

[16.4.20.3 NMAC - N, 8/20/12]

16.4.20.4 DURATION:

Permanent.

[16.4.20.4 NMAC - N, 8/20/12]

16.4.20.5 EFFECTIVE DATE:

August 20, 2012, unless a later date is cited at the end of a section.

[16.4.20.5 NMAC - N, 8/20/12]

16.4.20.6 OBJECTIVE:

To establish guidelines for advertising which must be followed by all licensed chiropractic physicians and non-licensed chiropractic practice owners.

[16.4.20.6 NMAC - N, 8/20/12]

16.4.20.7 DEFINITIONS: Refer

to 16.4.1.7 NMAC.

[16.4.20.7 NMAC - N, 8/20/12]

16.4.20.8 STATEMENT OF

POLICY: It is the policy of the board that advertising by licensed practitioners of chiropractic should be regulated in order to fulfill the duty of the state of New Mexico to protect the health, safety and welfare of its residents, while not abridging any rights guaranteed to the practitioners or to the public by the Constitution of the United States and the Constitution of the state of New Mexico as construed by the United States supreme court and the New Mexico supreme court. To that end, the board permits the dissemination

of legitimate information to the public concerning the science of chiropractic and individual practitioners thereof. Such dissemination of information must be done in accordance with this rule which is designed to reasonably facilitate the flow of accurate information and prevent fraudulent, false, deceptive, misleading or confusing advertising. Advertising not contrary to the prohibitions in this rule shall be deemed an appropriate means of informing the public of the availability of professional services.

[16.4.20.8 NMAC - Rn & A, 16.4.1.12 NMAC, 8/20/12]

16.4.20.9 CERTAIN ADVERTISING PROHIBITED:

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

B. Fraudulent, false, deceptive, misleading or confusing advertising includes, but is not limited, to:

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

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

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

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

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

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

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

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

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

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

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

(12) advertising which invades the field of practice of other licensed healthcare practitioners when the chiropractor is not allowed by rule or license to practice such profession;

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

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

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

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

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

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

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

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

D. Advertisements may

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

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

- (1) who they are (caller's name);
- (2) who they represent (clinic/doctor); and

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

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

G. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall engage in such practices during hours prohibited by applicable municipal ordinance or state law, or in the absence of either, then other than between the hours 9 a.m. and 8 p.m. local time.

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

I. No chiropractor shall advertise directly or indirectly, through any device or artifice, that the advertising chiropractor will not collect from any prospective patient, that patient's insurance deductible or co-payment obligations arising by virtue of any medical insurance policy provided for the payment, in whole or in part, of any chiropractor's charge. The words free initial consultation must be explicitly explained what a consultation consist of and at exactly what point charges begin to accrue with clear delineation between a free consultation and an exam with treatment for which services will be charged. At no time

can any representation in regards to payment for services be misleading to the consumer or patient and it must be stated up front that if the patient decides to accept the care that they will be charged for all services and that payment will be expected whether it be from the patient, third-party payor, insurance, or medpay.

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

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

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

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

N. The script for any telemarketing advertising shall be submitted to the board for approval and must be resubmitted yearly for ongoing use by any licensee or their agent.

[16.4.20.9 NMAC - Rn & A, 16.4.1.12 NMAC, 8/20/12]

**HISTORY OF 16.4.20 NMAC:
[RESERVED]**

**NEW MEXICO BOARD
OF CHIROPRACTIC
EXAMINERS**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 4 CHIROPRACTIC
PRACTITIONERS
PART 22 FEES**

16.4.22.1 ISSUING AGENCY:

New Mexico Board of Chiropractic Examiners, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.22.1 NMAC - N, 8/20/12]

16.4.22.2 SCOPE: All licensed chiropractic physicians and non-licensee owners.

[16.4.22.2 NMAC - N, 8/20/12]

16.4.22.3 STATUTORY AUTHORITY: These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Subsection F of 61-4-7 and Subsection B of 61-4-13 NMSA 1978.

[16.4.22.3 NMAC - N, 8/20/12]

16.4.22.4 DURATION: Permanent.

[16.4.22.4 NMAC - N, 8/20/12]

16.4.22.5 EFFECTIVE DATE: August 20, 2012, unless a later date is cited at the end of a section.

[16.4.22.5 NMAC - N, 8/20/12]

16.4.22.6 OBJECTIVE: To establish annual administrative fees.

[16.4.22.6 NMAC - N, 8/20/12]

16.4.22.7 DEFINITIONS: Refer to 16.4.1.7 NMAC.

[16.4.22.7 NMAC - N, 8/20/12]

16.4.22.8 ADMINISTRATIVE FEES:

A. In accordance with Subsection F of Section 61-4-7 and Subsection B of Section 61-4-13 of the New Mexico Chiropractic Physicians Practice Act, NMSA 1978, the board of chiropractic examiners establishes the following nonrefundable fees:

- (1) fees:
 - (a) application fee \$350;
 - (b) initial license fee with or without examination \$350;
 - (c) temporary licensure \$50;
 - (d) reinstatement of license \$125 (in addition to back renewal and penalty fees for each year, not to exceed two years);
 - (e) reactivation application fee \$200;
 - (f) application fee for advanced practice certification \$100;
- (2) annual renewal fees:
 - (a) active \$300;
 - (b) inactive \$100;
 - (c) advanced practice certification \$100;
 - (d) impairment fee of \$25 in addition to the license renewal fee, each chiropractor subject to renewal will be

assessed an amount not to exceed \$60 per renewal period;

(3) penalty for late renewal \$100 (per month or portion of a month for which the license renewal fee is in arrears, the penalty not to exceed \$1000);

(4) continuing education fee individual course \$50;

(5) continuing education fee yearly for approved institution \$500;

(6) miscellaneous fees listed below will be approved annually by the board and made available by the board office upon request:

(a) photocopying \$0.25;

(b) written license verifications \$25;

(c) list of licensees \$75;

(d) duplicate licenses \$25;

(e) duplicate renewal certificate \$25;

(f) copies of statutes, rules and regulations are free online at board web site.

B. The board shall annually designate that proportion of renewal fees which shall be used for the exclusive purposes of investigating and funding hearings regarding complaints against chiropractic physicians.

[16.4.22.8 NMAC - Rn & A, 16.4.1.13 NMAC, 8/20/12]

**HISTORY OF 16.4.22 NMAC:
[RESERVED]**

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.1 NMAC, Section 7, 8, 12, 13 and 14, effective 08/20/2012.

16.4.1.7 DEFINITIONS:

A. "Chiropractic" means the science, art and philosophy of things natural, the science of locating and removing interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the articulations and adjacent structures, more especially those of the vertebral column and pelvis, for the purpose of restoring and maintaining health for treatment of human disease primarily by, but not limited to, adjustment and manipulation of the human structure. It shall include, but not be limited to, the prescription and administration of all natural agents in all forms to assist in the healing act, such as food, water, heat, cold, electricity, mechanical appliances, herbs, nutritional supplements, homeopathic remedies and any necessary diagnostic procedure, excluding invasive procedures, except as provided by the board by rule and regulation. It shall exclude operative surgery and prescription or

use of controlled or dangerous drugs, except as permitted by statute and corresponding regulation.

B. "Board" means the New Mexico board of chiropractic examiners.

C. "Chiropractic physician" includes doctor of chiropractic, chiropractor and chiropractic physician and means a person who practices chiropractic as defined in the Chiropractic Physician Practice Act.

D. "Chiropractic assistant" means a person who practices under the on-premises supervision of a licensed chiropractic physician.

E. "Advertising" means any communication whatsoever, disseminated by any means whatsoever, to or before the public or any portion thereof, with the intent of furthering the purpose, either directly or indirectly, of selling professional services, or offering to perform professional services, or inducing members of the public to enter into any obligation relating to such professional services.

F. "Chiropractic adjustment" means the application of a precisely controlled force applied by hand or by mechanical device to a specific focal point on the anatomy for the purpose of creating a desired angular movement in the skeletal joint structures in order to eliminate or decrease interference with neural transmission or to correct or attempt to correct a vertebral subluxation using, as appropriate, short lever, high velocity, low amplitude line of correction force to achieve the desired angular movement or neuromuscular reflex response.

G. "Mobilization" means a non-thrusting manual therapy involving movement of a joint within its physiological range of motion. Mobilization is a passive movement within the physiological joint space administered by a clinician for the purpose of increasing normalizing overall joint range of motion.

H. "Spinal manipulation or articular manipulation" means the application of a direct thrust or leverage to move a joint of the spine or extremity articulation to the parapsysiologic end range movement but without exceeding the limits of anatomical integrity.

I. "Vertebral subluxation" means a complex of functional, structural or pathological articular changes, or combination thereof, that compromise articular junction, neural integrity and may adversely influence organ system function or general health and well being.

J. "Impairment fee" means: that in addition to the license renewal fee, each chiropractor subject to renewal will be assessed an impairment fee to be set aside for the purpose of the impaired practitioners program.

K. "NBCE" national board of chiropractic examiners.

L. "PACE" providers of approved continuing education.

M. "Application for [examination] licensure" applicants applying for licensure [by examination] in New Mexico [~~who have not yet successfully completed the NBCE examinations and who would like to take the New Mexico board exam prior to completing the NBCE~~ must apply for application by examination] whether by examination or without examination must submit an application for licensure that will be provided by the board and available of the board site.

N. "Licensure by examination" applicants applying for licensure by examination in New Mexico [~~who have taken and passed the NCBE and the board practical examination must apply for licensure by examination~~] are those candidates for licensure that have never held a chiropractic license in any other jurisdiction.

O. "Application for licensure without examination" applicants applying for licensure without examination are those who have held a chiropractic license in another jurisdiction.

[~~Ø~~] P. "Complaint/review committee" an ad hoc committee established by the board to review all complaints and applicants with background findings. Complaint/review committee shall consist of (1) one professional board member, (1) one chiropractor with an active license for 5 years in New Mexico in good standing, the boards executive director, boards compliance liason, and boards investigator. Recommendations regarding the complaints and licensure of the applicants will be given to the board at its next scheduled meeting.

[P.] Q. "Background findings" the board may deny, stipulate, or otherwise limit a license if it is determined the applicant holds or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is a danger to patients or is guilty of violating any of the provisions of the Chiropractic Physicians Practice Act, the Uniform Licensing Act, Impaired Health Care Providers Act. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board shall formally accept the approval of the application at the next scheduled meeting.

R. "Pre-paid treatment plans" include any agreement between a licensee and patient or prospective patient that includes payment or collection of money for treatment planned, anticipated or held in reserve to occur or potentially occur

more than 14 days following the payment or collection of those monies.

S. Electronic signatures will be acceptable for applications submitted pursuant to NMSA 1978 sections 14-16-1 through 14-16-19.

[3/1/72, 9/18/80, 2/27/87, 3/5/93, 11/16/97, 10/31/98; 16.4.1.7 NMAC - Rn & A, 16 NMAC 4.1.7, 1/15/05; A, 4/10/06; A, 8/30/06; A, 8/20/12]

16.4.1.8 PRACTICING WITHOUT A LICENSE: The practice of chiropractic without a license will constitute grounds to refuse an applicant the right to sit the examination or to be granted a license, and may be prosecuted as a misdemeanor as a first offense fourth degree felony for a second offense.

[10/30/69, 2/28/87, 11/16/97; 16.4.1.8 NMAC - Rn, 16 NMAC 4.1.8, 1/15/05; A, 8/20/12]

16.4.1.12 ADVERTISING:

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

B. Certain advertising prohibited:

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

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

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

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

disclosure of relevant or material facts;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) such advertising clearly

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

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

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

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

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

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

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

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

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

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

of whatever kind for the purpose of selling chiropractic services:

~~G. No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall engage in such practices during hours prohibited by applicable municipal ordinance or state law, or in the absence of either, then other than between the hours 9 a.m. and 8 p.m. local time.~~

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

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

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

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

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

~~materials, and mandatory voice recordings of all phone conversations for a period up to three years following any telemarketing procedures from public record.~~

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

~~[3/1/72, 2/27/87, 9/18/80, 3/5/93, 10/31/93, 11/16/97, 10/31/98; 16.4.1.12 NMAC - Rn & A, 16 NMAC 4.1.12, 1/15/05; A, 4/10/06; A, 11/13/11; A, 01/01/12; Repealed, 8/20/12]~~

~~**[16.4.1.13 ADMINISTRATIVE FEES:**~~

~~A. In accordance with Section 61-4-7.G and Section 61-4-13.B of the New Mexico Chiropractic Physicians Practice Act, NMSA 1978, the board of chiropractic examiners establishes the following nonrefundable fees:~~

- ~~(1) fees:~~
- ~~(a) application fee \$350;~~
 - ~~(b) without examination \$350;~~
 - ~~(c) temporary licensure \$50;~~
 - ~~(d) reinstatement of license \$125 (in addition to back renewal and penalty fees for each year, not to exceed two years);~~
 - ~~(e) initial license fee \$300.~~
- ~~(2) annual renewal fees:~~
- ~~(a) active \$300;~~
 - ~~(b) inactive \$100;~~
 - ~~(c) impairment fee of \$25 in addition to the license renewal fee, each chiropractor subject to renewal will be assessed an amount not to exceed \$60 per renewal period.~~

~~(3) penalty for late renewal \$100 (per month or portion of a month for which the license renewal fee is in arrears, the penalty not to exceed \$500).~~

~~(4) continuing education fee \$50.~~

~~(5) miscellaneous fees listed below will be approved annually by the board and made available by the board office upon request:~~

- ~~(a) photocopying;~~
- ~~(b) written license verifications;~~
- ~~(c) list of licensees;~~
- ~~(d) duplicate licenses;~~
- ~~(e) duplicate renewal certificate;~~
- ~~(f) copies of statutes, rules and regulations.~~

~~B. The board shall annually designate that proportion of renewal fees which shall be used for the exclusive purposes of investigating and funding hearings regarding complaints against chiropractic physicians.] [Reserved]~~

~~[3/22/95, 11/16/97, 10/31/98, 1/29/99; 16.4.1.13 NMAC - Rn & A, 16 NMAC 4.1.13, 1/15/05; A, 4/10/06; A, 11/19/07; Repealed, 8/20/12]~~

16.4.1.14 INSPECTION OF

PUBLIC RECORDS: The board operates in compliance with the Inspection of Public Records Act, NMSA 1978 Sections 14-2-1 through [4-2-16] 14-2-12. The board administrator is the custodial of the board's records.

[16.4.1.14 NMAC - N, 4/10/06; A, 8/20/12]

**NEW MEXICO BOARD
OF CHIROPRACTIC
EXAMINERS**

This is an amendment to 16.4.2 NMAC, Section 8, effective 08/20/2012.

16.4.2.8 TEMPORARY LICENSURE:

A. In accordance with Section 61-4-8 of the New Mexico Chiropractic Physicians Practice Act, the board or it's designee may issue a license without examination to a chiropractor who meets the following conditions:

(1) is a graduate of a council on chiropractic education accredited or board accepted equivalent chiropractic college;

(2) has a license in good standing in another state or jurisdiction and has no disciplinary actions taken against or pending against any chiropractic license the doctor held or holds;

(3) will be only treating individuals; no temporary license will be required, however, for instructors at board approved educational programs which meet the board's criteria for relicensure credit; and

(4) meets all other applicable requirements of New Mexico statutes pertaining to the practice of chiropractic and all other applicable provisions of the board's rules.

B. A temporary license to practice chiropractic issued by the board is subject to the following restrictions:

(1) valid for only 12 continuous days total during the 12 month period immediately following its effective date;

(2) the temporary license cannot be used to practice chiropractic for any other purposes than herein specified; locum tenens work for chiropractors practicing in the state is prohibited under this license; and

(3) the applicant must be covered by a professional malpractice insurance policy (minimal coverage [\$100,000/\$300,000] \$1,000,000/\$3,000,000) and provide the board with evidence of current coverage before practicing under the temporary license.

C. Prior to engaging in practice under the temporary license, the applicant must inform the board in writing of:

(1) the event(s) to be participated in;

(2) sponsoring organization(s) (name, address, phone);

(3) event date(s);
 (4) event location(s); and
 (5) compliance with Paragraph (3) of Subsection B of 16.4.2.8 NMAC above.

D. There is a nonrefundable application fee (cashier's check or money order made payable to the chiropractic board) for a temporary license.

E. The board may modify the time restriction of a temporary license or revoke the license at its discretion.

[3/22/95, 11/16/97; 16.4.2.8 NMAC - Rn & A, 16 NMAC 4.2.8, 3/15/06; A, 8/20/12]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.4 NMAC, Section 2, 6, and 8, effective 08/20/2012.

16.4.4.2 SCOPE: Applicants for licensure as a chiropractic physician [by endorsement] without examination.
 [11/16/97; 16.4.4.2 NMAC - Rn, 16 NMAC 4.4.2, 1/15/05; A, 8/20/12]

16.4.4.6 OBJECTIVE: To establish requirements for licensure [by endorsement] without examination.
 [11/16/97; 16.4.4.6 NMAC - Rn, 16 NMAC 4.4.6, 1/15/05; A, 8/20/12]

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

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

(a) has a doctor of chiropractic diploma from a council on chiropractic education accredited or board accepted equivalent chiropractic college;

(b) for those who have served in the military services of the United States for two years or more within one year prior to application, two of the seven out of 10 years of active practice required can be substituted for and;

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

(2) has had no disciplinary action imposed, nor criminal convictions entered

against any chiropractic license the applicant held or holds; applicant agrees to a national practitioners databank and a federation of chiropractic licensing boards background check;

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

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

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

C. If an applicant does not meet the minimal requirements of 61-4-8.B NMSA 1978, applicant may at the discretion of the board, be required to take and pass part I, II, III or IV, [~~and physiotherapy~~] or physiologic therapeutics or the special purpose examination (SPEC) of the national boards or request to be placed on the agenda at the next scheduled board meeting.

D. Upon receipt of a completed application, including all required documentation as set forth in Subsection A of 16.4.3.8 NMAC and fees, as stated in Subsection B of 16.4.4.8 NMAC the [~~secretary-treasurer~~] board administrator or the delegate of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board [~~shall~~] may formally accept the approval of the application at the next scheduled meeting.

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

[3/22/95, 11/16/97; 10/31/98; 16.4.4.8 NMAC - Rn & A, 16 NMAC 4.4.8, 1/15/2005; A, 3/15/06; A, 8/30/06; A, 8/9/08; A, 11/13/11; A, 8/20/12]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.6 NMAC, Section 8, effective 8/20/2012.

16.4.6.8 EXAMINATIONS:

The Chiropractic Physician Practice Act provides that the board shall examine candidates for licensure in the act of chiropractic adjusting, producers and methods as shall reveal the applicant's qualifications; provided that the board may waive the requirements for the board administered examination upon satisfactory completion of the examination conducted by the national board of chiropractic examiners. The board will accept successful completion of all parts of the examination conducted by the national board of chiropractic examiners.

A. National boards: an applicant for licensure by examination must have passed the national board exams I, II, III, and IV and physiotherapy conducted by the national board of chiropractic examiners with a passing score required by the national board of chiropractic examiners.

B. Jurisprudence exam: all licensure applicants must successfully pass the board's jurisprudence exam.

(1) The applicant will receive the jurisprudence examination with instructions from the board office after the board receives both the application and the application fees.

(2) To complete the jurisprudence examination, the applicant will use the statutes and rules and regulations of the board.

(3) The applicant must pass the jurisprudence exam with a minimum score of 75%.

(4) Applicants may retake the examination as many times necessary to achieve a passing grade.

(5) The jurisprudence examination may be developed for on-line access and available through the board web site.

[2/27/87, 11/16/97; 16.4.6.8 NMAC - Rn & A, 16 NMAC 4.6.8, 07/17/08; A, 8/20/12]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.8 NMAC, Section 10, effective 8/20/2012.

16.4.8.10 GUIDELINES: The board shall use the following as guidelines for disciplinary action.

A. "Gross incompetence" or "gross negligence" means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients.

B. "Unprofessional conduct" means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any

combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the chiropractic profession;

(2) representing to a patient that a manifestly incurable condition or sickness, disease or injury can be cured;

(3) willfully or negligently divulging a professional confidence;

(4) failure to release to a patient copies of that patient's records and x-rays;

(5) failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by consultation with individuals having special skills, knowledge, and experience;

(6) failure of a chiropractor to comply with and following advertising guidelines as set in 16.4.1.12 NMAC;

(7) failure to use appropriate infection control techniques and sterilization procedures;

(8) deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another chiropractor licensed or applying for licensure by the board;

(9) accept rebates, or split fees or commissions from any source associated with the service rendered to a patient;

(10) intentionally engaging in sexual contact with a patient other than his spouse during the doctor-patient relationship;

(11) the use of a false, fraudulent or deceptive statement in any document connected with the practice of chiropractics;

(12) employing abusive billing practices;

(13) fraud, deceit or misrepresentation in any renewal or reinstatement application;

(14) violation of any order of the board, including any probation order;

(15) failure to adequately supervise, as provided by board regulation, a chiropractic assistant or technician [~~or employee holding any professional license~~] who renders care as a chiropractic assistant under 16.4.19 NMAC of these rules;

(16) cheating on an examination for licensure;

(17) is habitually intemperate or is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice chiropractic;

(18) is guilty of failing to comply with any of the provisions of the Chiropractic Physician Practice Act (Chapter 61, Article 4 NMSA 1978) or rules and regulations promulgated by the board and filed in accordance with the State Rules Act (Chapter 14, Article 4 NMSA 1978);

(19) has been declared mentally incompetent by regularly constituted authorities or is manifestly incapacitated to practice chiropractic;

(20) has incurred a prior suspension or revocation in another state where the suspension or revocation of a license to practice chiropractics was based upon acts by the licensee similar to acts described in this section and by board rules;

(21) failure to report to the board within 90 days any adverse action taken after due process has been afforded to the licensee by:

(a) another licensing jurisdiction;

(b) any health care entity, not involving disputes over fees;

(c) any governmental agency, not involving disputes overseas;

(d) any court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(22) failure to furnish the board, its investigators or representatives with information requested by the board;

(23) abandonment of patients;

(24) providing a false, materially incomplete, factually unsupported opinion or opinions which are not congruent with current teachings and standards of care as taught in CCE accredited chiropractic colleges in a peer review, records review, independent medical examination, or chiropractic examination.

[16.4.8.10 NMAC - N, 3/15/06; A, 3/31/09; A, 8/20/12]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

**This is an amendment to 16.4.9 NMAC,
Section 8, effective 8/20/2012.**

16.4.9.8 LICENSE RENEWAL PROCEDURES:

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

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

(2) Renewal. The license shall expire at midnight on ~~[July 1st]~~ June 30th of each year. The board shall renew the license upon receipt from the licensee, the nonrefundable license renewal fee, along with a properly filled out original form with signature, and copies of continuing education certificate plus any applicable nonrefundable penalty fees.

(3) Renewal deadline. Each licensee shall submit the nonrefundable

license renewal fee and properly completed application to the board postmarked no later than ~~[July 1st]~~ June 30th of the year for which the nonrefundable license renewal fee is requested.

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

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

(6) The board during each renewal cycle will complete a random audit of continuing education hours. The board may select by accepted RLD random computer process, up to 10% of the renewing applicants. Individuals selected must submit proof of all continuing education for that cycle. The records indicated in 16.4.10.8 NMAC are acceptable forms of documentation continuing education records must be maintained for ~~[one year]~~ three years following the renewal cycle and in which they are earned and they may be obtain by the board at any time.

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

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

(2) the amount of renewal and late fees;

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

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

(5) any person whose license has been placed on inactive status over one year but less than two may apply to reactivate licensure status at any time. Documentation required must include:

(a) reactivation application;

(b) reactiavtion application fee of \$200;

(c) evidence of meeting all CE requirements (for current year);

~~[(5)]~~ (6) failure to respond to the notice by the date specified, which date must be at least 31 days after the forfeiture notice is sent by the board, either by submitting the renewal application and applicable fees, or the information required about continuing education hours, or by notifying the board that the licensee has voluntarily retired the license, or has applied for inactive status, shall result in forfeiture of the license to

practice chiropractic in New Mexico;

~~[(6)] (7)~~ the board may select by accepted RDL random computer processes, up to 10% of the renewal applicants which ~~[shaH]~~ may be submitted for background findings review.

[3/22/95, 11/16/97, 10/31/98; 16.4.9.8 NMAC - Rn & A, 16 NMAC 4.9.8, 1/15/05; A, 3/15/06; A, 11/13/11; A, 8/20/12]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.10 NMAC, Section 8, effective 8/20/2012.

16.4.10.8 CONTINUING EDUCATION:

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

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

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

D. The board may determine that, in its opinion, a particular course or area of professional education is of such importance or addresses an area of special need as it pertains to public protection

that all licensees shall be required to take the course of study as a part of or in addition to the CE requirements:

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

(2) the course title, approved instructors (if appropriate), locations of course delivery or methods of securing approved print or electronic presentations of the course must be communicated to all licensed New Mexico chiropractors on or before September 1st of the year that the course is made mandatory;

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

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

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

(2) the annual convention of any ~~[state]~~ New Mexico recognized chiropractic association; or

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

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

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

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

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

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

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

~~[F.] A fee as set forth in Paragraph (4) of Subsection A of 16.4.1.13 NMAC will be assessed to all non approved~~

~~entities, sponsoring institutions, or organizations requesting approval of any seminar or continuing education programs not noted in Subsection C of 16.4.10.8 NMAC.]~~

~~[G.] E.~~ All non approved entities, sponsoring institutions, or organizations requesting approval of seminars or continuing education programs must be submitted to the board office in writing by the licensee or sponsoring entity ~~[at least forty-five (45) days prior to the first day of the seminar or continuing education program and]~~ must include:

(1) course title, objective and format;

(2) sponsoring entity;

(3) total class hours;

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

(5) instructors credentials; and

(6) courses that in the boards opinion enhance the professional practice procedures, risk management, clinical skills or the doctor's ability to understand and operate within managed care guidelines and regulations will be considered for approval or will be approved.

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

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

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

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

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

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

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

individual licensees:]

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

[E.] L. This rule supersedes all prior continuing education rules.

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

(1) has 100% voluntary membership as evidenced by a written affirmative request for membership;

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

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

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

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

(1) grossman wellness center

(2) heel, inc.

(3) guna

(4) American association of orthopedic medicine (AAOM)

(5) hackett hemwall foundation

(6) American academy of musculoskeletal medicine (AAMSM)

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

(8) apex energetics seminars

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

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

[1/11/74; 10/23/86; 3/22/95; 11/16/97; 10/31/98; 1/29/99; 16.4.10.8 NMAC - Rn & A, 16 NMAC 4.10.8, 1/15/05; A, 3/15/06; A, 11/19/07; A, 3/31/09; A, 11/13/11; A, 8/20/12]

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.5 NMAC, Sections 5, 7 and 8, effective 8/20/2012. This also amends the part name. This rule was also renumbered and reformatted from 16 NMAC 4.5 to comply with NMAC requirements.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 4 CHIROPRACTIC PRACTITIONERS PART 5 CRITERIA FOR DETERMINATION OF EQUIVALENCY TO COUNCIL OF CHIROPRACTIC EDUCATION C.C.E.

16.4.5.5 EFFECTIVE DATE:
November 16, 1997, unless a later date is cited at the end of a section [~~or paragraph~~].
[11/16/97; 16.4.5.5 NMAC - Rn & A, 16 NMAC 4.5.5, 8/20/12]

16.4.5.7 DEFINITIONS:
[~~(Refer to Part 4)~~ Refer to 16.4.1.7 NMAC.
[11/16/97; 16.4.5.7 NMAC - Rn & A, 16 NMAC 4.5.7, 8/20/12]

**16.4.5.8 CRITERIA FOR
DETERMINATION OF EQUIVALENCY
TO C.C.E.:** Any chiropractic college that is not accredited by the council of chiropractic education (C.C.E.) must have:

A. [~~recognition by the U.S. secretary of education;~~ recognition of the program by the Canadian, European or Australasian councils on chiropractic education; and

B. [~~recognition by the commission on recognition of post-secondary accreditation; and~~ any other chiropractic accrediting bodies that the board may determine to be equivalent to the C.C.E. - USA; and

C. clinical competencies equal to or greater than those of C.C.E.
[2/12/93, 11/16/97; 16.4.5.8 NMAC - Rn & A, 16 NMAC 4.5.8, 8/20/12]

NEW MEXICO DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE AND ADMINISTRATIVE CENTER

This is an amendment to 10.14.200 NMAC, Sections 8, 9 and 10. The purpose of these changes are to effect the amending of Subsection G and H of 10.14.200.8 NMAC, Subsections L, M and N of 10.14.200.9 NMAC and Subsections E and F of

10.14.200.10 NMAC all to be effective on August 15, 2012.

10.14.200.8 COLLECTION AND TRANSFER OF SAMPLES AND FEES:

A. Routine collection of samples from a covered offender shall be performed only by trained employees of the department of corrections adult prisons or probation and parole divisions, jail or detention facility personnel, employees of the county sheriff office, members of the administrative center or persons designated by the administrative center as trained by and in coordination with the administrative center, utilizing the collection protocol approved by the oversight committee.

B. Collection and deposit of assessed fees from covered offenders shall be performed by employees of the department of corrections adult prisons and probation and parole divisions pursuant to policies and procedures established by the department of corrections.

C. The department of corrections shall be responsible for establishing policies and procedures for the collection of samples and assessed fees from covered offenders utilizing a collection protocol to be approved by the DNA oversight committee when custody is maintained by private or out-of-state, probation and parole or corrections facilities.

D. Routine collection of samples from arrestee's shall:

(1) be performed only by trained jail or detention facility personnel, members of the administrative center or persons designated by the administrative center as trained by and in coordination with the administrative center, utilizing the collection protocol approved by the oversight committee; and

(2) include the issuance to each collected arrestee a written statement or notice informing the arrestee that if the arrestee is not convicted of the felony charges in this arrest, or that the felony charges are otherwise dismissed, that the arrestee may request that the collected DNA sample and records be expunged, as well as how the arrestee can obtain information related to expungement procedures. Such written statement or notice shall also include information that if the arrestee posted bond or was released prior to appearing before a judge or magistrate and then failed to appear for a scheduled hearing, that the arrestee's DNA sample will automatically be analyzed.

E. DNA sample collection kits and information on the collection, storage, and transfer of samples shall be provided at no cost by the administrative center.

F. The routine method of sample collection shall be by buccal cell collection using the standardized

sample collection kit as supplied by the administrative center. In non-routine circumstances, including a refusal by an arrestee or a covered offender, the collection shall, pursuant to Section 29-16-9 NMSA 1978:

- (1) be referred to the administrative center;
- (2) require a written consent or court order;
- (3) consist of an appropriate, alternative sample type as designated by the administrative center or the court; and
- (4) shall be collected by members of the administrative center; or
- (5) by persons trained in the collection of the designated alternative sample type in coordination with, and as designated by, the administrative center.

G. In the case of an arrestee who refuses to provide a DNA sample to jail or detention facility personnel upon booking as required by Subsection A of 29-3-10 NMSA 1978, the jail or detention facility personnel shall immediately document the refusal and shall immediately report the refusal to the [administrative] administrative center in order for the administrative center to coordinate, with the office of the district attorney for the county where the arrest took place, the initiation of the required legal proceedings as required by Paragraph (2) of Subsection F of 10.14.200.8 NMAC.

H. The determination of a person's eligibility for DNA sample collection as a qualifying arrestee or as a covered offender shall be the responsibility of the authorized collector designated in Subsection A or D of 10.14.200.8 NMAC. An authorized collector may request, and receive, assistance from the administrative center when making such a determination. The determination of a person's eligibility shall be based upon the statutory requirements for the specific collection.

I. Questions on supplies, collection or packaging should be directed to the administrative center.

[3/1/1998, A, 4/30/99; 10.14.200.8 NMAC - Rn, 10 NMAC 14.200.8, 5/1/2000; A, 7/1/2003; A, 7/1/2005; A, 12/29/2006; A, 5/15/2007; A, 5/14/2009; A, 6/30/2011; A, 8/15/2012]

10.14.200.9 HANDLING AND SECURITY OF SAMPLES:

A. DNA records and samples are confidential and shall not be disclosed except as authorized by the DNA oversight committee and as governed by the DNA Identification Act.

B. All files, computer, and sample storage systems maintained by the administrative center pursuant to the DNA Identification Act shall be secured. Access shall be limited to employees of the administrative center as authorized by the

head of the administrative center pursuant to and directed by the official functions and duties stated in Paragraph (1) of Subsection B of 29-16-4 NMSA 1978, and as provided by Subparagraph (e) of Paragraph (6) of Subsection B of 29-16-4 and Subsection C of 29-16-8 NMSA 1978 and to technical repair personnel as required to maintain the system as authorized by the head of the administrative center.

C. Both state and national database searches shall be performed via secured computer systems.

D. Any person who willfully discloses, seeks to obtain or use information from the DNA identification system for purposes not authorized in these rules and in violation of Section 29-16-12 NMSA 1978 shall be subject to the penalties thereof.

E. All samples received by the administrative center for DNA analysis shall be considered potentially bio-hazardous. Universal safety precaution procedures shall be followed when handling biological samples.

F. Samples shall be handled, examined, and processed one at a time to avoid possible cross-contamination from another sample or from the examiner.

G. All sample collection kits shall be received in a sealed condition. If the kit is not sealed upon receipt the sample shall be rejected and a request for a new sample shall be made by the head of the administrative center.

H. If the documentation or certification sections are not filled out, it shall be documented and the head of the administrative center shall be notified. The decision as to whether to accept the sample or request a new sample shall be made by the head of the administrative center.

I. The FTA card envelope shall be opened to examine the FTA collection card. The person's name on the card shall be verified with the person's name on the subject information section of the sample collection kit. If the names do not match, the head of the administrative center shall be notified and shall reject the sample unless the identification of the donor can be verified through fingerprint comparison.

J. Each sample shall receive a unique identifying NMDIS database number that does not include any personal identification information. The database number shall be placed on the sample collection kit and on the FTA card.

K. The FTA card shall be returned to the FTA card envelope and placed into secured storage until processed for analysis.

L. Known, collected and non-analyzed, duplicate arrestee or covered offender samples and DNA collection kits may be destroyed at the discretion of the

head of the administrative center, provided that:

(1) the kit duplication is confirmed and documented by fingerprint comparison between the original and duplicate kits;

(2) an image of the duplicate collection kit is retained; and

(3) the original, or other previously collected, DNA collection kit and subsequent records for the arrestee or offender are maintained by the administrative center.

M. Unopened, unanalyzed arrestee samples that are collected but are found to not qualify to have been collected pursuant to Subsection B of 29-3-10 NMSA 1978, and whereby the person collected is not otherwise required to provide a DNA sample pursuant to another DNA collection related New Mexico statute, shall be destroyed by the administrative center.

N. Provided that there has been no qualifying request for expungement pursuant to 29-16-10 NMSA 1978, arrestee samples that are collected, may be retained unopened and unanalyzed as long as may be required to make a final determination of compliance with Subsection B of 29-3-10 NMSA 1978.

[3/1/1998; 10.14.200.9 NMAC - Rn & A, 10 NMAC 14.200.9, 5/1/2000; A, 7/1/2003; A, 7/1/2005; A, 12/29/2006; A, 8/15/2012]

10.14.200.10 S A M P L E PROCESSING AND ANALYSIS BY THE ADMINISTRATIVE CENTER:

A. All samples received by the administrative center for DNA analysis should be considered potentially bio-hazardous. Universal safety precaution procedures shall be followed when handling biological samples.

B. The mechanism of sample collection authorization for samples collected pursuant to Subsection B of 29-16-6 NMSA 1978 shall be documented and a copy of that authorization maintained by the administrative center.

C. Samples shall be handled, examined, and processed individually to avoid possible cross-contamination from another sample or from the examiner.

D. Samples tested shall follow DNA testing procedures approved by the administrative center. Remaining samples shall be returned to secured storage.

E. Five percent of all samples tested annually, shall consist of samples:

(1) with a known DNA profile; or

(2) that constitute randomly collected, unknown duplicate samples; and

(3) shall be presented to the analyzing laboratory in a "blind" fashion to ensure proficiency and to act as a quality assurance measure. Results of these analyses are to be evaluated with the corresponding

offender or arrestee samples. Should any resultant "blind" sample's DNA profile (other than a sample that is determined to be of insufficient quality or quantity to generate a profile) not match the expected known [result] DNA profile for that sample, or should the known personally identifying information for the collectee not reasonably match (other than for monozygotic siblings), an error rate is to be calculated by the administrative center and be presented to the analyzing laboratory and to the oversight committee.

F. The genetic markers analyzed shall consist of those contained in commercial analysis kits approved by the DNA oversight committee and approved by the board of the national DNA index system, having been selected for identification and statistical purposes only. [Approved are the profiler plus, cofiler and identifier analysis kits; as well as any other kit(s) that may be approved subsequent to the amending of this section.]

G. Excess extracted or amplified arrestee and offender DNA shall be destroyed within thirty (30) days after completion of analysis.

H. Excess DNA collected or extracted pursuant to Subsection C of 29-16-2 NMSA 1978 shall be retained by the administrative center, the analyzing laboratory or the submitting agency at the discretion of the submitting agency. Excess amplified DNA generated pursuant to Subsection C of 29-16-2 NMSA 1978 shall be destroyed within thirty (30) days after completion of analysis.

I. No written letters of notification shall be released on any specific DNA sample except as authorized by the DNA Identification Act and these rules.

J. Analysis of arrestee DNA samples collected on, or after, July 1, 2011, shall only be analyzed in conformance with the requirements of Subsection B of 29-3-10 NMSA 1978. [3/1/1998; 10.14.200.10 NMAC - Rn & A, 10 NMAC 14.200.10, 5/1/2000; A, 7/1/2003; A, 7/1/2005; A, 12/29/2006; A, 5/14/2009; A, 6/30/2011; A, 8/15/2012]

NEW MEXICO LIVESTOCK BOARD

This is an emergency amendment to 21.30.4 NMAC, Sections 3 and 12, effective 08-01-2012.

Purpose: New Mexico is currently experiencing a significant outbreak of Vesicular Stomatitis (VS). VS is classified as a Foreign Animal Disease (FAD), and, as such, cases are required to be reported nationally and internationally.

To minimize the spread of the disease

and to help avoid severe restrictions on future livestock movement, the following requirements and restrictions are being implemented. For livestock events held in NM, the event coordinator is responsible for helping ensure livestock owners' compliance with these and any other livestock movement requirements, as it applies to animals admitted onto the premises of the event and will go away in 90 days.

21.30.4.3 STATUTORY AUTHORITY: Section 77-2-7, 77-3-1, 77-3-13 and Article 3 of Chapter 77, NMSA 1978.

[3-1-99; 21.30.4.3 NMAC - Rn & A, 21 NMAC 30.4.3, 5-15-2001, A/E, 8-1-2012]

21.30.4.12 VESICULAR STOMATITIS; RESTRICTIONS AND SAFEGUARDS DEEMED PROPER TO PROTECT LIVESTOCK IN NEW MEXICO:

A. Livestock cannot be removed from a VS-quarantined premise. Any livestock introduced onto VS-quarantined premises will be subject to the quarantine restrictions and remain on the premises until the quarantine has been lifted.

B. Transporters hauling any New Mexico origin livestock in New Mexico must have in possession a current brand inspection (form 1) or a permanent equine hauling card (form 1-H).

C. Participants in public events in which all livestock attending originate from New Mexico must:

(1) present and have verified by event officials a certificate of veterinary inspection (CVI), commonly known as a health certificate, for each animal brought by that participant and that has been issued within five days prior to arrival at the event, or

(2) have the livestock examined upon arrival at the event by designated officials as specified and provided by the event organizers; the designated official should be a veterinarian whose background and experience with livestock would allow them to recognize abnormalities in tissues that could be consistent with vesicular stomatitis.

(3) The state veterinarian may specify other restrictions consistent with the board's duty to protect the health and integrity of the livestock industry in New Mexico, including limiting any destinations of the horse.

D. Participants with livestock that originate in New Mexico attending public events in New Mexico where livestock from states other than New Mexico will be present must:

(1) present and have verified by event officials a certificate of veterinary inspection (CVI), commonly known as a

health certificate, for each animal brought by that participant and that has been issued within five days prior to arrival at the event, and

(2) have the livestock examined upon arrival at the event by a NM accredited veterinarian.

E. All livestock entering New Mexico public auctions facilities must receive a health examination prior to sale by a NM accredited veterinarian.

F. Out of state livestock entering New Mexico from any other state or territory must meet all current New Mexico entry requirements. Owners of livestock temporarily entering New Mexico are urged to contact their state animal health officials for requirements and restrictions to return to their home state from New Mexico.

[21.30.4.12 NMAC - N/E, 8-1-2012]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.4 NMAC, Sections 9 and 16, effective 08-31-12.

16.19.4.9 DEFINING UNPROFESSIONAL OR DISHONORABLE CONDUCT:

A. Preamble: In defining "unprofessional conduct" the definitions of professional conduct and a pharmacist's duty should be considered.

B. Professional conduct may be defined as complying with all the laws and regulations that apply to a given professional activity.

C. Definition: Unprofessional or dishonorable conduct by a pharmacist shall mean, among other things, but not be limited to.

(1) Violation of any provision of the Pharmacy Act as determined by the board.

(2) Violation of the board of pharmacy regulations as determined by the board.

(3) Violation of the Drug and Cosmetic Act as determined by the board.

(4) Violation of the Controlled Substances Act as determined by the board.

(5) Failure of the pharmacist to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public, other health professions and fellow pharmacists.

(6) Failure to keep his pharmacy and/or area of professional practice clean, orderly, maintained and secured for the proper performance of his professional duties.

(7) Acquiring prescription stock from unlicensed sources.

(8) Failure to hold on the strictest

confidence all knowledge concerning patrons, their prescriptions, and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms, or where required for proper compliance with legal authorities.

(9) Participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare.

(10) The solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon.

(11) Failure to report a theft or loss of controlled substances in accordance with 16.19.20.36 NMAC.

(12) Failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.19.4.12 NMAC.

(13) Failure to train or supervise adequately supportive personnel or the use of supportive personnel in activities outside the scope of their permitted activities.

(14) Conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substances Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States.

(15) Suspension, revocation, denial, or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States.

(16) Dispensing a prescription for a dangerous drug to a patient without an established practitioner-patient relationship:

(a) except for the provision of treatment of partners of patients with sexually transmitted diseases when this treatment is conducted in accordance with the expedited partner therapy guidelines and protocol published by the New Mexico department of health;

(b) except for on-call practitioners providing services for a patient's established practitioner;

(c) except for delivery of dangerous drug therapies to patients ordered by a New Mexico department of health physician as part of a declared public health emergency;

(d) except for dispensing a prescription for the dangerous drug naloxone to a person for administration to another as authorized in public health law 24-23 administration of opioid antagonist;

(e) except for the prescribing or dispensing and administering for immunizations programs.

(17) Dispensing a prescription order for a dangerous drug to a patient if the pharmacist has knowledge, or reasonably

should know under the circumstances, that the prescription order was issued on the basis of an internet-based questionnaire or an internet-based consultation without a valid practitioner-patient relationship.

(18) Failure to perform a prospective drug review as described in Subsection D of 16.19.4.16 NMAC and document steps taken to resolve potential problems.

[03-01-93; 16.19.4.9 NMAC - Rn, 16 NMAC 19.4.9, 03-30-02; A, 07-15-02; A, 01-15-08; A, 09-16-11; A, 8-31-12]

16.19.4.16 RESPONSIBILITIES OF PHARMACIST AND PHARMACIST INTERN:

A. The following responsibilities require the use of professional judgement and therefore shall be performed only by a pharmacist or pharmacist intern:

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

(2) initial identification, evaluation and interpretation of the prescription order and any necessary clinical clarification prior to dispensing;

(3) professional consultation with a patient or his agent regarding a prescription;

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

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

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

B. Only a pharmacist shall perform the following duties:

(1) final check on all aspects of the completed prescription including sterile products and cytotoxic preparations, and assumption of the responsibility for the filled prescription, including, but not limited to, appropriateness of dose, accuracy of drug, strength, labeling, verification of ingredients and proper container;

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

(3) supervision of all supportive personnel activities including preparation, mixing, assembling, packaging, labeling and storage of medications;

(4) ensure that supportive personnel have been properly trained for the duties they may perform;

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

to substitution of generic equivalents;

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

C. Patient records.

(1) A reasonable effort must be made to obtain, record and maintain at least the following information:

(a) name, address, telephone number, date of birth (or age) and gender of the patient;

(b) individual medical history, if significant, including disease state or states, known allergies and drug reactions and a comprehensive list of medications and relevant devices; and

(c) pharmacist's comments relevant to the individual's drug therapy.

(2) Such information contained in the patient record should be considered by the pharmacist or pharmacist intern in the exercise of their professional judgement concerning both the offer to counsel and the content of counseling.

D. Prospective drug review.

(1) ~~[A pharmacist or pharmacist intern shall review the patient record for:]~~ **Prior to dispensing any prescription, a pharmacist shall review the patient profile for the purpose of identifying:**

(a) clinical abuse/misuse;

(b) therapeutic duplication;

(c) drug-disease contraindications;

(d) drug-drug interactions;

(e) incorrect drug dosage;

(f) incorrect duration of drug treatment;

(g) drug-allergy interactions;

(h) appropriate medication indication.

(2) ~~[Upon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the problem which shall, if necessary, include consultation with the prescriber.]~~ **Upon recognizing any of the above, a pharmacist, using professional judgment, shall take appropriate steps to avoid or resolve the potential problem. These steps may include requesting and reviewing a controlled substance prescription monitoring report or another states' reports if applicable and available, and consulting with the prescriber and counseling the patient. The pharmacist shall document steps taken to resolve the potential problem.**

E. Prescription monitoring report for opiate prescriptions. When presented with an opiate prescription for a patient, obtaining and reviewing a prescription monitoring report for that patient can be an important tool that assists the pharmacist in identifying issues or problems that put his or her patient at risk of prescription drug abuse or diversion. A pharmacist shall use professional judgment based on prevailing standards of practice in

determining whether to obtain and review a prescription monitoring report before dispensing an opiate prescription to that patient, and shall document his or her action regarding such reports.

(1) A pharmacist shall request and review a prescription monitoring report covering at least a one year time period and another states' report, where applicable and available if:

(a) a pharmacist becomes aware of a person currently exhibiting potential abuse or misuse of opiates (i.e. over-utilization, early refills, multiple prescribers, appears overly sedated or intoxicated upon presenting a prescription for an opiate or an unfamiliar patient requesting an opiate by specific name, street name, color, or identifying marks, or paying cash when the patient has prescription insurance);

(b) a pharmacist receives an opiat prescription requesting the dispensing of opiates from a prescription issued by a prescriber with whom the pharmacist is unfamiliar (e.i. prescriber is located out-of-state or prescriber is outside the usual pharmacy geographic prescriber care area);

(c) providing opiates for a patient that is receiving chronic pain management prescriptions.

(2) After obtaining an initial prescription monitoring report on a patient, a pharmacist shall use professional judgment base on prevailing standards of practice, in deciding the frequency of requesting and reviewing further prescription monitoring reports and other states' reports for that patient. The pharmacist shall document the review of these reports.

(3) In the event a report is not immediately available, the pharmacist shall use professional judgment in determining whether it is appropriate and in the patient's best interest to dispense the prescription prior to receiving a report.

(4) A prescription for an opiate written for a patient in a long term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness is exempt from Subsection D of 16.19.29.8 NMAC. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner. The pharmacist shall document whether the patient is "terminally ill" or an "LTCF patient".

[E:] E. Counseling.

(1) Upon receipt of a new prescription drug order and following a review of the patient's record, a pharmacist or pharmacist intern shall personally offer to counsel on matters which will enhance

or optimize drug therapy with each patient or the patient's agent. Upon receipt of a refill prescription drug order a pharmacy technician may query the patient or patient's agent regarding counseling by the pharmacist or pharmacist intern concerning drug therapy. Such counseling shall be in person, whenever practicable, or by telephone, and shall include appropriate elements of patient counseling which may include, in their professional judgement, one or more of the following:

(a) the name and description of the drug;

(b) the dosage form, dosage, route of administration, and duration of drug therapy;

(c) intended use of the drug and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescriptions refill information;

(i) action to be taken in the event of a missed dose;

(j) the need to check with the pharmacist or practitioner before taking other medication; and

(k) pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.

(2) [REPEALED]

(3) Alternative forms of patient information may be used to supplement patient counseling when appropriate. Examples include, but not limited to, written information leaflets, pictogram labels and video programs.

(4) Patient counseling, as described above and defined in this regulation shall not be required for in-patients of a hospital or institution where other licensed health care professionals are authorized to administer the drug(s).

(5) A pharmacist shall in no way attempt to circumvent or willfully discourage a patient or patient's agent from receiving counseling. However, a pharmacist shall not be required to counsel a patient or patients' agent when the patient or patients' agent refuses such consultation.

(6) When the patient or agent is not present when the prescription is dispensed, including but not limited to a prescription that was shipped by the mail, the pharmacist shall ensure that the patient receives written notice of available counseling. Such notice shall include days and hours of availability,

and: (1) of his or her right to request counseling; and (2) a toll-free telephone number in which the patient or patient's agent may obtain oral counseling from a pharmacist who has ready access to the patient's record. For pharmacies delivering more than 50% of their prescriptions by mail or other common carrier, the hours of availability shall be a minimum of 60 hours per week and not less than 6 days per week. The facility must have sufficient toll-free phone lines and personnel to provide counseling within 15 minutes.

(7) In every pharmacy there shall be prominently posted in a place conspicuous to and readable by prescription drug consumers a notice concerning available counseling.

[F:] G. [REPEALED]

[G:] H. Regulatory assessment.

Profiles, either electronic or hard copy, shall be available for inspection, and shall provide the capability of storing the described historical information. The profiles must demonstrate that an effort is being made to fulfill the requirements by the completion of the detail required. A patient record shall be maintained for a period of not less than three (3) years from the date of the last entry in the profile record.

[08-27-90; 16.19.4.16 NMAC - Rn, 16 NMAC 19.4.16, 03-30-02; 16.19.4.16 NMAC - Rn, 16.19.4.17 NMAC, 12-15-02; A, 02-01-04; A, 11-30-04; A, 01-15-05; A, 01-31-07; A, 8-31-12]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.20 NMAC, Sections 8, 42, 45, 65 and 68, effective 08-31-2012.

16.19.20.8 REGISTRATION REQUIREMENTS: Persons required to register:

A. manufacture - term includes repackagers;

B. distributors - term includes wholesale drug distributors;

C. dispensers - pharmacies, hospital pharmacies, clinics (both health and veterinarian);

D. practitioners - includes a physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, veterinarian, pharmacist, pharmacist clinician, certified registered nurse anesthetists, psychologists, chiropractic examiner, euthanasia technicians or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act. **Practitioners must register with the New Mexico prescription monitoring program in conjunction with their controlled substance registration.**

E. scientific investigators or researchers;

F. analytical laboratories and chemical analysis laboratories;

G. teaching institutes;

H. special projects and demonstrations which bear directly on misuse or abuse of controlled substances - may include public agencies, institutions of higher education and private organizations;

I. registration waiver: an individual licensed practitioner (e.g., intern, resident, staff physician, mid-level practitioner) who is an agent or employee of a hospital or clinic, licensed by the board, may, when acting in the usual course of employment or business, order controlled substances, for administration to the patients of the facility, under controlled substance registration of the hospital or clinic in which he or she is employed provided that:

(1) the ordering of controlled substances for administration, to the patients of the hospital or clinic, is in the usual course of professional practice and the hospital or clinic authorizes the practitioner to order controlled substances for the administration to its patients under its state controlled substance registration;

(2) the hospital or clinic has verified with the practitioner's licensing board that the practitioner is permitted to order controlled substances within the state;

(3) the practitioner acts only within

their scope of employment in that hospital or clinic;

(4) the hospital or clinic maintains a current list of practitioners given such authorization and includes the practitioner's full name, date of birth, professional classification and license number, and home and business addresses and phone numbers;

(5) the list is available at all times to board inspectors, the D.E.A., law enforcement and health professional licensing boards; and

(6) the hospital or clinic shall submit a current list of authorized practitioners with each hospital or clinic controlled substance renewal application.

[16.19.20.8 NMAC - Rp 16 NMAC 19.20.8, 07-15-02; A, 12-15-02; A, 07-15-04; A, 05-14-10; A, 08-31-12]

16.19.20.42 PRESCRIPTION REQUIREMENTS:

A. [~~Prescriptions shall be dated and signed as of the date of issue, and shall contain the full name and address of the patient, the name, address and federal registration number of the prescribing practitioner. Prescriptions for controlled substances listed in schedule II shall be written in ink, indelible pencil, or typewritten and manually signed by the practitioner.~~] **All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner. Information on the prescription may be added or clarified by the pharmacist after consultation with the practitioner. A practitioner may sign a paper prescription in the same manner as he would sign a check or legal document (e.g., J.H. Smith or John H. Smith). Where an oral order is not permitted, paper prescriptions must be written with ink or indelible pencil, typewriter, or printed on a computer printer and shall be manually signed by the practitioner. A computer-generated prescription that is printed out or faxed by the practitioner must be manually signed. Electronic prescriptions shall be created and signed using an application that meets the requirements of Part 1311 of the Code of Federal Regulations. An individual practitioner may sign and transmit electronic prescriptions for controlled substances provided the practitioner meets all of the requirements of Part 1306.08 of the Code of Federal Regulations.**

B. A prescription for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via

facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted in Subsections C and D of 16.19.20.41 NMAC and Subsection E of 16.19.20.42 NMAC. The original prescription shall be maintained in accordance with 16.19.20.31 NMAC.

C. A prescription prepared in accordance with Subsection A of 16.19.20.41 NMAC written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, or subcutaneous infusion may be transmitted by the practitioner or the practitioner's agent to the parenteral products pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this paragraph and it shall be maintained in accordance with 16.19.20.31 NMAC.

D. A prescription prepared in accordance with Subsection A of 16.19.20.41 NMAC written for a Schedule II substance for a resident of a long term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this sub-section and it shall be maintained in accordance with 16.19.20.31 NMAC.

E. A prescription prepared in accordance with Subsection A of 16.19.20.41 NMAC written for a Schedule II narcotic substance for a patient enrolled in a hospice program certified by medicare under title XVIII or licensed by the state may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or the practitioner's agent will note on the prescription that the patient is a hospice patient. The facsimile serves as the original written prescription for purposes of this sub-section and it shall be maintained in accordance with 16.19.20.31 NMAC.

F. A pharmacist may dispense directly a controlled substance listed in Schedule III or IV, which is a prescription drug as determined under the New Mexico Drugs and Cosmetics Act, only pursuant to either a written prescription signed by a practitioner or a facsimile of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy or pursuant to an oral prescription made by an individual practitioner and promptly reduced to written form by the pharmacist containing all information required for a prescription except the signature of the practitioner. **A new telephone prescription for any Schedule III, IV, or V opiate shall not exceed a ten day supply, based on the directions for use, and cannot be refilled. Verbal refill authorizations and**

clarifications to existing prescriptions are exempt from this requirement.

G. A pharmacy employee must verify the identity of the patient or the patient's representative before a new prescription for a controlled substance listed in Schedule II, III, or IV, is delivered. Acceptable identification means a state issued driver's license, including photo, or other government issued photo identification. The identification number of the government issued identification and the name imprinted on that identification must be recorded in a manner to be determined by a written policy developed by the pharmacist-in-charge. Exceptions are, a new controlled substance prescription filled for a patient known to the pharmacist or pharmacist intern, whose identification has already been documented in a manner determined by a written policy developed by the pharmacist-in-charge; a controlled substance prescription filled for home delivery; or a controlled substance prescription filled for and delivered to a licensed facility.

[16.19.20.42 NMAC - Rp 16 NMAC 19.20(1), 07-15-02; A, 01-15-08; A, 08-31-12]

16.19.20.45 PRESCRIPTION REFILL REQUIREMENTS:

A. Prescriptions for Schedule III or IV substances shall not be filled or refilled more than six (6) months after the date of issue or be refilled more than five (5) times unless renewed by the practitioner and a new prescription is placed in the pharmacy files.

(1) Controlled substance prescriptions dispensed directly to a patient shall not be refilled before 75% of the prescription days' supply has passed, unless the practitioner authorizes the early refill, which must be documented by the pharmacist.

(2) Controlled substance prescriptions delivered to a patient indirectly (as mail order) to a patient shall not be refilled before 66% of a 90 day supply has passed or 50% of a 30 day supply has passed, unless the practitioner authorizes the early refill, which must be documented by the pharmacist.

B. Schedule V prescriptions may be refilled only as expressly authorized by the prescribing physician on the prescription. If no such authorization is given, the prescription may not be refilled.

[16.19.20.45 NMAC - Rp 16 NMAC 19.20.20(4), 07-15-02; A, 08-31-12]

16.19.20.65 SCHEDULE I:

A. NMSA 1978 Section 30-31-6 Schedule I shall consist of the following drugs and other substances, by whatever name, common or usual name, chemical name or brand name designated, listed in

this section; **OPIATES**, unless specifically exempt or unless listed in another schedule, any of the following opiates, including its' isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

- (1) Acetylmethadol
- (2) Allylprodine
- (3) Alphacetylmethadol
- (4) Alphameprodine
- (5) Alphamethadol
- (6) Alpha-methyl fentanyl
- (7) Benzethidine
- (8) Betacetylmethadol
- (9) Betameprodine
- (10) Betamethadol
- (11) Betaprodine
- (12) Clonitazene
- (13) Dextromoramide
- (14) Diamprodine
- (15) Diethylthiambutene
- (16) Dimethylthiambutene
- (17) Difenoxin
- (18) Dimenoxadol
- (19) Dimepheptanol
- (20) Dimethylthiambutene
- (21) Dioxaphetyl Butyrate
- (22) Dipipanone
- (23) Ethylmethylthiambutene
- (24) Etonitazene
- (25) Etoxadine
- (26) Furethidine
- (27) Hydroxypethidine
- (28) Ketobemidone
- (29) Levomoramide
- (30) Levophenacylmorphan
- (31) Morpheridine
- (32) Noracymethadol
- (33) Norlevorphanol
- (34) Normethadone
- (35) Norpipanone
- (36) Phenadoxone
- (37) Phenampromide
- (38) Phenomorphan
- (39) Phenoperidine
- (40) Piritramide
- (41) Proheptazine
- (42) Properidine
- (43) Propiram
- (44) Racemoramide
- (45) Tilidine
- (46) Trimeperidine

B. O P I U M

DERIVATIVES: Unless specifically exempt or unless listed in another schedule, any of the following opium derivatives, its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation.

- (1) Acetorphine
- (2) Acetyl dihydrocodeine
- (3) Benzyl morphine
- (4) Codeine methylbromide
- (5) Codeine-N-Oxide

- (6) Cyprenorphine
- (7) Desomorphine
- (8) Dehydro morphine
- (9) Etorphine
- (10) Heroin
- (11) Hydromorphanol
- (12) Methyl-desomorphine
- (13) Methyl-dihydromorphine
- (14) Morphine methylbromide
- (15) Morphine methylsulfonate
- (16) Morphine-N-Oxide
- (17) Morphine
- (18) Nicocodeine
- (19) Nicomorphine
- (20) Normorphine
- (21) Pholcodine
- (22) Thebacon
- (23) Drotebanol
- (24) Beta-Hydroxy-3-

Methylfentanyl

- (25) 3-Methylthiofentanyl
- (26) Acetyl-Alpha-Methylfentanyl
- (27) Alpha-Methylthiofentanyl
- (28) Beta-hydroxfentanyl
- (29) Para-Fluoro fentanyl
- (30) Thiofentanyl

C. HALLUCINOGENIC

SUBSTANCES: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation (for purpose of this sub-section only, the term "isomers" includes the optical position, and geometric isomers).

- (1) 3,4 -methylenedioxyamphetamine
- (2) 5 - methoxy - 3,4-methylenedioxyamphetamine
- (3) 3,4,5 -trimethoxyamphetamine
- (4) Bufotenine
- (5) Diethyltryptamine; DET
- (6) Dimethyltryptamine; DMT
- (7) 4-methyl-2,5-dimethoxy-amphetamine; DOM or STP
- (8) Lysergic acid diethylamide
- (9) Lysergic acid diethylamide
- (10) Marijuana
- (11) Mescaline
- (12) Peyote
- (13) N-ethyl-3-piperidyl benzilate
- (14) N-methyl-3-piperidyl benzilate
- (15) Psilocybin
- (16) Psilocyn
- (17) Tetrahydrocannabinols
- (18) Parahexyl (synthetic analog of delta⁹tetrahydrocannabinol (THC) an active ingredient of cannabis)
- (19) Hashish
- (20) 2, 5 -dimethoxyamphetamine; 2, 5-DMA

(21) 4-bromo-2, 5-dimethoxy-amphetamine; 2,5-DMA
 (22) 4-methoxyamphetamine; PMA
 (23) Ethylamine N-ethyl-1-phenylcyclohexylamine (PCE)
 (24) Pyrrolidine 1-(1-phenylcyclohexyl)-pyrrolidine (PCPy), (PHP) analog of the drug phencyclidine
 (25) Thiophene (analog of phencyclidine) TCP or TPCP
 (26) Alpha-ethyltryptamine
 (27) 2, 5-dimethoxy-4-ethylamphetamine
 (28) Ibogaine
 (29) 2,5 dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7)
 (30) Alpha-methyltryptamine (AMT)
 (31) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT)
 (32) Synthetic cannabinoids: Unless specifically exempted or unless listed in another schedule, any material, compound, mixture of preparation which contains any quantity of the following synthetic cannabinoids which demonstrates binding activity to the cannabinoid receptor or analogs or homologs with binding activity:
 (a) CP 55,244 ((hydroxymethyl)-4-[2-hydroxy-4-(2-methyloctan-2-yl)phenyl]1,2,3,4,4a,5,6,7,8,8a-decahydronaphthalen-2-ol)
 (b) CP 55,940 (5-hydroxy-2-(3-hydroxypropyl) cyclohexyl]-5-(2-methyloctan-2-yl)phenol)
 (c) JWH-081 (1-pentyl-3-[1-(4-methoxynaphthoyl)]indole)
 (d) JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole)
 (e) JWH-133 3-(1,1-dimethylbutyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H dibenzo[b,d]pyran
 (f) JWH 203 1-pentyl-3-(2-chlorophenylacetyl)indole)
 (g) JWH 210 4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone
 (h) AM-694 (1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole)
 (i) AM-1221 (1-(N-methylpiperidin-2-yl)methyl-2-methyl-3-(1-naphthoyl)-6-nitroindole)
 (j) AM-2201 (1-(5-fluoropentyl)-3-(1-naphthoyl)indole)
 (k) RCS-4 or SR-19 (1-pentyl-3-[[4-methoxy]-benzoyl]indole)
 (l) RCS-8 or SR-18 (1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole)
 (m) JWH-210 (1-pentyl-3-(4-ethylnaphthoyl)indole)
 (n) WIN-49,098 (Pravadoline) (4-methoxyphenyl)-[2-methyl-1-(2-morpholin-4-ylethyl)indol-3-yl]methanone

(o) WIN-55,212-2 (2,3-dihydro-5-methyl-3-(4-morpholinylmethyl) pyrrolo-1,4-benzooxazin-6-yl)-1-naphthalenylmethanone)

(p) Any of the following synthetic cannabinoids, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation.

(i) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl) indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, JWH-210, JWH-398 and AM-2201.

(ii) Naphthylmethylindoles: Any compound containing a 1Hindol-3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-175, JWH-184, and JWH-199.

(iii) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-307.

(iv) Naphthylmethylindenes: Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-176.

(v) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or

2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, JWH-203, JWH-250, JWH-251, and RCS-8.

(vi) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with substitution at the 5- position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not substituted in the cyclohexyl ring to any extent including, but not limited to, Cannabicyclohexanol (CP 47,497 C8 homologue), CP 47,497 and CP 55,490.

(vii) Benzoylindoles: Any compound containing a 3-(benzoyl) [5] OTS-3833.4 indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, AM-694, Pravadoline (WIN 48,098), RCS-4, and AM-1241.

(33) Substances determined by the board to have the pharmacological effect of the substance, the risk to the public health by abuse of the substance and the potential of the substance to produce psychic or physiological dependence liability is similar to the substances described in Paragraph (1) or (2) of 30-31-23C NMSA 1978. Substances include but are not limited to:

(a) salvia divinorum
 (b) salvinorin A (methyl (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(furan-3-yl)-6a,10b-dimethyl-4,10-dioxododecahydro-2H-benzo[f]isochromene-7-carboxylate)
 (34) 4-methyl-ethylcathinone (4-MEC)
 (35) 4-ethyl-methcathinone (4-EMC)
 (36) 2-ethylamino-1-phenylpropan-1-one (ethcathinone)
 (37) 3',4'-methylenedioxyethcathinone (ethylone)
 (38) beta-keto-N-methyl-3,4-benzodioxolybutanamine (bk-MBDB, butylone)
 (39) naphthylpyrovalerone (NRG-1, naphyrone)
 (40) N,N-dimethylcathinone (metamfepramone)
 (41) alpha-pyrrolidinopropiophenone (alpha-PPP)
 (42) alpha-pyrrolidinobutiophenone (alpha-PBP)
 (43) 4'-methoxy-alpha-

pyrrolidinopropiophenone (MOPPP)
(44) 4'-methyl- α -pyrrolidinopropiophenone (MPPP)
(45) 3',4'-methylenedioxy- α -pyrrolidinopropiophenone (MDPPP)
(46) 3',4'-methylenedioxy- α -pyrrolidinobutiophenone (MDPBP)
(47) 4'-methyl- α -pyrrolidinobutiophenone (MPBP)
(48) α -pyrrolidinovalerophenone (α -PVP)
(49) 5,6-methylenedioxy-2-aminointhane (MDAI)
(50) α -methylamino-butyrophenone (buphedrone)

(51) beta-keto-ethylbenzodioxolylbutanamine (eutylone)
(52) beta-keto-ethylbenzodioxolylpentanamine (pentylone)

D. DEPRESSANTS:

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its' salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Mecloqualone
- (2) Methaqualone
- (3) Benzodiazepines
 - (a) bromazepam
 - (b) camazepam
 - (c) clonazepam
 - (d) delorazepam
 - (e) ethylloflazepate
 - (f) fludiazepam
 - (g) flunitrazepam
 - (h) haloxazolam
 - (i) ketazolam
 - (j) loprozepam
 - (k) lormetazepam
 - (l) medazepam
 - (m) nimetazepam
 - (n) nitrazepam
 - (o) nordiazepam
 - (p) oxazolam
 - (q) pinazepam
 - (r) tetrazepam

(4) Gamma hydroxybutyric acid and any chemical compound that is metabolically converted to GHB.

(5) Gamma butyrolactone and any chemical compound that is metabolically converted to GHB.

(6) 1-4 butane diol and any chemical compound that is metabolically converted to GHB.

E. STIMULANTS:

Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its' salts,

isomers, and salts of isomers.

- (1) Fenethylamine
- (2) N-ethylamphetamine
- (3) cis-4-methylaminorex
- (4) N, N-dimethylamphetamine
- (5) N-benzylpiperazine (BZP, 1-benzylpiperazine)

F. Any material, compound, mixture of preparation which contains any quantity of the following substances.

(1) 3-Methylfentanyl(N-3-methyl-1-(2-phenyl-ethyl)-4-Piperidyl)-N-phenylpropanamide, its' optical and geometric isomers, salts and salts of isomers.
(2) 3, 4-methylenedioxymethamphetamine (MDMA), its' optical, positional and geometric isomers, salts and salts of isomers.

(3) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its' optical isomers, salts, and salts of isomers.

(4) 1-(-2-phenylethyl)-4-phenyl-4-acetoxy piperidine (PEPAP), its' optical isomers, salts and salts of isomers.

(5) Cathinone.

(6) Methcathinone.

[16.19.20.65 NMAC - Rp 16 NMAC 19.20.28, 07-15-02; A, 06-30-05; A, 01-15-08; A, 05-14-10; A, 11-27-11; A, 06-15-12; A, 08-31-12]

16.19.20.68 SCHEDULE IV: Shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section:

A. DEPRESSANTS:

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam
- (2) Barbitol
- (3) Chloral Betaine
- (4) Chloral Hydrate
- (5) Chlordiazepoxide
- (6) **Clobazam**

- (7) Clonazepam
- (8) Clorazepate
- (9) Clotiazepam
- (10) Diazepam
- (11) Estazolam
- (12) Ethchlorvynol
- (13) Ethinamate
- (14) Flurazepam
- (15) Halazepam
- (16) Lorazepam
- (17) Mebutamate
- (18) Meprobamate
- (19) Methohexital
- (20) Methylphenobarbital
- (21) Midazolam

- (22) Oxazepam
- (23) Paraldehyde
- (24) Petrichloral
- (25) Phenobarbital
- (26) Prazepam
- (27) Quazepam
- (28) Temazepam
- (29) Triazolam
- (30) Zopiclone

B. FENFLURAMINE:

Any material, compound, mixture or preparation which contains any quantity of the following substance, including its' salts, isomers (whether optical position, or geometric) and its' salts, or such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine

C. STIMULANTS:

Unless specifically exempt or unless listed in another schedule any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its' salts, isomers (whether optical position, or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Diethylpropion
- (2) Phentermine
- (3) Pemoline (including organometallic complexes and chelates thereon)
- (4) Pipradrol
- (5) SPA ((-)-1-dimethyl amino-1,2-diphenylmethane)
- (6) Mazindol
- (7) Cathine
- (8) Fencamfamin
- (9) Fenproporex
- (10) Mefenorex
- (11) Modafinil
- (12) Sibutramine

D. OTHER

SUBSTANCES: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its' salts:

- (1) Dextropropoxyphene(Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane)
- (2) Pentazocine
- (3) Carisoprodol
- (4) Nalbuphine Hydrochloride
- (5) Butorphanol Tartrate
- (6) Dezocine
- (7) Dichloralphenazone
- (8) Zaleplon
- (9) Zolpidem
- (10) Tramadol

E. NARCOTIC DRUG:

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of any of the following narcotic

drugs or any salts thereof: Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

F. EXEMPTION OF CHLORAL: When packaged in a sealed, oxygen-free environment, under nitrogen pressure, safeguarded against exposure to the air. Chloral when existing under the above conditions is a substance which is not intended for general administration to a human being or another animal, and contains no narcotic controlled substances and is packaged in such a form that the package quantity does not present any significant potential for abuse. All persons who engage in industrial activities with respect to such chloral are subject to registration; but shall be exempt from Section 30-31-16 through 19 of the New Mexico Controlled Substances Act and 16.19.20.19 NMAC through 16.19.20.52 NMAC of the board of pharmacy regulations.

G. EXEMPT COMPOUNDS: Librax and Menrium are preparations which contain chlordiazepoxide, a depressant listed in Schedule IV, 16.19.20.68.A.5 NMAC and other ingredients in such combinations, quantity, preparation or concentration as to vitiate the potential for abuse of chlordiazepoxide, and are hereby exempt preparations.

- (1) Librax
- (2) Menrium, 5-2
- (3) Menrium, 4-5
- (4) Menrium, 10-4

[16.19.20.68 NMAC - Rp 16 NMAC 19.20.28(3), 07-15-02; A, 06-30-05; A, 05-14-10; A, 03-07-11; A, 08-31-12]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.29 NMAC, Sections 7, 8, 9, 12 and 14, effective 8-31-12.

16.19.29.7 DEFINITIONS:

A. "Controlled substance" has the meaning given such term in 30-31-2 NMSA.

B. "Board of pharmacy" means the state agency responsible for the functions listed in 16.19.29.8 NMAC.

C. "Patient" means the person or animal who is the ultimate user of a drug for whom a prescription is issued and for whom a drug is dispensed.

D. "Dispenser" means the person who delivers a Schedule II - V controlled substance as defined in Subsection E to the ultimate user, but does not include the following:

(1) a licensed hospital pharmacy that distributes such substances for the purpose of inpatient hospital care;

(2) a practitioner, or other authorized person who administers such a substance; or

(3) a wholesale distributor of a Schedule II - V controlled substance;

(4) clinics, urgent care or emergency departments dispensing no more than 12 dosage units to an individual patient within a 72 hour period.

E. "Prescription monitoring program" (PMP) means a centralized system to collect, monitor, and analyze electronically, for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners, of which the data is to be used to support efforts in education, research, enforcement and abuse prevention.

[E:] F. "Schedule II, III, IV and V controlled substance" means substances that are listed in Schedules II, III, IV, and V of the schedules provided under 30-31-5 to 30-31-10 of NMSA or the federal controlled substances regulation (21 U.S.C. 812).

[F:] G. "Report" means a compilation of data concerning a patient, a dispenser, a practitioner, or a controlled substance.

[16.19.29.7 NMAC - N, 07-15-04; A, 06-11-11; A, 08-31-12]

16.19.29.8 REQUIREMENTS FOR THE PRESCRIPTION MONITORING PROGRAM:

A. The board shall monitor the dispensing of all Schedule II, III, IV and V controlled substances by all pharmacies licensed to dispense such substances to patients in this state.

B. Each dispenser shall submit to the board by electronic means information regarding each prescription dispensed for a drug included under Subsection A of this section. Information to be reported shall conform to the standards developed by the American society for automation in pharmacy (ASAP) and published in the "ASAP telecommunications format for controlled substances", 2009 4.1 edition. Information submitted for each prescription shall include:

- (1) dispenser DEA number;
- (2) date prescription filled;
- (3) prescription number;
- (4) whether the prescription is new or a refill;
- (5) NDC code for drug dispensed;
- (6) quantity dispensed;
- (7) patient name;
- (8) patient address;
- (9) patient date of birth;
- (10) prescriber DEA number;

(11) date prescription issued by prescriber;

(12) and payment classification.

C. Each dispenser shall submit the information in accordance with transmission methods and frequency established by the board; but shall report at least every seven days. **The executive director shall have the authority to approve submission schedules that exceed seven days.** A record of each controlled substance prescription dispensed must be transmitted to the boards' agent [by computer modem] **electronically.**

[16.19.29.8 NMAC - N, 07-15-04; A, 06-11-11; A, 08-31-12]

16.19.29.9 ACCESS TO PRESCRIPTION INFORMATION: Practitioners registered with the program may designate one delegate per practice site to register with the program for the purpose of requesting and receiving reports for the practitioner.

A. Prescription information submitted to the board shall be confidential and not subject to public or open records laws, except as provided in Subsections C, D and E of 16.19.29.9 NMAC.

B. The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed to persons except as in Subsection C, D, and E of this 16.19.29.9 NMAC.

C. After receiving a complaint, the board inspectors shall review the relevant prescription information. If there is reasonable cause to believe a violation of law or breach of professional standards may have occurred, the board shall notify the appropriate law enforcement or professional licensing, certification or regulatory agency or entity, and provide prescription information required for an investigation.

D. The board will establish written protocols for reviewing the prescription data reported. These protocols will be reviewed and approved by the board as needed but at least once every calendar year. These protocols will define information to be screened, frequency and thresholds for screening and the parameters for using the data. Data will be used to notify providers, patients and pharmacies to educate, provide for patient management and treatment options.

E. The board shall be authorized to provide data in the prescription monitoring program to the following persons:

- (1) persons authorized to prescribe or dispense controlled substances, for the purpose of providing medical or pharmaceutical care for their patients;

(2) an individual who request's their own prescription monitoring information in accordance with procedures established under 61-11-2.D NMSA, 1978 and Subsection G of 16.19.6.23 NMAC;

(3) New Mexico medical board, New Mexico board of nursing, New Mexico board of veterinary medicine, New Mexico board of dental health care, board of examiners in optometry, osteopathic examiners board, acupuncture & oriental medicine board, and podiatry board for their licensees;

(4) professional licensing authorities of other states if their licensees practice in the state or prescriptions provided by their licensees are dispensed in the state;

(5) local, state and federal law enforcement or prosecutorial officials engaged in an ongoing investigation of an individual in the enforcement of the laws governing licit drugs;

(6) human services department regarding medicaid program recipients;

(7) metropolitan, district, state or federal court(s) under grand jury subpoena or criminal court order;

(8) personnel of the board for purposes of administration and enforcement of this regulation, or 16.19.20 NMAC or;

(9) the controlled substance monitoring program of another state or group of states with whom the state has established an interoperability agreement;

(10) a parent to have access to the prescription records about his or her minor child, as his or her minor child's personal representative when such access is not inconsistent with state or other laws[.];

(11) the board shall use de-identified data obtained from the prescription drug monitoring database to identify and report to state and local public health authorities the geographic areas of the state where anomalous prescribing dispensing or use of controlled substances is occurring.

(12) the board shall share prescription drug monitoring database data with the department of health for the purpose of tracking inappropriate prescribing and misuse of controlled substances, including drug overdose.

F. The board shall provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients and persons who have received prescriptions from dispensers. [16.19.29.9 NMAC - N, 07-15-04; A, 06-11-11; A, 08-31-12]

16.19.29.12 REGISTRATION FOR ACCESS TO PRESCRIPTION INFORMATION:

A. Practitioners with individual drug enforcement administration

(DEA) issued numbers will complete and submit a hard copy written, signed and notarized application. After verification of submitted information, a username and password will be issued to the practitioner. One subaccount per practitioner account is authorized for an agent of the practitioner. The agent designated by the practitioner will complete and submit a hard copy written, signed and notarized application. After verification of submitted information, a username and password will be issued to the agent.

B. Pharmacies with DEA issued numbers will complete and submit a hard copy written, signed and notarized application. After verification of submitted information, a username and password will be issued. Pharmacies will designate one individual who will complete and submit a hard copy written, signed and notarized application. After verification of submitted information, a username and password will be issued to the individual. Pharmacies will not be permitted to obtain a subaccount.

C. All registrations will be renewed every three years by completing and submitting a new application.

D. All registrants to the prescription monitoring program will complete a web based training program approved by the board.

[16.19.29.12 NMAC - N, 07-15-04; 16.19.29.12 NMAC - N, 06-11-11; A, 08-31-12]

16.19.29.14 PENALTIES:

A. A dispenser who knowingly fails to submit prescription monitoring information to the board as required by this regulation or knowingly submits incorrect prescription information shall be subject to disciplinary proceedings as defined in 61-11-20 NMSA.

B. [A person authorized to have prescription monitoring information pursuant to this regulation who knowingly discloses such information in violation of this regulation shall be subject to criminal proceedings as described in 26-1-16.D and 26-1-26 NMSA.] **Prescription information submitted to the New Mexico prescription monitoring program (PMP) is protected health information. Registrants with access to the PMP are required to exercise due diligence in protecting this information and access it only as necessary in the course of legitimate professional regulatory, or law enforcement duties.**

C. [A person authorized to have prescription monitoring information pursuant to this regulation who uses such information in a manner or for a purpose in violation of this regulation shall be subject to criminal proceedings as described in 26-1-16.D and 26-1-26 NMSA.] **Individual registrants found to be in violation of this**

section may be subject to one or more of the following actions.

(1) Termination of access to the program information.

(2) A complaint may be filed with appropriate professional regulatory entities.

[16.19.29.14 NMAC - Rn, 16.19.29.12 NMAC, 06-11-11; A, 08-31-12]

NEW MEXICO PUBLIC REGULATION COMMISSION

Repealer: The New Mexico Public Regulation Commission repeals its rule entitled "Pipeline Safety Excavation Damage Prevention", 18.60.5 NMAC filed 6-27-06, and replaces it with the new rule 18.60.5 NMAC, "Pipeline Safety Excavation Damage Prevention". Effective date of Repeal: August 15, 2012.

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 18 TRANSPORTATION AND HIGHWAYS CHAPTER 60 PIPELINE CONSTRUCTION AND MAINTENANCE PART 5 PIPELINE SAFETY EXCAVATION DAMAGE PREVENTION

18.60.5.1 ISSUING AGENCY:
New Mexico Public Regulation Commission.
[18.60.5.1 NMAC - Rp, 18.60.5.1 NMAC, 8-15-12]

18.60.5.2 SCOPE: This rule applies to all one-call notification systems, excavators, and owners and operators of pipelines and other underground facilities in New Mexico subject to the jurisdiction of the commission.
[18.60.5.2 NMAC - Rp, 18.60.5.2 NMAC, 8-15-12]

18.60.5.3 STATUTORY AUTHORITY: Sections 8-8-4, 62-14-7.1, 62-14-10, 70-3-4, and 70-3-13 NMSA 1978.
[18.60.5.3 NMAC - Rp, 18.60.5.3 NMAC, 8-15-12]

18.60.5.4 DURATION:
Permanent.
[18.60.5.4 NMAC - Rp, 18.60.5.4 NMAC, 8-15-12]

18.60.5.5 EFFECTIVE DATE:
August 15, 2012, unless a later date is cited at the end of a section.
[18.60.5.5 NMAC - Rp, 18.60.5.5 NMAC,

8-15-12]

18.60.5.6 OBJECTIVE: The purpose of this rule is to implement Chapter 62, Article 14 NMSA 1978 by providing procedures for preventing excavation damage and for dealing with damage when it occurs.

[18.60.5.6 NMAC - Rp, 18.60.5.6 NMAC, 8-15-12]

18.60.5.7 DEFINITIONS: In addition to the definitions in Section 62-14-2 NMSA 1978, as used in this rule:

A. access information means a telephone number, a facsimile number, an email address, and, if available, a web site address;

B. bid locate means the marking of underground facilities at the request of a project owner for the purpose of providing information to persons bidding on a project;

C. design locate means the marking of underground facilities at the request of a project owner for the purpose of providing information to persons designing a project;

D. excavation locate means the marking of underground facilities at the request of an excavator for the purpose of providing information to an excavator working on a project;

E. holiday means the day New Mexico state government observes New Year's Day, Martin Luther King, Jr's, Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, President's Day, and Christmas Day;

F. incorporated area means any area within the limits of any incorporated city, town or village with a population of ten thousand or greater;

G. non-member UFO means a private underground facility owned by a homeowner and operated and located on a residential property or not subject to the jurisdiction of the commission;

H. project owner means the owner of a project involving excavation or the person designated by the owner to be in charge of the project involving excavation;

I. road maintenance means routine grading and resurfacing of the earth and gravel surface, but not the subbase, of a roadway for the purpose of maintaining the surface condition of the road and includes recovery of material from a borrow ditch but does not include road construction or reconstruction and shall entail moving no more than four (4) inches of earth; road maintenance does not include street sweeping or road milling and resurfacing as long as the subsurface is not disturbed;

J. underground facility operator (UFO) means a person who

operates an underground facility; and

K. working day means a twenty-four (24) hour period excluding weekends and holidays.

[18.60.5.7 NMAC - Rp, 18.60.5.7 NMAC, 8-15-12]

18.60.5.8 RESPONSIBILITIES OF ONE-CALL NOTIFICATION SYSTEMS: A one-call notification system shall:

A. provide toll-free access;
B. provide to the commission quarterly the name, contact person, and access information for each member of the one-call notification system;

C. notify the commission of the service area in which the one-call notification system operates;

D. have a written coordination agreement with other one-call notification systems operating in New Mexico;

E. keep a record of all locate requests, tickets, and clears for five (5) years and make such records available to the commission upon request;

F. report to the commission quarterly the:

(1) average wait time for answered calls for each month in the quarter;

(2) number of calls received for each month in the quarter;

(3) number of tickets generated for each month in the quarter;

(4) number of requests by type (regular, priority, emergency) for each month in the quarter;

G. report any changes in access information to the commission on or before the date the information will change;

H. establish a registry of non-member UFOs that voluntarily provide their contact and underground facility information for excavation purposes; and

I. inform any person who calls with a complaint that he or she may file a complaint with the commission, and provide the commission's access information, if the one-call system is unable to satisfactorily resolve the matter.

[18.60.5.8 NMAC - Rp, 18.60.5.8 NMAC, 8-15-12]

18.60.5.9 RESPONSIBILITIES OF UFOs:

A. UFO shall report any changes in access information to the commission on or before the date the information will change.

B. A UFO shall keep a record of all locate requests and make such records available to the commission upon request.

C. A UFO shall retain records of locate requests, excavation notices and underground facility damage

information for a period of five (5) years.

D. A UFO that utilizes contractors to perform locate and excavation activities or damage investigations on its behalf shall be responsible for compliance with the law and these rules.

[18.60.5.9 NMAC - Rp, 18.60.5.9 NMAC, 8-15-12]

18.60.5.10 LOCATE REQUESTS: An excavator shall make an excavation locate request for all projects involving excavation, including road maintenance. Although not required under the Excavation Damage Law, Sections 62-14-1, et seq. NMSA 1978, or this rule, locate requests are encouraged for excavation projects involving purely non-mechanical means.

A. Submittal.

(1) An excavator shall submit an excavation locate request to each one-call notification system:

(a) by telephone or in person during normal business hours Monday to Friday, excluding holidays; or

(b) by facsimile or electronically twenty-four hours a day, seven days a week.

(2) An excavator shall also submit an excavation locate request to each non-member UFO.

B. Size of locate requests.

(1) An excavator shall determine the maximum area that he can reasonably expect to excavate within a ten (10) working day period and shall request an excavation locate for that area only. In every incorporated area, or when an excavation site cannot be clearly and adequately identified on the locate ticket, the excavator shall pre-mark the actual intended excavation route or site(s) in that area in accordance with American public works association (APWA) marking guidelines to communicate to facility owners where the actual excavation will take place for standard ten (10) working day ticket requests only.

(2) An excavator may request relocates for the same area only if justified by the circumstances and nature of the work; such justification shall be made part of the relocate request.

C. Minimum information required. When requesting an excavation locate or a locate conference, an excavator shall comply with the requirements of the one-call notification system or non-member UFO operating in the intended excavation area and shall provide accurate and truthful information. A locate request shall be deemed incomplete if it does not contain, at a minimum:

(1) the name and contact information of the excavator;

(2) if available, an alternate name and contact information of the excavator;

(3) a description and the purpose

of the type of work to be done;

(4) the name of the person for whom the work is being done;

(5) whether or not the excavation site is pre-marked in white;

(6) an accurate physical description of the location and size of the excavation site; reference to a plat of a subdivision shall not by itself be sufficient description;

(7) driving instructions to a rural excavation site;

(8) spotting instructions;

(9) any appropriate remarks regarding access to or hazards at the site.

D. Processing.

(1) A one-call notification system may hold a locate request in suspension until it is complete. The one-call notification system shall contact an excavator within three (3) hours to request any missing information that prevents the one-call notification system or non-member UFO from processing the request.

(2) A one-call notification system shall process all complete locate requests within three (3) hours of receipt. A one-call notification system shall deem locate requests received on a weekend or holiday, or after 4:00 pm on a working day, to have been received at 7:00 am on the next working day and shall deem locate requests received before 7:00 am on a working day to have been received at 7:00 am on that working day.

(3) Upon receipt of a complete locate request, a one-call notification system shall issue a ticket with a unique number to the requesting excavator as confirmation, and shall send a ticket to all members of the system that have underground facilities in the excavation area, or notify the members by telephone. A ticket shall become effective at the date and time a one-call notification system issues a ticket number; if the ticket is for a conference, the ticket shall be marked "wide area conference," "bid conference," or "design conference," as appropriate. [18.60.5.10 NMAC - Rp, 18.60.5.10 NMAC, 8-15-12]

18.60.5.11 WIDE AREA LOCATE REQUESTS: An excavator who expects a project to take more than ten (10) working days to complete shall either request separate locates which meet the requirements of Subsection B of 18.60.5.10 NMAC or follow the conference procedure set forth in this section.

A. If an excavator expects that an excavation will take more than ten (10) working days to complete, the excavator shall contact the one-call notification system to request a wide area conference. The one-call notification system shall process the request as provided in Subsection D of 18.60.5.10 NMAC.

B. A UFO shall contact

an excavator who requests a wide area conference within two (2) working days of the issuance of the conference ticket to schedule a conference.

C. At the conference, the excavator shall develop a written work plan in concert with each UFO, which shall be signed by all parties. Updates or revisions to the work plan shall also be in writing and signed by all parties.

D. After the work plan has been developed, an excavator shall request a wide area excavation locate. The one-call notification system shall process the request as provided in Subsection D of 18.60.5.10 NMAC. The excavation ticket shall reference the wide area conference ticket number and cite the work plan as the description of the work to be performed.

E. An excavator working pursuant to a wide area excavation locate ticket shall request reaffirmation of the ticket every ten (10) working days for the duration of the ticket. For the purpose of reaffirmation, a working day begins on the date and time stamped on the ticket and ends ten (10) working days from such date and time. Unless the excavator states that the existing markings are sufficient for the time being, a UFO shall verify that existing markings are still visible, refresh them if needed, and continue to locate according to the work plan.

[18.60.5.11 NMAC - Rp, 18.60.5.11 NMAC, 8-15-12]

18.60.5.12 DESIGN AND BID LOCATE REQUESTS: A project owner shall request information regarding the location of underground facilities in accordance with either Subsection A or B of this section, but may not switch methods once having made an election.

A. Physical locates.

(1) A project owner may request from one-call notification systems and non-member UFOs a design locate or a bid locate.

(2) The one-call notification system and non-member UFOs for the intended excavation area shall issue a ticket marked "bid locate" or "design locate" as appropriate.

(3) UFOs shall physically mark the location of underground facilities on the site within two (2) working days from the date of the ticket.

(4) Designers or bidders, as appropriate, shall capture data from the site within ten (10) working days from the end of the two day marking period.

(5) A project owner shall not request relocates or time extensions.

B. Conferences.

(1) A project owner may request from the one-call notification system for the intended excavation area and non-member

UFOs a design conference or bid conference with UFOs.

(2) The one-call notification system for the intended excavation area shall process the request as provided in Subsection D of 18.60.5.10 NMAC.

(3) UFOs shall contact the project owner within two (2) working days to arrange to provide information to designers or bidders within a reasonable time.

(4) A project owner and UFOs shall continue coordinating until the bid for the project has been awarded and an excavator requests an excavation locate.

[18.60.5.12 NMAC - Rp, 18.60.5.12 NMAC, 8-15-12]

18.60.5.13 MARKING EXCAVATION SITES:

A. Excavators. As provided under Subsection B of 18.60.5.10 NMAC, excavators shall mark all proposed excavation sites in accordance with American public works association (APWA) standards to improve communication between the excavator and UFO. In assessing administrative penalties for violation of the Excavation Damage Law, NMSA 1978, Section 62-14-1 et seq. and this rule, the commission may consider whether and how well an excavator marked a proposed excavation site.

B. UFOs.

(1) A UFO shall mark underground facilities for excavation purposes in accordance with the APWA standards.

(2) A UFO shall locate and mark its underground facilities within two (2) working days from the effective date of the ticket.

(3) If it does not have underground facilities at the excavation site, a UFO may write "clear" or "no underground facilities" and the UFO's name at the site in the appropriate color. Alternatively, a UFO that is a member of the one-call notification system for the intended excavation area, or non-member UFO may contact the one-call notification system within two (2) working days to report it has no underground facilities in the proposed area of excavation.

(4) The locate markings shall be valid for ten (10) working days from the end of the two (2) day marking period. For the purpose of excavation, a working day begins on the date and time stamped on the ticket and ends twelve (12) working days from such date and time.

(5) If a UFO fails to mark its underground facility in accordance with the requirements of applicable laws, the UFO may be liable to the excavator in accordance with Subsection C of 62-14-5 NMSA 1978. [18.60.5.13 NMAC - Rp, 18.60.5.13 NMAC, 8-15-12]

18.60.5.14 IDENTIFYING

UNDERGROUND FACILITIES FOR ROAD MAINTENANCE: In response to an excavation locate request for road maintenance, a UFO shall physically mark its underground facilities that are parallel to the road, as provided in Subsection A, and shall either physically mark or locate by marker its underground facilities that cross the road, as provided in Subsection B.

A. Underground facilities parallel to road. A UFO shall physically mark the location of all underground facilities located parallel to the road to be maintained if the UFO deems the facilities to be in conflict with the road maintenance activity. If the UFO deems the facilities not to be in conflict with the road maintenance activity, then the UFO may "clear" the ticket with the excavator using the procedure set forth in 18.60.5.13 NMAC.

B. Underground facilities that cross the road.

(1) Physical locate. A UFO may physically mark the location of all underground facilities that cross the road to be maintained if the UFO deems the facilities to be in conflict with the road maintenance activity. If the UFO deems the facilities not to be in conflict with the road maintenance activity, then the UFO may "clear" the ticket with the excavator using the procedure for positive response set forth in 18.60.5.13 NMAC.

(2) Locate by marker. Alternatively, a UFO may use a system of markers to indicate the location of underground facilities that cross the road to be maintained. Such markers shall:

(a) only be used to mark underground facilities that cross the road to be maintained and only for the purposes of road maintenance;

(b) be durable enough to withstand normal weathering;

(c) be the same APWA color as is designated for marking the UFO's type of underground facility; and

(d) have a decal on the marker specifying the depth of the underground facility at the marker.

C. Maintenance of markers. A UFO shall be deemed to have failed to correctly mark its underground facility that crosses a road to be maintained unless it:

(1) ensures that the markers are in place;

(2) maintains a minimum twenty-four (24) inches of coverage over the underground facility that crosses the road;

(3) verifies the depth of its underground facilities at the markers at least annually; and

(4) ensures that the decal is visible and the information on it is readable.

[18.60.5.14 NMAC - Rp, 18.60.5.14 NMAC, 8-15-12]

18.60.5.15 EXCAVATION PROCEDURES:

A. Pre-excavation. Before excavating, an excavator shall determine whether all underground facilities have been marked.

(1) If all underground facilities have been marked and the two (2) working day marking period has expired, the excavator may begin excavating.

(2) If one or more underground facilities have not been marked, an excavator shall, prior to commencing excavation, call the one-call notification system for the intended excavation area if the UFO is a member of the one-call notification system to verify the area as "clear" or "no underground facilities".

B. Excavation.

(1) If, while excavating, an excavator observes evidence that an unmarked underground facility may exist, the excavator shall, before excavating in the immediate area of such evidence:

(a) make a reasonable effort to identify and contact the UFO and wait until the UFO marks or clears the immediate area of the evidence; the UFO shall mark or clear the area within two (2) hours of contact or as expeditiously as possible if the excavation site is in a rural area; or

(b) expose the underground facility by non-mechanical means or mechanical vacuum excavation methods.

(2) If excavation activity cannot proceed without obliterating all or some of the markings made by a UFO, an excavator shall provide temporary offset marks or stakes to retain the information regarding the location of each UFO's underground facilities.

(3) The requirement to clear a facility does not apply to the homeowner of a residential property.

C. Temporary suspension of excavation activity. If staff determines that an excavation activity is not in compliance with the requirements of this rule, and that continued noncompliance may result in injury to persons or damage to property, staff may suspend the excavation activity until the excavation activity is brought into compliance with the requirements of this rule and excavation conditions are safe.

[18.60.5.15 NMAC - Rp, 18.60.5.15 NMAC, 8-15-12]

18.60.5.16 EMERGENCY EXCAVATION AND DAMAGE REPORTING PROCEDURE: This section applies whenever damage to underground facilities or public infrastructure threatens or causes interruption of utility services or use of the public infrastructure.

A. Excavators. An excavator who damages an underground

facility while excavating shall exercise prudence and shall:

(1) stop excavating immediately;

(2) call 911 if appropriate and the operator of the damaged underground facility and 811 to report the damaged facility;

(3) secure the site and direct people and traffic a safe distance away from the site of the damage;

(4) not leave the scene until authorized by an emergency responder or the operator of the damaged underground facility; an excavator may leave the scene without such authorization only if the excavator has made reasonable, if unsuccessful, efforts to contact the affected UFOs and has safely secured the site;

(5) not resume work within an unsafe distance of the damage until authorized by the operator of the damaged underground facility.

B. Operators of damaged underground facilities. The operator of a damaged underground facility shall exercise prudence and shall:

(1) promptly respond to a report of damage to its underground facilities and travel to the site of the damage;

(2) while on the way to the site or at the site, call the one-call notification system for the excavation area to request an emergency locate;

(3) make the site safe and get the emergency situation under control;

(4) locate its own underground facilities as soon as practical, ideally within two (2) hours; and

(5) obtain an excavation locate ticket for repair work beyond resolution of the emergency situation.

C. Operators of damaged public infrastructure. The entity responsible for the damaged public infrastructure shall:

(1) call the one-call notification system for the excavation area to request an emergency locate;

(2) obtain an excavation locate ticket for repair work beyond resolution of the emergency situation.

D. One-call notification system. A one-call notification system shall upon request:

(1) issue an emergency excavation notice which shall be valid until the emergency is resolved, or for forty-eight (48) hours, whichever is longer;

(2) issue a notice of a reported damage to each affected UFO.

[18.60.5.16 NMAC - Rp, 18.60.5.16 NMAC, 8-15-12]

18.60.5.17 ABUSE OF THE LAW: A person shall be deemed to have willfully failed to comply with this rule or Chapter 62, Article 14 NMSA 1978 and shall be subject to the penalties in Section 62-14-8

NMSA 1978 if the person:

A. requests a locate for an area that cannot reasonably be excavated in ten (10) working days;

B. provides misinformation or withholds information regarding the size of an excavation area;

C. requests locates that unduly burden a one-call notification system or UFO;

D. requests a locate for fraudulent reasons;

E. fails to process locate requests or clears within the requisite timeframe;

F. fails to mark, or call in a clear for, its underground facilities within the requisite timeframe;

G. commences excavation prior to the expiration of the two (2) day notice period;

H. obliterates markings at an excavation site without providing temporary offset marks or stakes;

I. alters any record relating to excavation activity; or

J. commits any other act that the commission determines violates Chapter 62, Article 14 NMSA 1978 or this rule.

[18.60.5.17 NMAC - Rp, 18.60.5.17 NMAC, 8-15-12]

18.60.5.18 REPORTS OF THIRD PARTY DAMAGE:

A. A UFO shall report to the director any incident in which the owner or operator's underground facility is damaged. Such report, where practicable, shall be submitted using the commission's web site at: www.nmprc.state.nm.us. For purposes of this subsection, incident is to be taken in its general sense and is not to be restricted to the definition given in 49 CFR 191.3.

B. The report shall be filled out in its entirety.

C. The report shall be submitted by the 15th day of the month following the month of occurrence, or within thirty (30) days of occurrence, whichever is later.

D. The UFO shall make available to the director within a reasonable time such other information or documentation as the director may require regarding any incident reportable under this section.

[18.60.5.18 NMAC - Rp, 18.60.5.18 NMAC, 8-15-12]

18.60.5.19 ALTERNATIVE DISPUTE RESOLUTION:

A. The commission encourages owners and operators of underground facilities and excavators to privately negotiate and settle disputes arising

from excavation damage to underground facilities.

B. In the event the parties are unable to resolve such disputes privately, any owner or operator of underground facilities or any excavator may request mediation or arbitration from the commission.

C. Staff may participate in mediation or arbitration proceedings.

D. In mediation and arbitration proceedings, persons shall be represented in accordance with the requirements of 18.60.4.11 NMAC.

[18.60.5.19 NMAC - Rp, 18.60.5.19 NMAC, 8-15-12]

18.60.5.20 MEDIATION OF EXCAVATION DAMAGE DISPUTES:

A. Designation of mediator. If any of the parties request mediation, the commission shall designate a mediator. The mediator may be a permanent or temporary employee of the commission or another state agency or any other individual acceptable to the parties. If the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services. The mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time the mediator is assigned by the commission and all parties agree that the mediator may serve. The mediator shall not, subsequent to serving as a mediator in an excavation damage dispute, participate in any subsequent proceeding in the same cause as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding.

B. Duties of mediator. The mediator shall notify the parties by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator. The notice may direct the parties to send the mediator, but not other parties, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the damage. In addition, the mediator may require counsel to have their clients present at the mediation conference or accessible by telephone. The mediation conference shall be held within twenty (20) days of the date of the notice unless good cause is shown for an extension. If the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution. If the parties are unable to reach

a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file an action for civil liability for damages in district court.

C. Inadmissibility of settlement offers. Offers of settlement and statements in furtherance of settlement made in the course of mediation are privileged and, except by agreement among all parties, shall not be admissible as evidence in any formal hearing before the commission nor disclosed by the mediator voluntarily or through discovery or compulsory process.

[18.60.5.20 NMAC - Rp, 18.60.5.20 NMAC, 8-15-12]

18.60.5.21 BINDING ARBITRATION OF EXCAVATION DAMAGE DISPUTES:

A. Request for arbitration. Any party to a dispute arising from excavation damage to underground facilities may request binding arbitration of the dispute. The request shall be in writing to the commission and shall include a concise statement of the grounds for the dispute, the remedy sought, and an acknowledgment that the requesting party agrees to be bound by the decision of the arbitrator. The commission shall forward the request for arbitration to all other parties and require that they submit a written response within ten (10) days of receipt of the commission's letter forwarding the request.

(1) If the other parties agree to arbitration of the dispute, they shall include in their response to the commission a concise statement of their position with regard to the merits of the dispute and an acknowledgment that they agree to be bound by the decision of the arbitrator.

(2) If the other parties will not agree to arbitration, they shall so state in their response.

(3) If the other parties either fail to respond to a request for arbitration or do not agree to arbitration, the requesting party retains the right to proceed with an action for civil liability for damages in district court.

B. Designation of arbitrator. If all parties agree to arbitration, the commission shall designate an arbitrator. The arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the dispute. The designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve. The parties shall be required to indicate their consent in writing to the designated arbitrator within ten (10) days of the date of the commission's letter of designation.

If the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the arbitrator's services. Any employee of the commission designated to arbitrate a dispute under these provisions shall not participate in any subsequent proceeding in the same cause regarding excavation damage to underground facilities as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding.

C. Duties of arbitrator.

(1) The arbitrator shall render a decision in the arbitration proceeding within sixty (60) days of the date the parties approved the arbitrator, unless good cause exists to extend the time.

(2) The arbitrator shall fix a time and place for an arbitration and shall serve notice of arbitration on all parties at least ten (10) days in advance of the arbitration. The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths. The parties may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator shall decide the relevancy and materiality of the evidence offered. The arbitrator shall give consideration to but shall not be bound by the New Mexico rules of evidence. No stenographic or electronic record will be made of the testimony at the hearing unless requested by a party, who shall bear the cost of the record.

(3) The arbitrator shall permit discovery only if it will not unduly complicate, burden, or impede the expeditious and informal nature of the proceeding.

(4) At the close of or soon after the hearing, the arbitrator will issue a brief written decision, which need not contain findings of fact and conclusions of law. The arbitrator's decision will be binding on the parties, but will not be deemed a decision of the commission and shall have no precedential effect.

D. Inadmissibility of settlement offers. Unless agreed to by all the parties, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process. Nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them.

[18.60.5.21 NMAC - Rp, 18.60.5.21 NMAC,

8-15-12]

**18.60.5.22 W A I V E R
OR VARIANCE FROM RULE
REQUIREMENTS:**

A. The commission may, in its discretion, waive or vary any requirement of this rule whenever the commission finds that such waiver or variance would be in the public interest.

B. An excavator, one-call notification system, or UFO that cannot meet one or more of the requirements of this rule may petition the commission for a waiver or variance. The petition shall be in writing and shall include:

(1) a list of those requirements which the excavator, one-call notification system, or UFO wishes to have waived or varied;

(2) an explanation and description of the specific conditions which prevent the requirement from being met; and,

(3) a statement of steps already taken and to be taken, with projected time limits for each step, in attempting to meet the requirements.

C. The commission may order a hearing on the merits of the petition.

D. An excavator, one-call notification system, or UFO shall be required to comply with requirements it has petitioned to have waived or varied until the commission has issued an order on the merits of the petition, unless the commission or its designee grants an interim waiver of or variance from one of more of the requirements that are the subject of the petition.

[18.60.5.22 NMAC - Rp, 18.60.5.22 NMAC, 8-15-12]

HISTORY OF 18.60.5 NMAC:

Pre-NMAC History: The material in this rule was derived from that previously filed with the State Records Center.

SCC 69-29, Order No. 2966, Cause No.516, filed 9-24-69.

SCC 71-2, Amended Order No. 2966, Cause No.516, filed 3-18-71.

SCC 72-1, Amended Order No. 3096, Cause No.516, filed 1-12-72.

SCC 77-2, Order No. 3096-C, Docket No.750, filed 3-4-77.

SCC 79-4, Regulations Relating to Minimum Safety Standards for the Transportation of Natural and other Gas by Pipeline, filed 6-27-79.

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84.

History of Repealed Material: 18 NMAC 60.1, General Provisions; 18 NMAC 60.2, Reports Required for New Master Meters and Third Party Damage; 18 NMAC

60.3, Requirement of Filing of Procedural Manual; 18 NMAC 60.4, Classification and Repair of Leaks; 18 NMAC 60.5, Pipeline Safety Program Procedures; 18 NMAC 60.6, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards: Annual and Incident Reports; 18 NMAC 60.7, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 18 NMAC 60.8, Transportation of Hazardous Liquids by Pipeline; 18 NMAC 60.9, Pipeline Safety Regulations: Drugs & Alcohol Testing; 18 NMAC 60.10, Procedures for Transportation Workplace Drug & Alcohol Testing Programs (all filed 5-1-96) repealed 7-1-03. 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, filed 6-27-06 - Repealed effective 8-15-12.

Other History:

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84, was renumbered into first version of the New Mexico Administrative Code as 18 NMAC 60.1 through 18 NMAC 60.10, effective 6-5-96.

18 NMAC 60.1 through 18 NMAC 60.10 (all filed 5-1-96), were replaced by 18.60.2 NMAC, Pipeline Safety, effective 7-1-03.

Those **applicable portions** of 18.60.2 NMAC, Pipeline Safety (filed 6-16-2003) replaced by 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, effective 7-17-06.

**NEW MEXICO
PUBLIC REGULATION
COMMISSION**

This is an amendment to 18.60.2 NMAC, Sections 7, 8 and 9, effective 8-15-12

18.60.2.7 DEFINITIONS: In addition to the definitions in 49 CFR Parts 40, 190, 191, 192, 193, 194, 195 and 199, and Sections 62-14-2 and 70-3-12 NMSA 1978, as used in these rules:

A. applicable laws means the Hazardous Liquid Pipeline Safety Act, 49 USC Sections 2001 et seq; the Hazardous Materials Transportation Act, 49 USC Sections 1801 et seq; the Natural Gas Pipeline Safety Act, 49 USC Sections 60101 et seq; Chapter 62, Article 14 NMSA 1978; the Pipeline Safety Act, Sections 70-3-11 to 70-3-20 NMSA 1978; these rules, and commission orders issued pursuant to them;

B. director means the director of the transportation division of the New Mexico public regulation commission or his designee;

C. staff means the staff of the pipeline safety bureau of the transportation division of the public regulation commission; and

D. these rules means Title 18, Chapter 60. [18.60.2.7 NMAC - Rp, 18.60.2.7 NMAC, 7-17-06; A, 8-15-12]

18.60.2.8 ADOPTION OF PORTIONS OF THE CODE OF FEDERAL REGULATIONS:

A. Adoption by reference. Except for the variances set forth in Subsection B of this section, the commission adopts the following portions of the code of federal regulations, as such may be amended from time to time, pertaining to gas and hazardous liquid pipeline operators and facilities, and concerning the health, safety, and welfare of persons and property in New Mexico, as part of this rule:

(1) pipeline safety programs and procedures. 49 CFR 190.5, 190.233(a) and (b), and 190.237;

(2) annual, incident, and safety related condition reports. 49 CFR Part 191;

(3) minimum federal safety standards. 49 CFR Part 192;

(4) transportation of hazardous liquids by pipeline, 49 CFR Part 195;

(5) drug and alcohol testing, 49 CFR Parts 40 and 199.

B. New Mexico variances to adopted federal regulations.

(1) The reporting threshold in New Mexico shall be \$5,000 instead of the \$50,000 reporting threshold established in 49 CFR 191.3.

(2) Hazardous liquid pipeline operators must make telephonic notice to the pipeline safety bureau in accordance with 49 CFR Section 195.50.

~~(2)~~ (3) Leakage surveys of transmission lines in New Mexico shall be conducted using leak detection equipment but shall otherwise be conducted in accordance with 49 CFR 192.706(b).

(4) Intrastate gas and hazardous liquid pipeline operators must submit annual reports, written incident/accident reports and safety related condition reports as prescribed in 49 CFR 191.9, 191.11, 191.12, 191.15, 191.17, 191.23, 191.25, 195.49, 195.50, 195.54, 195.55 and 195.56 to the transportation division director or his designee at Post Office Box 1269, Santa Fe, New Mexico 87504-1269.

(5) Regulated intrastate gathering operators in New Mexico shall:

(a) establish and follow written operating and maintenance procedures as prescribed in 49 CFR 192.605 for all applicable requirements of 49 CFR 192.9;

(b) establish and follow written emergency procedures as prescribed in 49 CFR 192.615;

(c) establish and follow written maintenance procedures as prescribed in 49 CFR 192.703(b) and (c);

(d) establish and follow written

procedures for prevention of accidental ignition as prescribed in 49 CFR 192.751;

(e) establish and follow written valve maintenance procedures as prescribed in 49 CFR 192.745;

(f) keep records necessary to administer the procedures established under Subsection B of 18.60.2.8 NMAC; and

(g) conduct leakage surveys of its regulated gathering line(s) using leak detection equipment at intervals not exceeding fifteen (15) months but at least once each calendar year.

C. Interpretation of references and terms in federal regulations.

(1) References in the code of federal regulations to "state agency" shall be deemed references to the transportation division of the New Mexico public regulation commission.

(2) References in 49 CFR 190.233(a) and (b) to the "associate administrator, OPS" shall be deemed references to the director of the transportation division of the New Mexico public regulation commission[; and].

(3) References in 49 CFR 190.233(a) and (b) to 49 CFR 190.233(c), 49 CFR 190.233(c)(2), or 49 CFR 190.233(g) shall be deemed references to 18.60.4.9 NMAC through 18.60.4.15 NMAC.

(4) References in 49 CFR 192.723(b)(1) to "business district" shall have the meaning given by the United States department of transportation in correspondence interpreting the term.

(5) References in 49 CFR 192.383(a) to "replaced service line" includes piping within three (3) feet of the fitting that connects the service line to the main.

(6) References in 49 CFR 192.605(b), 192.615(a)(7) to "procedures for making safe any actual or potential hazard to life or property" shall include specific procedures for emergency response to excavation damage near buildings that adequately address the possibility of multiple leaks and gas migration into nearby buildings.

(7) References in 49 CFR 192.617 to "accidents and failures" shall include an unintentional release of gas.

[18.60.2.8 NMAC - Rp, 18.60.2.8 NMAC, 7-17-06; A, 8-15-12]

18.60.2.9 NOTICE OF INTENT TO CONSTRUCT:

Prior to the start of construction of any new or replacement intrastate natural gas or hazardous liquid pipeline with a total construction value of \$50,000 or more, the operator of such pipeline shall give written notice of its intent to construct to the Transportation Division Director, Post Office Box 1269, Santa Fe, New Mexico, 87504-1269. The notice of

intent to construct shall state:

A. the pipe material;

B. the finished diameter, length, and approximate location of the pipeline;

C. the size and capacity of any compressors or pumps;

D. and the contemplated date construction will commence.

[18.60.2.9 NMAC - Rp, 18.60.2.18 NMAC, 7-17-06; A, 8-15-12]

**NEW MEXICO
PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION**

This is an amendment to 13.10.11 NMAC, Sections 29, 31 and 34, effective 8-15-12

**13.10.11.29 F A M I L Y
COVERAGE:**

A. Family coverage must be offered for:

(1) the employee's lawful spouse;

(2) the employee's natural-born or legally adopted unmarried child;

(3) the employee's stepchild who is living in the employee's home and is chiefly dependent on the employee for support; and

(4) a child who is living in the employee's home and for whom the employee or his or her spouse has been appointed the legal guardian by a state court of competent jurisdiction.

B. Family coverage must be offered to the family of an employee who is not eligible for coverage because of his or her eligibility for medicare, provided that the dependents enrolling meet the timely enrollment requirements set forth in 13.10.11.27 NMAC.

C. Coverage of a dependent unmarried individual terminates on the first day of the month following the date when the individual becomes [25] 26.

(1) Attainment of the limiting age does not terminate coverage of a dependent child as a dependent when the individual continues to be incapable of self-sustaining employment by reason of mental retardation or physical handicap and is primarily dependent upon the employee or primary insured for support and maintenance.

(2) A dependent child aged [25] 26 or older is not eligible to enroll, even if that child became disabled prior to attaining that age unless coverage is required under the "no-loss, no-gain" rules for replacement group policies set forth in 13.10.5 NMAC, Group Coverage Discontinuance and Replacement.

D. A newly born child of the family member or the individual in whose name the **alliance** coverage is issued must be covered from birth if enrolled within 31 days of birth. If payment of a specific

premium is required to provide coverage for the child, the particular policy or plan may require that notification of the birth of a child and payment of the required premium shall be furnished to the carrier within 31 days after the date of birth in order to have the coverage from birth.

E. Adopted children are eligible for coverage on the same basis as other dependents. Coverage shall be effective from the date of placement (i.e., physical custody) for the purpose of adoption, if the child is enrolled and any additional premium is paid within 31 days from such date. Coverage continues unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage shall include the necessary care and treatment of medical conditions existing prior to the date of placement.

F. Coverage of children is subject to all requirements of federal and state law, including but not limited to the requirements of Sections 59A-22-34.2 and 59A-46-38.1 NMSA 1978.

G. A dependent is not eligible for coverage if the dependent would be ineligible as an employee under Subsection B of 13.10.11.21 NMAC. [13.10.11.29 NMAC - N, 6-1-01; A, 3-31-08; A, 8-15-12]

13.10.11.31 CONTINUATION COVERAGE:

A. In addition to continuation coverage under the act, other forms of continuation coverage may be available under federal law or other provisions of state law. Details of these other programs may be obtained from an employer, an agent, or the insurance division. With respect to continuation of coverage provided under the act:

(1) An employee is eligible for continuation coverage under the act only if the employee has been continuously covered under an **alliance** plan as an active employee for at least six months, even if the employer group ceases to do business or terminates its group coverage under the **alliance**. If the employee has family coverage, this coverage would continue as well, provided other conditions of eligibility continue to be met. An employee must apply for continuation coverage through the **alliance** within 31 days of the loss of his or her eligibility for group coverage through the **alliance**.

(2) A covered dependent is eligible for individual continuation coverage under the Alliance Act only if the dependent has been continuously covered under an **alliance** plan as a dependent of an active employee for at least six months, and then only if the dependent applies for continuation coverage within 31 days of:

- (a) the death of the employee;
- (b) the divorce, annulment or

dissolution of marriage or legal separation of the spouse from the employee;

(c) termination of the employee's employment for any reason, including the termination of the employer's group coverage or dissolution of the group; or

(d) for covered dependent children, upon attainment of the limiting age of ~~[19 or 25]~~ 26, as provided in Subsection C of 13.10.11.29 NMAC;

(e) a covered dependent may not continue coverage if, at the time of the qualifying event specified above, the employee himself is covered under continuation coverage; provided that a spouse and any dependent children may continue coverage if the qualifying event is the death of the continuee.

(3) No person is eligible to enroll or to remain on continuation coverage if he or she resides outside of the United States for a period of over six months or, if continuation coverage under this section became effective after the effective date of this rule, he or she either moves from the state of New Mexico or resides outside of the state of New Mexico for a period of over six months.

(4) Continuation coverage under the act is considered to be individual coverage for purposes of state and federal law. Persons electing to continue coverage under the act shall be subject to the provisions of 13.10.11.34 NMAC. Premiums for this continuation coverage shall be calculated at individual coverage rates.

B. An individual who is eligible for and elects COBRA continuation shall remain on the small employer's plan as required by COBRA; COBRA rights shall be administered by the small employer who shall be responsible for collecting premiums and submitting them to the **alliance**. An individual who is eligible for state six-month continuation may elect to remain on the group plan for the continuation period provided that the plan itself continues and appropriate premiums are submitted through the small employer. The **alliance** does not list bill. An individual may move to an individual plan at any time during the continuation period; provided, however, that any COBRA continuee who moves to an individual plan after the effective date of this rule shall be deemed to be covered as an individual and not as a COBRA continuee as of the date of his or her enrollment in the individual plan.

[13.10.11.31 NMAC - N, 6-1-01; A, 8-15-12]

13.10.11.34 INDIVIDUAL COVERAGE:

A. Eligibility as an individual.

- (1) An individual is eligible for an **alliance** plan outside of a small employer if:
 - (a) as of the date of application for

coverage the individual is a resident of the state of New Mexico and has an aggregate of 18 or more months of creditable coverage, as defined in the act, provided that during this period the individual did not have a break in creditable coverage lasting ~~[63]~~ 95 days or longer; and either

(i) the individual's most recent coverage was under a group health plan, governmental plan or church plan, or

(ii) the individual was covered by a group health plan, governmental plan or church plan less than ~~[63]~~ 95 days prior to the date the individual applies for coverage through the **alliance**;

(b) the individual is a resident of the state of New Mexico and is entitled to continuation coverage under the act, as provided in 13.10.11.31 NMAC;

(c) the individual is a resident of the state of New Mexico and his coverage has been terminated pursuant to the provisions of Section 59A-23E-14 NMSA 1978 (i.e., when a carrier has withdrawn from the small group market) or Section 59A-23E-19 NMSA 1978 (i.e., when a carrier has withdrawn from the individual market).

(2) The **alliance** may require the individual to provide an affidavit, signed under oath, stating that the individual is or will be a resident of the state of New Mexico as of the effective date of coverage.

(3) Notwithstanding the foregoing, an individual is not eligible for coverage if the coverage is being paid for or reimbursed by the individual's employer, unless the individual is either self-employed or employed by his own corporation and in either case has no other employees, or if on the effective date of coverage the individual:

(a) has or is eligible for coverage under a group health plan, as defined in the Alliance Act;

(b) is eligible for coverage under medicare or medicaid;

(c) has other health insurance coverage as defined by Subsection R of Section 59A-23E-2 NMSA 1978 (which is not terminating);

(d) was terminated from the most recent coverage within the coverage period described in Paragraph 1 of Subsection A of 13.10.11.34 NMAC as a result of nonpayment of premium or fraud; or

(e) has been offered the option of coverage under a COBRA continuation provision or a similar state program (other than through the **alliance**), and either did not elect or did not exhaust the coverage available under the offered program.

(4) An individual may elect to obtain coverage for his or her eligible dependents under an individual plan. The requirements of 13.10.11.29 NMAC shall apply to the eligibility and enrollment of dependents under individual coverage.

(5) A covered dependent is eligible

for individual continuation coverage under the act only if the dependent has been continuously covered under an **alliance** plan as a dependent of a covered individual for at least six months, and then only if the dependent applies for continuation coverage within 31 days of:

(a) the death of the individual;

(b) the divorce, annulment or dissolution of marriage or legal separation of the spouse from the individual; or

(c) for covered dependent children, upon attainment of the limiting age of [25] 26, as provided in Subsection C of 13.10.11.29 NMAC.

(6) No person is eligible to enroll or to remain on continuation coverage if he or she resides outside of the United States for a period of over six months or, if continuation coverage under this section became effective after the effective date of this rule, he or she moves from the state of New Mexico or resides outside of the state of New Mexico for a period of over six months.

(7) Continuation coverage under the act is considered to be individual coverage for purposes of state and federal law. Persons electing to continue coverage under the act shall be subject to the provisions of 13.10.11.34 NMAC. Premiums for this continuation coverage shall be calculated at individual coverage rates.

B. Effective date.

(1) If the documentation required by the **alliance** is received by the 15th of the month, coverage shall be reviewed for an effective as of the first day of the following month. If the complete documentation required by the **alliance** is received after the 15th of the month, coverage shall be not be effective until the first day of the month after the month following that in which the documentation is received. (If the 15th of the month falls on a weekend or holiday, the documentation must be received by the **alliance**, or delivered to its post office box, before 5:00 p.m. on the next business day.)

(2) The effective date of a continuee's individual coverage shall be the first of the month following termination of the individual's group coverage through the **alliance** provided the required documentation is received.

C. Renewability.

(1) Coverage under an **alliance** plan for an individual can be terminated or non-renewed only in the event of the following:

(a) the individual loses eligibility by residing outside of the state of New Mexico for a period of over six months, and the individual:

(i) obtained individual coverage through the **alliance** after the date on which this residency requirement first became effective; and

(ii) is not covered

as a continuee under state six-month continuation; termination under this paragraph is allowed if the individual is covered under 13.10.11.31 NMAC;

(b) nonpayment of premium;

(c) fraud; or

(d) termination of the plan.

(2) If coverage under an **alliance**

plan is terminated or not renewed because of termination of the plan, the individual shall have the right to transfer to any other **alliance** plan. If the individual's coverage terminates for any reason, covered dependents shall be given the opportunity to obtain conversion coverage directly from the member.

D. HMO service area requirements. In order to be eligible to enroll in an **alliance** plan offered by an HMO, an individual must live or work within the HMO's service area. The HMO may approve exceptions on an individual basis in accordance with the HMO's usual business practice. If the individual moves from the service area, the individual may enroll in the HMO's affiliated indemnity plan offered through the **alliance**.

E. Coverage of out-of-country services. Services provided outside of the United States will be covered only if they are for emergency treatment.

F. Pre-existing condition exclusions. An individual or dependent enrolling for individual coverage shall not be subject to any pre-existing condition exclusion.

G. Individual rates.

Premium rates for individuals, including **alliance** continuees, shall be based on the age of the individual on the effective date of the individual or continuation coverage. Rates, excepting age-based increases or tier changes, shall be guaranteed for 12 months from that effective date and from each annual anniversary thereafter. Any applicable age-based increase shall not be considered a violation of the guarantee and shall become effective on the first of the month following the individual's birthday. Any applicable tier-change increase shall not be considered a violation of the guarantee and shall become effective on the first of the month in which the change in dependents becomes effective. Changes in premiums for renewal periods shall take effect on the anniversary of the effective date of individual or continuation coverage.

H. Plan selection.

Individuals must select a carrier (member) as of the effective date of individual coverage and may not thereafter change carriers except on the annual anniversary of the effective date of individual coverage or if the carrier withdraws from participation in the **alliance**. An individual may change plan design, e.g., level of deductible or co-pay/co-insurance, as of any annual anniversary of the effective date of individual coverage.

[13.10.11.34 NMAC - N, 6-1-01; A, 3-31-08; A, 8-15-12]

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

This is an emergency amendment to 10.29.6 NMAC, Sections 8 and 10, adding new Section 11, and renumbering Sections 12 and 13, effective 8/1/2012.

10.29.6.8 REQUIREMENTS FOR POLICE OFFICERS:

A. [~~In order~~] To be eligible for certification by waiver of basic training, such applicants shall be required to successfully [~~complete an 120-hour certification by waiver of previous training program in order to demonstrate proficiency. The training will include the following topics: state laws; constitutional law; firearms training and testing; defensive tactics training and testing; use of force training; patrol tactics training and testing; emergency vehicles operations training and testing; and critical incident management training. All applicants must successfully challenge or complete a law enforcement Spanish class. The 1.5 mile run and the 300 meter run fitness tests must be completed at the 50th percentile or better. Agility course 1 and agility course 2 must be completed in the time required for graduation from the basic training program. If the applicant chooses, he or she may drag a rigid aid or object 10 feet from the side of the wall and use it as a platform to scale the wall. The rigid aid or object will have handles, a flat top, weigh 50 lbs. and be 25" tall. The law enforcement officer certification examination will be administered at the end of the training program. The applicant will have two (2) opportunities to successfully pass the exam. Two (2) failures of the exam will require the applicant to attend the basic police officer training program~~] meet all qualifications for police officer admission as set forth in NMSA 1978, Section 29-7-6 (Repl. Pamp. 1997).

B. [~~For the purposes of certification by waiver of previous training, pursuant to NMSA 1978, Section 29-7-10 (Repl. Pamp. 1997), the academy board has adopted the following formula to be applied to individuals who have not completed a comparable basic training program: applicants will be given credit for previous certified law enforcement experience at the rate of 40 hours per year for each year of service, up to but not to exceed ten (10) years; for a total of 400 hours; and the applicant will receive credit for advanced training, up to but not to exceed 400 hours. Applicant~~]

experience and training must be equivalent to the current minimum standards of training curriculum in effect at the time of application, unless such deficiencies are covered in the certification by waiver program] All applicants must submit a required packet of materials documenting previous training to be used by the academy board to make a determination of whether the applicant has completed a basic law enforcement training program that is comparable to or exceeds the standards of the programs of the academy. Applicants must meet this requirement to be eligible for the certification by waiver program.

C. Once an applicant has successfully met the aforementioned requirements, the applicant shall complete one of the following paths to successfully meet the certification requirements:

(1) The applicant's agency will provide documentation attesting to the applicant's successful completion of the current forty (40) hour biennium training. The applicant will challenge and successfully pass with a minimum score of 70%, on the law enforcement officer's certification examination (LEOCE).

(2) If the applicant is unable to complete any of the forty (40) hour biennium training, or did not successfully pass the LEOCE, the applicant will attend a forty (40) hour certification by waiver training program and successfully pass with a minimum score of 70% the LEOCE.

D. Applicants will have two opportunities to successfully pass the LEOCE. If an applicant is unable to pass the LEOCE after two attempts they will be required to attend and pass the basic police officer training program.

E. For the purposes of certification by waiver of previous training, pursuant to NMSA 1978, Section 29-7-10 (Repl. Pamp. 1997), the academy board has adopted the following formula to be applied to individuals who have not completed a comparable basic training program: applicants will be given credit for previous certified law enforcement experience at the rate of 40 hours per year for each year of service, up to but not to exceed ten (10) years, for a total of 400 hours, and the applicant will receive credit for advanced training, up to but not to exceed 400 hours. Applicant experience and training must be equivalent to the current minimum standards of training curriculum in effect at the time of application, unless such deficiencies are covered in the certification by waiver program.

[11-25-89, 1-30-93, 10-1-97, 1-1-98, 1-1-99, 6-1-99, 12-31-99; 10.29.6.8 NMAC - Rn, 10 NMAC 29.6.8, 7/1/01; A, 01/01/04; A/E, 8/1/12]

10.29.6.10 ELIGIBILITY OF

RETIREES: In the event a retired certified officer who has appropriately separated from law enforcement service makes application to obtain or regain New Mexico certification by waiver of basic training, such applicants shall satisfy the following requirements.

A. Applicant must have graduated from a certified law enforcement academy that was comparable to or exceeded the standards of the programs of the New Mexico academy.

B. Separation [period shall not exceed twenty (20) years] must be under honorable conditions.

C. [Separation must be under honorable conditions] Complete all other conditions required under the current certification by waiver of basic training, except for the physical fitness and agility requirements.

D. [Applicant shall complete current DPS/TRD basic firearms qualifications] Complete any other requirements imposed on applicant by sponsoring agency.

E. Complete all other conditions required under the current certification by waiver of basic training, except for the physical fitness and agility requirements:

F. Complete any other requirements imposed on applicant by sponsoring agency.]

[10.29.6.10 NMAC - N, 07-01-03; A, 02-28-05; A, 11-30-09; A/E, 8-1-12]

10.29.6.11 REQUIREMENTS FOR ACTIVE DUTY MILITARY POLICE APPLICANTS:

A. Qualifying military police must have successfully completed a basic military police course and completed a four (4) year enlistment as a military police officer in the United States army, United States marine corps, United States air force, or United States navy. Persons serving in the United States coast guard and department of defense police do not meet occupational requirements.

B. Individuals meeting the aforementioned qualifications must have successfully completed basic military training from one of the following military police courses for the military branch they served.

(1) U.S. army after 9/1/2003.
(2) U.S. marine corps after 9/1/2003.

(3) U.S. air force after 9/1/2005.
(4) U.S. navy after 9/1/2005.

C. Military occupational specialties or air force career classifications considered are.

(1) U.S. army 95B, or 31B.
(2) U.S. marine corps 5811.
(3) U.S. air force 3PO51, or 3PO91.

(4) U.S. navy master at arms, or NEC 9545 (completed NAVEDTRA 14137).

D. Individuals serving in the armed forces who have completed a basic military police course prior to the above dates, but had continuous military service in an approved MOS/AFC since completion of the military basic course, along with continuing educational courses may be considered. Applicants meeting this criterion will be required to complete part I packet listing all schools and training to the NMLEA director for consideration.

E. All of the aforementioned military police applicants must attend the 40 hour certification by waiver training course and successfully pass the LEOCE with a score of 70% or better.

F. Applicants currently on active duty status must also submit a notarized letter from their current command attesting to their current status, records of any disciplinary actions, and a statement attesting the applicant is eligible for a general/honorable discharge.

G. Members who have only served in the national guard or reserves are not eligible for the certification by waiver program.

[10.29.6.11 NMAC - N/E, 8-1-12]

10.29.6.12 REQUIREMENTS FOR PUBLIC SAFETY TELECOMMUNICATOR:

A. In order to be eligible for certification by waiver of basic training, such applicants shall be required to successfully complete a certification by waiver of previous training program in order to demonstrate proficiency. The training will include the following topics: human relations; civil law; criminal law; domestic violence; NCIC - NMLETS and critical incident management training. The public safety telecommunicator certification examination will be administered at the end of the training program. The applicant will have two (2) opportunities to successfully pass the exam. Two (2) failures of the exam will require the applicant to attend the basic public safety telecommunicator training program.

B. For the purposes of certification by waiver of previous training, pursuant to NMSA 1978, Section 29-7C-6, the academy board has adopted the following formula to be applied to individuals who have not completed a comparable basic training program: applicants will be given credit for previous public safety telecommunicator experience at the rate of 24 hours per year for each year of service, up to but not to exceed five (5) years, for a total of 120 hours, and the applicant will receive credit for advanced training, up to but not to exceed 120 hours. Applicant experience and training must be equivalent to the current

minimum standards of training curriculum in effect at the time of application, unless such deficiencies are covered in the certification by waiver program.

[10.29.6.12 NMAC - N, 01/01/04; 10.29.6.12 NMAC - Rn, 10.29.6.11 NMAC, 8-1-12]

~~[10.29.6.12]~~ **10.29.6.13 ELIGIBILITY OF OUT-OF-STATE PUBLIC SAFETY TELECOMMUNICATOR APPLICANTS:**

A. In the event a certified telecommunicator from another state or a telecommunicator from a federal agency makes application for certification in the state of New Mexico they must meet all qualifications and requirements as determined by the director.

B. Any applicant who has not been employed as a certified telecommunicator for a period in excess of eight (8) years must attend the basic public safety telecommunicator training program to become certified.

C. Any applicant who has successfully completed an accredited law enforcement academy from another state, but has never been certified, must secure a telecommunicator position with a New Mexico public safety agency within three (3) years of academy completion and must meet all other qualifications and requirements as determined by the director to be eligible for certification by waiver.

[10.29.6.13 NMAC - Rn, 10.29.6.12 NMAC, 8-1-12]

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

This is an amendment to 10.29.7 NMAC, Section 8, effective 9/15/2012.

10.29.7.8 2012-2013 IN-SERVICE TRAINING CYCLE FOR LAW ENFORCEMENT OFFICERS:

A. All New Mexico certified law enforcement officers shall receive a minimum of forty (40) hours of training bi-annually.

(1) A minimum of four (4) hours shall be in safe pursuit pursuant to Section 29-20-3 NMSA 1978.

(2) A minimum of one (1) hour shall be in domestic violence incident training pursuant to Section 29-7-4.1 NMSA 1978.

(3) A minimum of two (2) hours shall be in the detection, investigation and reporting of a crime motivated by hate pursuant to Section 31-18B-5 NMSA 1978.

(4) For all officers who may be

involved in the arrest of DWI offenders as a normal part of their duties, four (4) hours shall be in NHTSA approved standardized field sobriety testing (SFST) protocols or successful course completion of the NHTSA approved sixteen (16) hour advanced roadside impaired driving enforcement course.

(5) A minimum of one (1) hour shall be in ensuring child safety upon arrest pursuant to Section 29-7-7.3 NMSA 1978.

(6) Four (4) hours of academy approved day and night firearms training on agency approved weapons systems, including but not limited to duty handgun, backup handgun, shotgun, and rifle. No more than one (1) hour training shall be classroom lecture. A minimum of three (3) hours training, divided equally between day and night training, and shall consist of practical exercises using live fire, simmunitions®, airsoft® or other firearms training systems. Qualification testing may not be used as training to meet this requirement.

(7) A minimum of two (2) hours in child abuse incident training pursuant to Section 29-7-4.2 NMSA 1978.

(8) A minimum of one (1) hour shall be in missing persons and AMBER alert training pursuant to Section 29-7-7.4 NMSA 1978.

(9) A minimum of ~~four (4)~~ two (2) hours shall be in academy accredited interaction with persons with mental impairments training pursuant to Section 29-7-7.5 NMSA 1978.

(10) A minimum of two (2) hours shall be in academy accredited legal update training to include changes in New Mexico state statutes and recent state and federal case law.

(11) Remaining hours shall be in maintenance or advanced areas from the following general topic areas.

(a) Ethics, use of force, report writing, critical incident management, defensive tactics, communications skills, or emergency vehicle operations.

(b) First line supervisors and mid-managers: Ethics, principles of supervision, field training and evaluation, performance appraisals, coaching, mentoring, vicarious liability, or communication skills.

(c) Agency executives and command staff: Ethics, leadership, policy development, strategic planning, goal setting, budgeting, human resources management, or employment law.

(d) Other approved advanced and specialized training/education or any maintenance training area which is designed to improve upon or add to the knowledge, skills, and abilities of the certified law enforcement officer.

B. Required training may be received through the following means.

(1) The advanced training bureau

will contract for course instruction at the regional training sites.

(2) Where scheduling will allow, the training and recruiting division will assign staff to instruct the course at the regional training sites.

(3) Curriculum developed by the training and recruiting division will be provided to individual agencies upon request for their own certified instructors to present to their officers, provided the instructor is qualified in the subject matter.

(4) Individual agencies develop curriculum for review and approval (accreditation) by the academy which meets the criteria established by the board.

C. This four-pronged approach gives all agencies the flexibility they need to address individual training needs. It also allows the board to implement a planned program of in-service training that is responsive to the changing demands placed upon law enforcement and the opportunity to have statewide consistency in certain critical areas.

D. Implementation is to begin on January 1, 2012.

E. Officers obtaining certification between, January 1, 2012 and December 31, 2012, will be required to obtain one-half of the in-service training requirements. Officers obtaining certification between, January 1, 2013, and December 31, 2013, will be required to meet the next two-year requirement which will go into effect on January 1, 2014. This policy will apply in subsequent two-year cycles. Officers transferring from one agency to another will carry with them the responsibility for in-service training.

[1/30/93, 12/15/93, 1/17/94, 12/7/95, 10/1/97, 1/1/98, 1/1/00; 10.29.7.8 NMAC - Rn, 10 NMAC 29.7.8, 7/1/01; A, 1/1/02; A, 6/14/02; A, 01/01/04; A, 04/15/04; A, 12/30/05; A, 12/14/06; A, 10/31/07; A, 11/15/07; A, 03/01/10; A, 12/15/10; A, 12/15/11; A, 9/15/12]

**NEW MEXICO TAXATION
AND REVENUE
DEPARTMENT**

This is an amendment to 3.2.1 NMAC, Section 27 effective 8/15/2012.

3.2.1.27 PROPERTY.

A. Bills, notes, etc.:

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) lodging;

(2) meals;

(3) delivery and transportation services;

(4) guide services;

(5) license to use the property;

(6) carcass of the hunted animal; or

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

E. Example: X owns a ranch in New Mexico and sells guided

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

[12/5/69, 3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/17/91, 11/15/96; 3.2.1.27 NMAC - Rn, 3 NMAC 2.1.27, 4/30/01; A, 8/15/12]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.10 NMAC, Sections 8, 15, 19 and 20 effective 8/15/2012.

3.2.10.8 T A N G I B L E PERSONAL PROPERTY ACQUIRED OUTSIDE NEW MEXICO FOR USE IN NEW MEXICO:

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

B. Example 1: X, a New Mexico [resident] business, purchases the furniture for a new [house] office from an El Paso, Texas, merchant. X brings this furniture into New Mexico in X's truck and puts it in the [house] office. If X had purchased the furniture [in] from a New Mexico business, the transaction would have been subject to the gross receipts tax.

Therefore, X is liable for compensating tax measured by the sale price of the furniture. However, X may take a credit of up to 5% of the sale price of the furniture against the compensating tax liability on this furniture for any sales tax which was paid in Texas on the purchase of the furniture. Also, X pays no separate tax if tax collected by the seller is shown on the invoice as the New Mexico compensating tax collected by the El Paso, Texas, merchant.

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

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96, 3.2.10.8 NMAC - Rn, 3 NMAC 2.7.8, 4/30/01; A, 4/30/07; A, 8/15/12]

3.2.10.15 MATERIALS USED ON NONTAXABLE PROJECTS.

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

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

[1/26/86, 2/21/86, 4/2/86, 11/26/90, 11/15/96, 3.2.10.15 Rn & A, 3 NMAC 2.7.15, 10/31/00; A, 8/15/12]

3.2.10.19 T A N G I B L E PERSONAL PROPERTY FURNISHED TO DEALERS BY OUT-OF- STATE SERVICE CONTRACT ADMINISTRATORS:

Tangible personal property, such as contract forms and promotional and administrative materials, furnished to New Mexico dealers by out-

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

[6/28/89, 11/26/90, 10/28/94, 11/15/96, 3.2.10.19 NMAC - Rn, 3 NMAC 2.7.19, 4/30/01; A, 8/15/12]

3.2.10.20 TELECOMMUNICATIONS SERVICE USED BY HOTELS AND MOTELS:

[A.] If a hotel, motel or similar establishment has represented to a company engaged in the business of providing interstate telecommunications service that the hotel, motel or similar establishment is purchasing interstate telecommunication service for use as a service to guests of the hotel, motel or similar establishment for an additional separately stated charge, it is liable for compensating tax on the value of any interstate telecommunications service purchased but not separately stated in its billings to its guests.

[B.] Section 3.2.10.20 NMAC applies to receipts from transactions occurring on or after July 1, 1992.]

[3/9/92, 11/15/96, 3.2.10.20 NMAC - Rn & A, 3 NMAC 2.7.20, 4/30/01; A, 8/15/12]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.106 NMAC, Section 7 effective 8/15/2012.

3.2.106.7 DEFINITIONS

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

[B.] **LIVESTOCK:**

(1) The term "livestock" means:
(a) horses, including racehorses and pet horses; and

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

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

(ii) for production of food for human consumption, such as dairy

cattle for milk and related products;

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

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

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

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

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

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

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

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 12/23/92, 11/15/96; 3.2.106.7 NMAC - Rn, 3 NMAC 2.18.1.7, 5/15/01; A, 8/15/12]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.211 NMAC, Section 17 effective 8/15/2012.

3.2.211.17 RECEIPTS FROM LICENSE TO USE REAL PROPERTY:

A. Receipts derived from a license to use real property may not be deducted from gross receipts under Section 7-9-53 NMSA 1978, except that receipts derived from selling or leasing the entirety of the hunting rights with respect to a property for a period of one year or more will be considered the sale or lease of real property for the purposes of this deduction. Receipts from selling a hunting package are subject to gross receipts tax to the extent that the individual components of the package are not deductible or exempt from the gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act. A person that sells a hunting package that consists of taxable and nontaxable components must reasonably allocate the receipts based on the value of the individual components. For purposes of this section, a "hunting package" may include the following components:

(1) lodging;

(2) meals;

(3) delivery and transportation services;

(4) guide services;

(5) license to use the property;

(6) carcass of the hunted animal;

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

B. Example 1: X owns a ranch in New Mexico and is engaged in the business of ranching. Incidental to X's main business, X permits members of the public to go on X's property to hunt and fish for specified periods. X collects a fee from each person who does so. X's receipts from these fees are subject to the gross receipts tax because X merely granted a license to use. No property is leased or sold. If X sells or leases the entirety of the hunting rights on X's property for one year or more to a single individual or entity, as distinct from permitting several different individuals to hunt for various periods during a year, that constitutes the sale or lease of real property and receipts therefrom may be deducted under Section 7-9-53 NMSA 1978.

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

D. Example 3:

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

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

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

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

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

E. Example 4: X owns a ranch in New Mexico and sells guided hunting packages. Included in the price for the hunt X guarantees that the hunter will retrieve an animal, lodging at the ranch, meals, experienced hunting guide, retrieval, caping, delivery to local meat processor and taxidermist. Not included in the price are expenses associated with alcohol consumption, meat processing, taxidermy services or gratuities for guides. X receipts from the sale of this type of hunting package includes receipts from providing services, the sale of tangible personal property (meals), the sale of the carcass (possibly livestock) and from granting a license to use the land within the ranch boundaries. X must determine a reasonable method of allocating their receipts between components that are subject to gross receipts tax and those that are exempt from gross receipts tax (sale of livestock).

[1/30/78, 6/17/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 7/15/96; 3.2.211.17 NMAC – Rn, 3 NMAC 2.53.17 & A, 5/31/01; A, 8/15/12]

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

The following Department of Labor and Office of Workforce Training and Development rules are repealed effective 8/15/2012.

11.2.4 NMAC, Workforce Investment Act (WIA) Rulemaking Procedures, filed 12/15/2005.

11.2.5 NMAC, Workforce Investment Act (WIA) State Workforce Development Board, filed 6/16/2000.

11.2.6 NMAC, Workforce Investment Act (WIA) One-Stop Delivery System, filed 6/16/2000.

11.2.7 NMAC, Workforce Investment Act (WIA) Performance Accountability Requirements, filed 6/16/2000.

11.2.8 NMAC, Workforce Investment Act (WIA) Individual Training Accounts (ITAs), filed 12/15/2005.

11.2.9 NMAC, Workforce Investment Act (WIA) Sanctions and Corrective Actions and Liability, filed 6/16/2000.

11.2.10 NMAC, Workforce Investment Act (WIA) Oversight and Monitoring, filed 6/16/2000.

11.2.11 NMAC, Workforce Investment Act (WIA) Financial Management Guide, filed

6/16/2000.

11.2.12 NMAC, Workforce Investment Act (WIA) Identification of Eligible Providers of Training Services, filed 6/16/2000.

11.2.13 NMAC, Workforce Investment Act (WIA) Participant Eligibility, filed 6/13/2003.

11.2.14 NMAC, Workforce Investment Act (WIA) Local Boards, filed 6/16/2000.

11.2.16 NMAC, Adult and Dislocated Worker Activities and Use of Funds Under Title I of the Workforce Investment Act (WIA), filed 6/16/2000.

11.2.17 NMAC, Workforce Investment Act (WIA) Youth Councils, filed 8/1/2001.

11.2.18 NMAC, Workforce Investment Act (WIA) Youth Activities, filed 8/1/2001.

11.2.19 NMAC, Workforce Investment Act (WIA) On-the-Job Training, filed 12/15/2005.

11.2.20 NMAC, Workforce Investment Act (WIA) Customized Training, filed 12/15/2005.

11.2.21 NMAC, Workforce Investment Act (WIA) Technical Assistance and Corrective Action - Local Workforce Development Board Failure to Meet Performance, filed 12/15/2005.

11.2.22 NMAC, Workforce Investment Act (WIA) Programs of Demonstrated Effectiveness, filed 12/15/2005.

11.2.23 NMAC, Workforce Investment Act (WIA) Priority of Service, filed 12/15/2005.

11.2.26 NMAC, WIA Program Complaint Resolution Procedures and Procedures for Reporting Criminal Fraud and Abuse, filed 12/15/2005.

11.2.27 NMAC, WIA Equal Opportunity Requirements and Discrimination Complaint Resolution Procedures, filed 12/15/2005.

11.2.28 NMAC, Workforce Investment Act (WIA) Procurement and Contracting Activities Guidelines, filed 8/18/2003.

11.2.30 NMAC, Workforce Investment Act (WIA) Policy Regarding Disability Nondiscrimination, filed 9/4/2001.

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 4 W O R K F O R C E INVESTMENT ACT LOCAL GOVERNANCE

11.2.4.1 ISSUING AGENCY:
New Mexico Department of Workforce Solutions (DWS)

[11.2.4.1 NMAC - Rp, 11.2.14.1 NMAC, 8-15-2012]

11.2.4.2 SCOPE: State
workforce development board (state board),

state administrative entity (SAE), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners.

[11.2.4.2 NMAC - Rp, 11.2.14.2 NMAC, 8-15-2012]

11.2.4.3 S T A T U T O R Y AUTHORITY: Title I of the WIA of 1998, as amended (29 U.S.C. 2801 et seq.); WIA Regulations, 20 CFR Part 652 et al, 29 CFR Part 95-97; Office of Management and Budget (OMB) circulars applicable to the entity, such as OMB Circulars A-21, A-87, or A-122; NMSA 1978, Section 50-14-1 *et seq.*

[11.2.4.3 NMAC - Rp, 11.2.14.3 NMAC, 8-15-2012]

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

[11.2.4.4 NMAC - Rp, 11.2.14.4 NMAC, 8-15-2012]

11.2.4.5 EFFECTIVE DATE:
August 15, 2012, unless a later date is cited at the end of a section.

[11.2.4.5 NMAC - Rp, 11.2.14.5 NMAC, 8-15-2012]

11.2.4.6 OBJECTIVE: This policy provides guidance on the appointment of local boards and outlines the roles, responsibilities and authority of the chief elected officials and the local boards in regard to the local workforce system.

[11.2.4.6 NMAC - Rp, 11.2.14.6 NMAC, 8-15-2012]

11.2.4.7 DEFINITIONS:
A. Chief elected official is the chief elected executive officer of a unit of general local government in a local area, which is the mayor or county commission chair.

B. Lead chief elected official is the individual selected by the participating chief elected officials who may act on behalf of the other chief elected officials in a given local workforce development area (local area).

[11.2.4.7 NMAC - Rp, 11.2.14.7 NMAC, 8-15-2012]

11.2.4.8 CHIEF ELECTED OFFICIAL AGREEMENT: As noted in 20 CFR Part 667.705, when a local area includes more than one unit of government, the chief elected officials of each unit shall execute a written agreement that specifies the respective roles and liability of the individual chief elected officials. The DWS, as the designated representative of the governor, provides the following guidance

on this agreement.

A. Required inclusions. Chief elected officials shall enter into an agreement with each other that, at a minimum, includes the following sections.

(1) Liability of funds. Acknowledge financial liability as noted in WIA 117(d)(3)(B)(i)(I) and outline the process for determining each chief elected officials' share of responsibility as required in 20 CFR Part 667.705. This determination could be based on allocation, population, expenditures, or other criteria determined by the chief elected officials.

(2) Grant recipient and signatory. Acknowledgement that the chief elected officials are the grant recipient for all local WIA funds as outlined in WIA 117(d)(3)(B)(i) or have designated grant recipient authority to the local board. If the chief elected officials will serve as the grant recipient, they shall outline the process they will use to sign contracts and enter into agreements related to the WIA. This may be accomplished by designating signatory authority to a lead chief elected official. If a lead chief elected official is used in this capacity, chief elected officials shall include the information outlined in the recommend inclusions Subsection B of 11.2.4.8 NMAC.

(3) Fiscal agent designation. To assist in the administration of the grant funds, the chief elected officials may designate an entity to serve as a local fiscal agent as outlined in WIA 117(d)(3)(B)(i) and describe the process for designating a local fiscal agent within the guidelines required by state and local procurement laws and policies.

(4) Local board budget approval. Describe the process for reviewing and approving the local board annual budget as required in WIA 117(d)(3)(A) and 20 CFR Part 661.305(a)(4).

(5) Participating chief elected officials. The agreement shall contain the name, representation, contact information, and signature of each participating chief elected official in the local area.

(6) Election of a new chief elected official. Within 120 days of when a new chief elected official is elected within the local area, either participating as a signatory on the agreement or as a participating chief elected official, the local board shall ensure the individual submits to the local board a written statement acknowledging that he or she:

(a) has read, understands, and will comply with the current chief elected official agreement; and

(b) reserves the option to request negotiations to amend the chief elected official agreement at any time during the official's tenure as a chief elected official.

(7) Amendment or change to the chief elected official agreement. Outline

the process that will be used for amendments or changes to the chief elected official agreement. All amendments or changes shall be maintained at the local administrative entity office and available for monitoring by the state administrative entity.

B. Recommended inclusions. In order to improve the coordination and functionality of the local workforce system, chief elected officials should also address the following items in their agreement.

(1) Designation of a lead chief elected official. Chief elected officials are liable for all WIA funds in the local area and are required by the WIA to approve or provide guidance on a number of local board activities, the SAE encourages chief elected officials to select a lead chief elected official (lead) who will act on behalf of the other chief elected officials. If a lead is appointed, the following information shall be sent to the local administrative entity and kept on file for review by the SAE.

(a) Appointment process and term of the lead.

(b) Designate the lead to serve as the signatory for the chief elected officials.

(c) Outline decisions that may be made by the lead on behalf of the chief elected officials.

(d) Include name, title, and contact information of the appointed lead.

(2) Local board member representation. Outline how chief elected officials will ensure local board representation is fair and equitable across the local area.

(3) Communication. Describe how the chief elected officials will communicate with each other regarding local board activities. Determine how many times a year the chief elected officials will meet and how often a joint meeting with the local board will be held. The state encourages chief elected officials to meet at least once a year just as chief elected officials and once a year with the local board.

[11.2.4.8 NMAC - N, 8-15-2012]

11.2.4.9 CHIEF ELECTED OFFICIAL AND LOCAL BOARD PARTNERSHIP AGREEMENT:

In accordance with WIA 117(b), the state shall establish criteria for the appointment of local board members by the chief elected officials. To ensure the criteria established by the state are acknowledged by both the chief elected officials and the members of the local board, a partnership agreement is required. The DWS, as the designated representative of the governor, provides the following guidance on this agreement.

A. Required inclusions. The local board and chief elected officials shall enter into a partnership agreement that, at a minimum, addresses the following

sections.

(1) Local board membership. The WIA Section 117(c)(1) authorizes chief elected officials to appoint the members of the local board in accordance with the criteria established under Section 117(b) of the WIA and the guidelines in this policy. Chief elected officials shall appoint business representatives that meet the criteria established by the state on behalf of the governor in partnership with the state board. Authority to appoint members to the local board lies solely with the chief elected officials.

(a) Outline the terms of local board member appointments and ensure that the terms are staggered so that only a portion of membership expires in a given year.

(b) For each local board member position that requires a nomination, the nominating organization shall submit to the appointing chief elected officials of the local area a document or letter signed by the chief executive officer or designee identifying the individual being nominated. The document or letter shall also acknowledge the nominee's optimum policy making authority and include documentation of curriculum vitae, resume or work history supporting the qualifications of the nomination.

(c) Local board member appointments shall be signed by the appointing chief elected official and submitted to the local administrative entity.

(d) Local board acknowledgement that members who no longer hold the position or status that made them eligible local board members shall resign or be removed by the chief elected officials immediately as a representative of that entity.

(e) Local board members replacing out-going members in the middle of a term will serve the remainder of the out-going member term.

(f) Local board vacancies shall be filled within 120 days of the vacancy. The chief elected officials in a local area are authorized to make all reappointments of members. Reappointments shall be made within 120 days of the term expiration. Any action taken by a local board, with a vacancy or term expiration beyond the 120 day period is void unless the local board has an approved waiver from the state administrative entity prior to the local board meeting. Waivers are to be requested in writing with an explanation of why a vacancy was not filled in the 120 day timeframe and a description of the process underway to fill the vacancy.

(g) Local board members shall be removed by the chief elected officials if any of the following occurs: documented violation of conflict of interest; failure to meet local board member representation requirements defined in the WIA and this policy; or documented proof of fraud or abuse. Local board members may be removed for other

reasons outlined in the local board bylaws such as lack of attendance. Local boards shall define the specific criteria that will be used to establish just cause and the process for such removal. The state reserves the right to conduct an investigation regarding allegations of wrong doing that result in the removal of a board member. Chief elected officials will be formally notified of the results of any investigation.

(2) Relationship between chief elected officials and the local board. Establish roles and responsibilities of the chief elected officials and the local board along with a description of the partnership and specific responsibilities.

(a) Describe how the local plan will be developed in partnership between the chief elected officials and the local board.

(b) As referenced in WIA 117(d) (3)(A), describe how the local board will develop the local area budget and the process for obtaining the chief elected officials' approval.

(c) Establish the guidelines that will be followed by the local board for selection of a local workforce system operator in accordance with WIA and 11.2.5 NMAC, One Stop Deliver System, including the process for getting chief elected official agreement on the selection.

(d) Establish youth council and appointment procedures consistent with WIA 117(h).

(e) Describe the process for approving local workforce policy.

(f) Describe process for demonstrating chief elected official agreement on the memorandum of understanding between workforce system partners and the local board.

(3) The partnership agreement shall be signed by the current chief elected officials that have been identified as participating in the chief elected official agreement and by the local board chair at the time of the signing.

(4) Any amendment or change to the partnership agreement, notice of an election of a new chief elected official, or notice of an election of a new local board chair shall be maintained at the local administrative entity office and available for monitoring by the state administrative entity. If a new chief elected official or local board chair is elected within the local area, the newly elected individual shall submit to the local board a written statement acknowledging the following.

(a) Read, understands, and will comply with the current partnership agreement.

(b) Reserves the option to request negotiations to amend the partnership agreement at any time during the individual's tenure.

B. Recommended

inclusions and communication. Establish requirements for informing the chief elected officials on a regular basis regarding activities, performance outcomes, and budgets with at least one joint meeting held annually between the chief elected officials and the local board.

[11.2.4.9 NMAC - N, 8-15-2012]

11.2.4.10 LOCAL BOARD

MEMBERSHIP: A majority, defined as greater than 50%, of the local board membership shall be comprised of business representatives. An individual may be appointed as a representative of more than one category or represent more than one workforce system partner if the individual meets all criteria for representation. Individuals representing more than one category shall have optimum policy making authority within each of the entities they are representing. Each local board is required to have the following representation.

A. Business representatives. All business representatives shall be owners of a business, chief executives, operating officers, or other business executives or individuals with optimum policy making or hiring authority; represent business with employment opportunities that reflect the employment opportunities of the local area; and appointed from among individuals nominated by local business organizations and business trade associations.

B. Labor organization representatives. The local board shall have at least two representatives of labor organizations with optimum policy making authority within their organization, agency or entity and nominated by a local labor federation.

C. Local educational entity representatives. The local board shall have at least two representatives from local educational entities. These may be representatives of local educational agencies, local school boards, adult education and literacy providers, and post-secondary educational institutions and community colleges. Educational representatives will be nominated by regional or local educational agencies, institutions or organizations representing such local educational entities.

D. Community-based organization representatives. The local board shall have at least two representatives of community-based organizations, including but not limited to, organizations representing individuals with disabilities and veterans and nominated by the community based organization.

E. Economic development agency representatives. The local board shall have at least two representatives of economic development agencies, including but not limited to, private sector

economic development entities, regional planning commissions, or county economic development organizations and nominated by the economic development agency.

F. New Mexico workforce system partners. The local board shall have at least one member representing each of the following programs if they are present in the local area. As noted above, an individual may be appointed as a representative of more than one workforce system partner if the individual meets all criteria for representation. They are nominated by the partner agency.

(1) Workforce Investment Act Title I (adult, dislocated worker, and youth).

(2) Wagner-Peyser Act.

(3) Adult education and literacy.

(4) TANF/food stamp employment and training program.

(5) Vocational rehabilitation.

(6) Title V Older Americans Act.

(7) Postsecondary Vocational Education/Perkins Act.

(8) Trade Act.

(9) Veterans Title 38.

(10) Unemployment insurance.

(11) Community service block grant employment and training.

(12) Housing and urban development employment and training.

(13) Native American programs.

(14) Migrant and seasonal farmworker programs.

(15) Job corps.

(16) Veterans workforce programs.

[11.2.4.10 NMAC - Rp, 11.2.14.8 NMAC, 8-15-2012]

11.2.4.11 LOCAL BOARD

ROLES AND RESPONSIBILITIES: The local board shall have the following roles and responsibilities outlined in the agreement with the chief elected officials describing how the requirement for agreement, approval, or partnership is accomplished.

A. Partnership. Carry out the following in partnership with the chief elected officials and the local board.

(1) Develop the local workforce development plan consistent with WIA, state plan and other state administrative entity requirements.

(2) Select the local workforce system operator according to 11.2.5 NMAC, one stop delivery system.

(3) Select eligible youth service providers consistent with federal, state, and local procurement requirements.

(4) Select eligible providers of adult and dislocated worker intensive and training services.

(5) Maintain a list of eligible training providers including cost and performance data.

(6) Conduct oversight of the one stop delivery system including all WIA

activities.

(7) Negotiate local performance measures.

(8) Appoint a youth council to advise the local board on youth activities.

B. Budget approval.

Develop a budget for carrying out the duties of the local board with the approval of the chief elected officials.

C. Other local board roles and responsibilities.

(1) Elect a private-sector business representative as local board chair.

(2) Produce an annual report that shall be submitted to the state administrative entity as per guidelines established by the state administrative entity.

(3) Promote workforce connection center programs and activities.

(4) Assist the DWS in developing the statewide employment statistics system under the Wagner-Peyser Act.

(5) Coordinate with economic development strategies and establish employer linkages with workforce development activities.

(6) Carry out regional planning responsibilities as required by the state administrative entity, Section WIA 116 (c).

(7) Conduct business in an open manner by making available to the public information about the activities of the local board; this includes the local plan before submission, membership, designation of the local workforce system operator, the awards of grants or contracts, and minutes of local board meetings.

[11.2.4.11 NMAC - Rp, 11.2.14.8 NMAC, 8-15-2012]

11.2.4.12 BYLAWS: The local board shall establish bylaws that include, at a minimum, the following sections.

A. Establishment.

Acknowledge that the local board is established in accordance with WIA Section 117 and New Mexico Workforce Development Act Section 5.

B. Name. Identify the name of the local board.

C. Purpose. Acknowledge the establishment of the local board consistent with WIA sections 117(a) and (b).

D. Duties and responsibilities. Acknowledge the duties and responsibilities as outlined in the WIA, NMSA 1978, Section 50-14-1 *et seq.*, and in the partnership agreement between the chief elected officials and the local board.

E. Membership. Include a description of membership as outlined in WIA 117(b) and in the chief elected official agreement.

F. Local board chair election. Describe the process used to elect a local board chair, including term details.

G. Election of officers.

Outline officer positions, the process used to elect officers, officer terms, removal of officers, and specific officer roles and responsibilities.

H. Meetings.

(1) Information on how often local board and committee meetings will be held.

(2) Acknowledgement of open meeting requirements and compliance.

(3) Description of the process of announcing regular and special meetings.

(4) Acknowledgement that a quorum shall consist of at least a simple majority of the currently appointed membership.

(5) Clarification as to whether phone and web-based meetings will be permitted.

I. Delegation of local board duties. Acknowledge that local board members will not be permitted to delegate any local board duties to proxies or alternates.

J. Committees. Include a list of standing committees including the descriptions for each and composition, and description of the process for having ad hoc committees.

K. Conflict of interest. Acknowledge that local board members shall adhere to the following in regard to conflict of interest.

(1) A local board member may not vote on any matter that would provide direct financial benefit to the member or the member's immediate family, or on matters of the provision of services by the member or the entity the member represents.

(2) A local board member shall avoid even the appearance of a conflict of interest. Prior to taking office, local board members shall provide to the local board chair a written declaration of all substantial business interests or relationships they, or their immediate families, have with all businesses or organizations that have received, currently receive, or are likely to receive contracts or funding from the local board. Such declarations shall be updated annually or within 30 days to reflect any changes in such business interests or relationships. The local board shall appoint an individual to timely review the disclosure information and advise the local board chair and appropriate members of potential conflicts.

(3) Prior to a discussion, vote, or decision on any matter before a local board, if a member, or a person in the immediate family of such member, has a substantial interest in or relationship to a business entity, organization, or property that would be affected by any official local board action, the member shall disclose the nature and extent of the interest or relationship and shall abstain from discussion and voting on or in any other way participating in the

decision on the matter. All abstentions shall be recorded in the minutes of the local board meeting and be maintained as part of the official record.

(4) It is the responsibility of the local board members to monitor potential conflict of interest and bring it to the local board's attention in the event a member does not make a self-declaration.

(5) In order to avoid a conflict of interest, a local board shall ensure that the local board's workforce service providers shall not employ or otherwise compensate a current or former local board member or local board employee who was employed or compensated by the local board or its administrative entity, fiscal agent, or grant recipient anytime during the previous 12 months.

(6) Local board members or their organizations may receive services as a customer of a local workforce service provider or workforce system partner. To avoid conflict of interest, a local board shall ensure that the local board, its members, or its administrative staff do not directly control the daily activities of its workforce service providers, workforce system partners or contractors.

L. Compensation and reimbursement of expenses. A description of the policy on compensating local board members and reimbursing expenses shall be included.

M. Amendment. Include a description of the process for amending the bylaws.

N. Compliance with law.

(1) Acknowledgement stating, in execution of its business, the local board shall comply with all applicable New Mexico statutes and regulations including, but not limited to, the state Procurement Code, the state Open Meetings Act, as provided in Section 10-15-1, NMSA 1978 Compilation, and the state Mileage and Per Diem Act.

(2) Acknowledgement stating, in execution of its business, the local board shall comply with the WIA and regulations as well as state policies and directives.

[11.2.4.12 NMAC - Rp, 11.2.14.8 NMAC, 8-15-2012]

11.2.4.13 LOCAL BOARD CERTIFICATION:

A. Local board initial certification. The state administrative entity will certify that the composition of each local board, including the appointment process, complies with the criteria outlined in Section 117 of the WIA and with this policy. The composition of each local board will be evaluated on the following.

(1) State membership criteria.

(2) Federal membership requirements.

B. Local board

recertification.

(1) Recertification will be conducted by the state once every two years to: ensure that the local workforce system activities support meeting local performance measures and any prescribed outcomes as outlined in the local grant agreement; and the local board composition requirements have been maintained. If a local board meets all membership requirements, but fails to meet all performance measures and outcomes, certification will be granted for only a one-year review period, instead of a two-year period. At the end of the one-year review period, the recertification process will be repeated with an updated review of performance and membership composition. If this review shows the local board is meeting all performance measures and outcomes, a two-year certification will be granted.

(2) During the two-year certification period, if more than 10% of the local board membership is removed for cause, a recertification shall occur to ensure membership compliance and board stability.

C. Decertification.

(1) Conditions for decertification.

A local board is subject to decertification under the following conditions.

- (a) Failure to meet all local board certification requirements.
- (b) Failure to carry out required functions of the local board.
- (c) Fraud.
- (d) Abuse.

(2) Performance and decertification. If a local board has already been placed on a one-year review period due to a lack of meeting all performance measures and outcomes, and fails to meet performance measures and outcomes for a second-year, the local board may be decertified.

(3) Notice and comment. A written notice and opportunity for comment will be provided prior to decertification.

(4) Reorganization plan. In accordance with WIA section 117(c)(3), if a local board is decertified, the state administrative entity acting on behalf of the governor, may require a new local board be appointed for the local area pursuant to a reorganization plan developed by the state administrative entity, in consultation with the chief elected officials.

[11.2.4.13 NMAC - N, 8-15-2012]

11.2.4.14 RESCISSIONS:
[RESERVED]

[11.2.4.14 NMAC - Rp, 11.2.14.9 NMAC, 8-15-2012]

11.2.4.15 CONTACT ENTITY:
Inquiries regarding this rule should be directed to the New Mexico DWS/state administrative entity.

[11.2.4.15 NMAC - Rp, 11.2.14.10 NMAC, 8-15-2012]

11.2.4.16 DISTRIBUTION:

State board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal counsel, United States department of labor employment and training administration federal representative, and the New Mexico commission on public records.

[11.2.4.16 NMAC - Rp, 11.2.14.11 NMAC, 8-15-2012]

11.2.4.17 ATTACHMENTS:

None.

[11.2.4.17 NMAC - Rp, 11.2.14.12 NMAC, 8-15-2012]

HISTORY OF 11.2.4 NMAC:

History of Repealed Material:

11.2.4 NMAC, Workforce Investment Act (WIA) Policy/Program Issuance and State Information Notice (SIN) System, filed 6-16-2000 - Repealed effective 7-1-2003.

11.2.4 NMAC, Workforce Investment Act (WIA) Program Policies and State Technical Assistance Guide (STAG) System, filed 6-13-2003 - Repealed effective 12-31-2005.

11.2.4 NMAC, Workforce Investment Act (WIA) Rulemaking Procedures, filed 12-15-2005 - Repealed effective 8-15-2012.

11.2.14 NMAC, Workforce Investment (WIA) Act Local Boards, filed 6-16-2000 - Repealed effective 8-15-2012.

**NEW MEXICO
DEPARTMENT OF
WORKFORCE SOLUTIONS**

**TITLE 11 LABOR AND
WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 5 WORKFORCE
INVESTMENT ACT ONE-STOP
DELIVERY SYSTEM**

11.2.5.1 ISSUING AGENCY:

New Mexico Department of Workforce Solutions (DWS)

[11.2.5.1 NMAC - Rp, 11.2.6.1 NMAC, 8-15-2012]

11.2.5.2 SCOPE:

State workforce development board (state board), state administrative entity (SAE), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners.

[11.2.5.2 NMAC - Rp, 11.2.6.2 NMAC, 8-15-2012]

11.2.5.3 STATUTORY

AUTHORITY: Title I of the WIA of 1998, as amended (29 U.S.C. 2801 et seq.); WIA Regulations, 20 CFR Part 652 et al, 29 CFR Part 95-97; Office of Management and Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230; NMSA 1978, Section 50-14-1 et seq.

[11.2.5.3 NMAC - Rp, 11.2.6.3 NMAC, 8-15-2012]

11.2.5.4 DURATION:

Permanent.

[11.2.5.4 NMAC - Rp, 11.2.6.4 NMAC, 8-15-2012]

11.2.5.5 EFFECTIVE DATE:

August 15, 2012, unless a later date is cited at the end of a section.

[11.2.5.5 NMAC - Rp, 11.2.6.5 NMAC, 8-15-2012]

11.2.5.6 OBJECTIVE:

This policy provides local boards and other workforce system sub-recipients (sub-recipients) with instruction and guidance on the New Mexico one-stop delivery system and emphasizes, encourages and supports the continued development of a seamless statewide one-stop delivery system that is business-driven, skills-based, and accessible. This policy ensures the statewide system focuses on quality and seamless services to business and job seeker customers through coordination and non-duplication among the programs and activities carried out by workforce system partners (partners). 11.2.5.7 NMAC clarifies the brand name associated with the New Mexico one-stop delivery system.

[11.2.5.6 NMAC - Rp, 11.2.6.6 NMAC, 8-15-2012]

11.2.5.7 DEFINITIONS:

A. One-stop centers are called New Mexico workforce connection centers.

B. Local workforce investment boards referenced in the WIA are called local workforce development boards.

C. One-stop operators are called workforce system operators (operators).

D. The term seamless refers to a service delivery system that maintains individual agency identities and formal supervision lines of authority behind the scene, however, provides an integrated approach to serving job seeker and business customers through a focus on functions rather than agencies and funding streams.

[11.2.5.7 NMAC - Rp 11.2.6.7 NMAC, 8-15-2012,]

11.2.5.8 BACKGROUND:

Title I of the WIA assigns responsibilities at the

local, state, and federal levels for the creation and maintenance of a one-stop delivery system. The one-stop delivery system is charged with enhancing the range and quality of workforce development services available to job seekers and businesses through a coordinated approach among partner agencies. The governor has assigned the role of state administrative entity to the DWS. A state board is appointed by the governor according to WIA requirements. The state board and the state administrative entity are responsible for guiding the establishment of a statewide seamless one-stop delivery system, called the New Mexico workforce system (workforce system). This system is a collaborative effort among education, business, public agencies, and community-based organizations to provide services to job seekers and employers in a seamless manner. Participating entities are called workforce system partners (partners). Services are provided through a variety of access points. Each local workforce development area (local area) is required to have at least one comprehensive (center) that includes, at a minimum, three partners: WIA adult and dislocated worker services, Wagner-Peyser labor exchange, and access to unemployment insurance services. Additional access points may include affiliate centers as well as stand-alone partner agency locations.

[11.2.5.8 NMAC - Rp, 11.2.6.8 NMAC, 8-15-2012]

11.2.5.9 LOCAL BOARD RESPONSIBILITIES: The WIA requires a workforce development board be established and be certified by the governor to set policy for the local area. Herein is specific guidance related to the roles and responsibilities of local boards in regard to the workforce system. See local governance policy 11.2.4 NMAC for additional guidance on local board responsibility.

A. Service delivery.

The workforce system shall include at least one physical comprehensive center in each designated local area. Local boards may choose to establish additional comprehensive and affiliate centers as determined appropriate. Decisions regarding additional comprehensive centers shall be made in collaboration with the DWS cabinet secretary as the state administrative entity designated by the governor.

(1) Comprehensive centers. The comprehensive center shall provide core services specified in Section 134(d)(2) of the WIA, and provide job seeker and employer access to partner services specified in Section 121(b)(1). Each comprehensive center shall have on-site WIA adult and dislocated worker services, Wagner-Peyser labor exchange services, and access to unemployment insurance services. WIA and Wagner-Peyser

services shall be present and available full-time during posted work hours with access to information regarding unemployment insurance and partner services. Information regarding unemployment insurance will include providing written instructions and technology-based support such as a phone for job seekers to use to contact the unemployment insurance call center, use of a fax machine to transmit paperwork to the unemployment insurance call center, or access to a computer in the resource room. Required partners shall be available on-site or through electronic means or formalized referral processes. Partners are encouraged to co-locate in centers either full-time or on an itinerant basis and will be given priority over other tenants when space is assigned. Center hours may vary, however centers are required to be open during the core hours of 8:00 a.m. to 5:00 p.m.

(2) Affiliate centers. An affiliate center shall, at a minimum, include the full-time physical presence of WIA adult and dislocated worker services during the core hours of 8:00am – 5:00pm. In addition, an affiliate center may have one or more partner services and activities available through scheduled on-site presence, via technology, cross-training of staff, or referral.

(3) Stand-alone partner services. An office that provides stand-alone workforce system partner services, such as Wagner-Peyser services, will not be considered an affiliate center and will not be the responsibility of the respective local board or operator.

(4) Itinerant services. Local boards may authorize itinerant services defined as WIA adult and dislocated worker services or youth services offered on a part-time basis at a location other than affiliate or comprehensive centers, such as stand-alone partner locations, libraries or community-based organizations. Locations where only itinerant WIA adult and dislocated worker services or youth services are offered are not considered an affiliate center and will not be the responsibility of the respective local board or operator.

(5) Relocation or closure of a center. Local boards shall notify the DWS cabinet secretary of any plan for potential comprehensive center closure or relocation. The local board and the DWS cabinet secretary will work together to evaluate the potential center closure or relocation and seek alternative means to continue services in the affected area. The final decision to close or relocate a comprehensive center will be a joint decision between the local board and the DWS cabinet secretary. To ensure successful coordination and continued effectiveness of workforce system services, the local board and DWS cabinet secretary shall be notified of all relocation or closure of affiliate or Wagner-Peyser stand-alone

facilities.

B. Operator. Local boards are responsible for the oversight of the local workforce system. This is accomplished in part through the designation of the operator. Local boards shall designate an operator for their local area that will ensure oversight and seamless service delivery within each center. The operator shall be designated through one of the following processes.

(1) Competitive process.

(2) Under agreement between the local board and a consortium of entities that includes at least three or more of the required one-stop partners as identified at 20 CFR 662.200.

(3) In the event the local board determines it will utilize a consortium of entities as the one-stop operator, the following parameters shall be met.

(a) Shall be a consortium of three specific one-stop partners; WIA adult and dislocated worker service provider and Wagner-Peyser, as the two required partners in a comprehensive center, and a third required partner chosen by the local board.

(b) Individual consortium partners will be designated by their participating partner agency, shall work in the local area, and have supervisory authority over staff within the respective local area.

(c) Members of the local operator consortium will select one of its partners to serve as the lead; the operator agreement detailed below shall include a description of how the lead will be determined among the participating partner agencies that comprise the local operator, what the specific role of the lead will be, and how the lead will encourage consensus building among the operator team.

C. Operator agreement.

The agreement shall describe in detail how the following will be accomplished and maintained.

(1) All partner staff physically located within an affiliate or comprehensive center shall be organized and coordinated by function.

(2) Assurance that seamless service delivery is implemented and managed in all affiliate and comprehensive centers to include details of the day-to-day functional supervision that may take the form of a site manager or other means as determined effective.

(3) Development of a customer flowchart together with partners that includes access to and services available for core, intensive and training activities.

(4) Detail operational procedures and protocols that promote effective seamless service delivery for all partners and do not negatively impact the performance or outcomes of any individual partner program.

(5) Convene meetings to be held at least quarterly between the operator and

other required partners to discuss services, customer flow, partner referrals, performance outcomes and other issues as appropriate.

(6) Ensure communication of workforce system policy, guidance and information to affiliate and comprehensive center staff and required partners.

(7) Establish policies and procedures for situations such as inclement weather, holidays, breaks or time off, accounting for relevant policies that may not be consistent across partners. (state employees shall be governed by state personnel rules, collective bargaining agreements and state policy)

(8) Assure that success indicators established by the local board or state administrative entity are met and recommend additional metrics to the local board that support seamless service delivery and apply across partner services and activities.

(9) Enforce the prohibition against the local board directly delivering services to include a statement that the local board shall ensure that the local board, its members, and its employees do not directly control or supervise the daily activities of its workforce service providers.

D. Memorandum of understanding (MOU). The purpose of the MOU is to improve the accessibility and quality of services made available to a shared customer pool. Local boards are responsible for the development, execution, and maintenance of a memorandum of understanding with all partners physically located in each of their comprehensive and affiliate centers. (See 11.2.6 NMAC) [11.2.5.9 NMAC - Rp, 11.2.6.8 NMAC, 8-15-2012]

11.2.5.10 PARTNER RESPONSIBILITIES: All WIA required or local board approved partners who wish to be physically co-located within a center shall be willing to provide their services within the following parameters.

A. Partners shall make their core services available and seamless as directed by the operator or site manager.

B. Partners shall make available through a seamless process other activities and programs carried out under their program direction or authorizing law.

C. Partners shall ensure their staff is trained on their respective program rules and regulations and capable of effectively delivering program services and activities within a seamless service delivery environment.

D. Partners shall enter into a MOU with the local board establishing shared success indicators, operating strategies and procedures, and customer flow for an effective seamless service delivery.

E. Partners shall participate in cross-training of staff as determined

necessary by the operator.

F. Partners shall coordinate leave requests with the operator to ensure adequate staff coverage at all times.

G. Partner shall maintain direct supervision over their respective staff and the volunteers that support their program.

H. Partners shall ensure when applicable, state personnel rules and regulations, collective bargaining agreements and other partner agency policy continue to govern state partner staff in a center.

I. Partner staff shall comply with center operational procedures but certain exceptions may exist such as veterans staff that shall comply with veterans program requirements and responsibilities in accordance with their authorizing legislation.

J. While the operator or site manager may be asked to assist and provide information necessary to support certain personnel actions, the partner agency retains sole discretion for anything that may affect the current base pay, status, and tenure of their respective staff such as any of the following employee actions.

- (1) Hiring.
- (2) Termination.
- (3) Discipline.
- (4) Promotion.
- (5) Permanent assignments.

(functional supervisors may temporarily assign state staff to ensure coverage and positively impact service and a seamless service delivery)

(6) Permanent transfer. (functional supervisors may temporarily assign state staff to ensure coverage)

(7) Performance evaluations - with input from the functional supervisor.

- (8) Grievances.
- (9) Corrective action.
- (10) Disciplinary action.
- (11) Timesheet and leave approval.
- (12) Approval of costs not addressed in the MOU with the local board related to the operation of the center such as travel, training, etc.

[11.2.5.10 NMAC - Rp, 11.2.6.8 NMAC, 8-15-2012]

11.2.5.11 STATE ADMINISTRATIVE ENTITY RESPONSIBILITIES:

The state administrative entity, under the direction of the governor and the state workforce development board, is responsible for establishing and overseeing the workforce system and service delivery. The state administrative entity responsibilities in regard to establishing and overseeing the statewide seamless service delivery system include but are not limited to the following.

A. Develop statewide policies.

B. Establish and disseminate directives.

C. Ensure each local board develops and maintains a single umbrella or individual partner MOU(s) that includes a working resource sharing agreement(s) and cost allocation plan(s).

D. Negotiate statewide performance measures with the U.S. department of labor followed by negotiating with local boards for local area performance measures.

E. Review and approve local area plans.

F. Prepare New Mexico's state workforce system plan and submit it to the U.S. department of labor.

G. Prepare an annual report on the workforce system activity and performance.

H. Prepare and initiate grant agreements and contracts with the local boards and others as required.

I. Monitor and evaluate the local workforce systems to ensure compliance with state and federal policies and directives.

J. Provide or contract for technical assistance and training to ensure performance measures and outcomes are met, a seamless delivery system is operational, and opportunities for continuous improvement are identified.

K. Require corrective action or impose sanctions on a local board or other WIA sub-recipient for significant inability or failure to perform as required. (11.2.20 NMAC).

L. Evaluate the effectiveness of the statewide workforce system, including a qualitative and quantitative program analysis of program goals, performance, success indicators, outcomes, cost efficiencies, seamless service delivery, partner collaboration, customer satisfaction.

M. Compile and submit data and reports on partner program outcomes and performance as required by the state and U.S. department of labor.

[11.2.5.11 NMAC - N, 8-15-2012]

11.2.5.12 COMMON MANAGEMENT INFORMATION SYSTEM:

The centers will utilize a common management information system, the NM virtual one stop system (NMVOSS) or other system as determined by DWS. The system is used for all data collection and reporting for all required partners located in comprehensive and affiliate centers. Shared information and data agreements will be utilized to support access to information and information sharing between the partners as allowed by authorizing law and regulation.

[11.2.5.12 NMAC - N, 8-15-2012]

11.2.5.13 OUTREACH AND

BRANDING: The workforce system outreach and branding is a shared state and local board responsibility. The center branding will be used to ensure recognition of the statewide seamless workforce system. Brochures, flyers, advertising media and announcements, stationery, business cards, and name tags used by the center staff will reflect the New Mexico workforce connection center branding only. Signage outside and inside all affiliate, comprehensive centers and Wagner Peyer stand-alone partner facilities will reflect the New Mexico workforce connection center branding. No single partner or other tenants' signage will be combined or incorporated on the center signage. Modification to branding can be directed by the DWS cabinet secretary as state administrative entity.

[11.2.5.13 NMAC - N, 8-15-2012]

11.2.5.14 WORKFORCE SYSTEM COMMUNICATION

PROTOCOL: To promote better coordination of the delivery of workforce services, all communication regarding state workforce system policy, guidance and information will flow from the state administrative entity to the local boards, local workforce system administrative entities (local administrative entity), operators and site managers. The operators and site manager shall inform affiliate and comprehensive center staff. Communications regarding partner program policy, guidance and information will be communicated from the program authority at the state level to appropriate center staff responsible for program administration ensuring the local administrative entity and the operator and site manager are simultaneously copied. Communication directly related to state personnel matters will be sent directly to individual staff from the state supervisor or official.

[11.2.6.14 NMAC - N, 8-15-2012]

11.2.5.15 RESCISSIONS:

[RESERVED]

[11.2.5.15 NMAC - Rp, 11.2.6.9 NMAC, 8-15-2012]

11.2.5.16 CONTACT ENTITY:

Inquiries regarding this rule should be directed to the New Mexico DWS/state administrative entity.

[11.2.5.16 NMAC - Rp, 11.2.6.10 NMAC, 8-15-2012]

11.2.5.17 DISTRIBUTION:

State board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal counsel, United States department of labor employment and training administration

federal representative, and, the New Mexico commission on public records.

[11.2.5.17 NMAC - Rp, 11.2.6.11 NMAC, 8-15-2012]

HISTORY OF 11.2.5 NMAC:**History of Repealed Material:**

11.2.5 NMAC, Workforce Investment Act (WIA) State Workforce Development Board, filed 6-16-2000 - Repealed effective 8-15-2012.

11.2.6 NMAC, Workforce Investment Act (WIA) One-Stop Delivery System, filed 6-16-2000 - Repealed effective 8-15-2012.

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

TITLE 11 LABOR AND WORKER'S COMPENSATION CHAPTER 2 JOB TRAINING PART 6 WORKFORCE INVESTMENT ACT MEMORANDUM OF UNDERSTANDING

11.2.6.1 ISSUING AGENCY:

New Mexico Department of Workforce Solutions

[11.2.6.1 NMAC - N, 8-15-2012]

11.2.6.2 SCOPE:

State workforce development board (state board), state administrative entity (SAE); chief elected officials (CEOs); local workforce development boards (local boards); local workforce system administrative entities (local administrative entities); workforce system sub-recipients and workforce system partners.

[11.2.6.2 NMAC - N, 8-15-2012]

11.2.6.3 STATUTORY

AUTHORITY: Title I of the WIA of 1998, as amended (29 U.S.C. 2801 et seq.); WIA Regulations, 20 CFR Part 652 et al, 29 CFR Part 95-97; Office of Management and Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230; NMSA 1978, Section 50-14-1 et seq.

[11.2.6.3 NMAC - N, 7-1-2012]

11.2.6.4 DURATION:

Permanent.

11.2.6.4 NMAC - N, 8-15-2012]

11.2.6.5 EFFECTIVE DATE:

August 15, 2012, unless a later date is cited at the end of a section.

[11.2.6.5 NMAC - N, 8-15-2012]

11.2.6.6 OBJECTIVE:

To give guidance and direction to the local workforce development boards (local boards) on the development of a memorandum of understanding between local boards and

workforce system partners. This will provide an overview of the components of an MOU and provide a template for local board use.

[11.2.6.6 NMAC - N, 8-15-2012]

11.2.6.7 DEFINITIONS:

[RESERVED]

11.2.6.8 BACKGROUND:

The Workforce Investment Act of 1998 reformed the nation's publicly funded employment and training delivery system through the creation of a one-stop delivery system. A memorandum of understanding (MOU) is mandated by federal law as the mechanism that serves as the blueprint from which the system operates. The MOU is the agreement between one stop partners and the local workforce development boards to establish a process to maintain and govern the operation of the one-stop delivery system in the local areas. The local board is responsible for developing, maintaining and managing the MOU process. The workforce system primarily operates in state-owned facilities; therefore, the state plays a role in supporting and assisting local boards with this process as outlined herein.

[11.2.6.8 NMAC - N, 8-15-2012]

11.2.6.9 MEMORANDUM OF UNDERSTANDING (MOU):

A. Agreement. The MOU is an agreement between the local workforce development board and the workforce system partners, with the agreement of the chief elected officials, to establish a process to maintain and govern the operation of each of the comprehensive and affiliate workforce connection centers.

B. Single MOU. A single "umbrella" MOU may be developed relating to the system between the local board and partners or the local board and its partners can decide to enter into separate agreements if appropriate.

[11.2.6.9 NMAC - N, 8-15-2012]

11.2.6.10 MEMORANDUM OF UNDERSTANDING COMPONENTS:

A. MOU components. Each MOU shall contain at a minimum the following components.

(1) Description of the services to be provided through the one-stop delivery system.

(2) Description of the functional organization, customer flow and service delivery.

(3) Methods for referral of individuals to workforce system partners.

(4) Duration of the MOU and the procedures for amending the MOU.

(5) A resource sharing agreement (RSA) and a cost allocation plan (CAP) are included as addendums to the MOU and

updated as needed. Modifications to the RSA and the CAP do not require the MOU itself to be modified.

(a) Resource sharing agreements (RSA) outline how services and operating costs of the system will be funded; methodology for cost sharing; and invoicing and payment processes.

(b) Cost allocation plans (CAP) outline partner cost based on accepted a methodology.

B. MOU planning and development process. Memorandum of understanding planning and development process should include the following.

(1) Identification of area specific needs through labor market information, demographics, customer input, etc.

(2) Level of service.

(a) Define and determine level of core, intensive and training services.

(b) Define and outline service and training priorities.

(c) Evaluate staffing levels.

(3) Referral methods.

(a) Define customer work flow and process for referral.

(b) Formalize referral process to partners and communities services.

(4) Budget Information.

(a) Develop a financial plan that addresses operations and programs.

(b) Develop a cost allocation plan detailing specific partner cost sharing.

[11.2.6.10 NMAC - N, 8-15-2012]

11.2.6.11 MOU PROVISIONS FOR STATE OWNED FACILITIES:

A. State agency responsibility. The department of workforce solutions (DWS) accepts certain inherent responsibility as a state agency for state-owned facilities functioning as one stop centers. Unless other provisions are negotiated with the local board, DWS will perform the following functions and assess cost to all partners as outlined in the MOU, RSA and CAP.

(1) Invoicing of partners in state-owned facilities.

(2) Day-to-day facility maintenance.

(3) Front- end payment of utilities; gas, electric, refuse, sewer, and water.

(4) Contracting for security.

(5) Janitorial service contracts, supplies and associated costs.

(6) Snow removal.

(7) Shared operational office costs, which will include but not limited to shared office equipment and related expenses like copier leases, equipment maintenance and supplies, postage costs and fax machines. This does not include partner staff desk supplies, office furniture, computers, personal printer expenses, and property/ contents insurance.

B. Information technology services. In order to improve efficiency and reduce costs while maintaining a quality information technology infrastructure, local boards will utilize telephone, email and information technology services from the state of New Mexico department of information technology and DWS workforce technology division when available unless there is mutual agreement to use alternative services and systems. Specific roles and responsibilities for the management, upkeep, maintenance, and replacement of computer equipment and systems, including any specific board applications, requirements or needs will be negotiated on an individual office basis. Costs for those services will be allocated to participating partners as negotiated and outlined in the cost allocation plan.

C. Alterations and improvement. If a local board wants to propose alterations or improvements to a state-owned facility, the local board must provide a written request to DWS before any alteration or permanent improvement is made to state property/facilities. DWS will review and determine if the request is appropriate and obtain the written permission from the state of New Mexico, general services department, property control division (PCD) to proceed with alterations and improvements. DWS will submit a written request to PCD within 15 business days from DWS's approval of the board's written request. DWS will provide the board with copies of all correspondence relating to property alteration(s) request. Any alterations or improvements will become part of the property and will remain with the property upon expiration of this MOU.

D. Signs and personal property. Upon approval from DWS, the local board may place necessary and reasonable exterior signage on the state property. DWS will not be liable for any damage to signs and personal property of the board, its employees, agents, customers and invitees kept on the property. The board will ensure removal of all exterior signage installed as directed by the board within 30 calendar days of the end of the term of its occupancy.

E. Inspection. The parties agree that DWS and the property control division of the general services department will be permitted to enter the property at all times in order to inspect the condition, use, safety or security of the property and any improvements therein.

F. Expiration. Upon termination of this MOU by reason of the expiration of the term, the local board and workforce partners will surrender possession of the state property and all normal and reasonable improvements therein in good condition and repair, reasonable wear and

tear excepted.

G. Fiscal administration. MOU fiscal administrative functions for state-owned buildings will be the responsibility of the DWS chief financial officer.

(1) **Invoicing.** DWS will invoice for all shared costs in accordance with the MOU, resource sharing agreement and cost allocation plan at the end of each quarter unless negotiated otherwise. DWS will submit, on or before the 20th of the subsequent month following quarter end, an invoice detailing each partners shared costs. Each partner must submit payment to DWS accounts receivable unit within 30 days of date of invoice. Disputed invoices will be resolved in good faith by DWS and the board in a timely manner. Costs not received by the invoice date will be included in the subsequent billing.

(2) **Cost information.** Cost information will be distributed quarterly and will be available for inspection and copying at the department of workforce solutions office in Albuquerque, New Mexico during regular business hours by appointment.

[11.2.6.11 NMAC - N, 8-15-2012]

11.2.6.12 COST ALLOCATION PLAN GUIDELINES:

A. Basic cost principles and guidelines. It is important to consider the following factors in incurring and classifying costs.

(1) **Allowability.** To be allowable, a cost must be necessary and reasonable for the proper and efficient administration of the program. To reduce risk of accumulating and being held accountable for disallowed costs, careful review must be conducted of anticipated program expenditures, the terms and conditions of the award, and applicable regulations before any program costs are incurred.

(2) **Reasonableness.** For a cost to be reasonable under an award, it will not exceed the cost that would be incurred by a prudent person under the same circumstances. In determining the reasonableness of a given cost, consideration should be given to the following.

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award.

(b) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms-length bargaining, federal and state laws and regulations, and terms and conditions of the award.

(c) Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its

members, employees, and clients, the public at large, and the government.

(d) Significant deviations from the established practices of the organization that may unjustifiably increase the award's costs.

(3) **Allocable.** For a cost to be allocable to a particular cost objective, it must be treated consistently with other costs incurred for the same purpose in like circumstances. Any cost allocable to a particular grant or other cost objective under these principles may not be shifted to other federal grants to overcome funding deficiencies, to avoid restrictions imposed by law or grant agreement, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements.

(4) **Measuring benefit.** Measuring benefit is the critical requirement and central task to be performed in allocating costs. Costs are allocable to a particular cost objective on benefits received by that cost objective. When the direct measurement of benefit cannot be done efficiently and effectively, then it is appropriate to pool the costs for later distribution. The allocation base is the mechanism used to allocate the pooled costs to final cost objectives. Care should be taken to ensure that the basis chosen does not distort the results.

B. Cost allocation plan (CAP) methodology. A cost allocation plan (CAP) documents the method in which an entity identifies, accumulates, and distributes allowable direct and indirect costs under grants and contracts, and identifies the allocation methods used for distributing costs. A plan for allocating joint costs is necessary to support the distribution of those costs to the grant program. Formal accounting records to substantiate the propriety of the eventual charges must support all costs included in a CAP. A CAP should include, at a minimum, the following elements.

(1) Chart that identifies all partners, and partner funding source.

(2) Copy of the official budget that includes all costs to operate the center.

(3) Methods used in allocating the expenses to benefiting cost objectives which includes the following components.

(a) Narrative description of the methodology for allocating expenses for each cost objective.

(b) General description of direct costs and type of costs.

(c) List of indirect costs, cost pool, basis for allocating each type of pooled cost, and the documentation for supporting each basis for allocation.

[11.2.6.12 NMAC - N, 8-15-2012]

11.2.6.13

R E S O U R C E

SHARING AGREEMENT (RSA): The resource sharing agreement section of the MOU outlines how costs will be shared between partners. Unless alternative methodology is negotiated with workforce partners and documented in the RSA, shared costs will be allocated among the parties to the MOU agreement as follows.

A. Facility costs. Facility costs will be allocated on the basis of square footage occupied and the proportion of common area attributed to each partner. Facility costs include but are not limited to facility leases, utilities, snow removal, janitorial services, security services, and routine maintenance and repairs.

B. Operational costs. Operational costs will be allocated on the basis of square footage occupied and the proportion of common area attributed to each partner. Operational costs include but are not limited to shared office equipment and related expenses like copier lease, maintenance and supplies, telephone/internet, postage meter rental, and fax machine. Costs for postage will be allocated based on actual usage.

C. Unallocated costs. Unallocated costs are general desk supplies, office furniture, computers, personal printer expenses, and property/contents insurance which will be paid separately by each partner.

[11.2.6.13 NMAC - N, 8-15-2012]

11.2.6.14 MOU

MODIFICATION AND RECONCILIATION PROCESS:

Modifications may need to be made as a result of various occurrences such as changes in program/services provided; change in partner co-location; and analysis of shared costs and partner contributions.

A. Modification of the MOU. Partners may request, in writing, an amendment to the MOU through the local board. The local board may amend the MOU whenever the board determined it is appropriate or necessary. In order for any MOU modification to be valid, the changes must be documented in writing, signed, dated under the conditions agreed upon by all of the partners. The modification should be attached to the original MOU.

B. Modification of the cost allocation plan. The cost allocation plan must be reviewed, updated quarterly or as required. The local board is responsible for informing the state administrative entity of changes/adjustments to the cost allocation plan based on actual costs incurred and square footage occupied quarterly for state-owned buildings. DWS is responsible for making adjustments to the cost allocation plan for state-owned buildings. The local board is responsible for making adjustments to the cost allocation plan for non-state-

owned buildings. Revisions to the cost allocation plan worksheet/summary must include signatures of all partners and be incorporated into the active MOU.

C. Modification timelines.

Modifications should be completed within 30 days of the occurrence requiring such action. Impacted partners must receive copies of the modification and agree to the change in terms. Once approved, modifications will be effective the date of the occurrence and reflected in the subsequent quarterly billing.

D. Cost allocation plan. Cost allocation plan worksheets for subsequent program years must be automatically incorporated into this MOU and must not be considered as a modification to the MOU.

E. Dispute resolution. If a dispute arises over the administration of part of the MOU, the parties must meet and confer. If consensus is not achieved, the final decision regarding all disputes resides with the DWS cabinet secretary as state administrative entity designated to act on behalf of the governor. If any provision of the MOU is held invalid, the remainder of the MOU must not be affected.

[11.2.6.14 NMAC - N, 8-15-2012]

11.2.6.15 R E Q U I R E D

ACTION: Each local workforce development board must develop one or more MOU(s) with the local comprehensive and affiliate workforce connection center partners relating to the operation of the workforce service delivery system in the local area. This agreement must be developed and executed with the agreement of the CEOs. Each workforce connection center partner must negotiate the terms of their MOU with local board. This policy provides guidance for use by local board to ensure complete information is included in all MOUs. The local board may customize their respective MOUs to fit the needs of the local area, but any customization should ensure that all components outlined in this policy are included.

[11.2.6.15 NMAC - N, 8-15-2012]

11.2.6.16 R E S C I S S I O N S :

[RESERVED]

[11.2.6.16 NMAC - N, 8-15-2012]

11.2.6.17 CONTACT ENTITY:

Inquiries regarding this rule should be directed to the New Mexico DWS/state administrative entity.

[11.2.6.17 NMAC - N, 8-15-2012]

11.2.6.18 D I S T R I B U T I O N :

State board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal

counsel, United States department of labor employment and training administration federal representative, and, the New Mexico commission on public records.

[11.2.6.18 NMAC - N, 8-15-2012]

HISTORY OF 11.2.6 NMAC:

History of Repealed Material:

11.2.6 NMAC, Workforce Investment Act (WIA) One-Stop Delivery System, filed 6-16-2000 - Repealed effective 8-15-2012.

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

TITLE 11 LABOR AND WORKER'S COMPENSATION CHAPTER 2 JOB TRAINING PART 7 W O R K F O R C E INVESTMENT ACT SERVICE INTEGRATION

11.2.7.1 ISSUING AGENCY:

New Mexico Department of Workforce Solutions (DWS)

[11.2.7.1 NMAC - N, 8-15-2012]

11.2.7.2 SCOPE:

State workforce development board (state board), state administrative entity (SAE), chief elected officials, local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients, and workforce system partners.

[11.2.7.2 NMAC - N, 8-15-2012]

11.2.7.3 S T A T U T O R Y

AUTHORITY: Title I of the Workforce Investment Act (WIA) of 1998, as amended (29 U.S.C. 2801 et seq.); WIA Regulations, 20 CFR Part 652 et al, 29 CFR Part 95-97; Office of Management and Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230; NMSA 1978, Section 50-14-1 et seq.

[11.2.7.3 NMAC - N, 8-15-2012]

11.2.7.4 D U R A T I O N :

Permanent.

[11.2.7.4 NMAC - N, 8-15-2012]

11.2.7.5 EFFECTIVE DATE:

August 15, 2012, unless a later date is cited at the end of a section.

[11.2.7.5 NMAC - N, 8-15-2012]

11.2.7.6 OBJECTIVE:

The purpose of this policy is to align staff and services around employment and training functions, rather than providing services through siloed and independent program funding streams.

[11.2.7.6 NMAC - N, 8-15-2012]

11.2.7.7 D E F I N I T I O N S :

[RESERVED]

11.2.7.8 BACKGROUND:

The WIA of 1998 reformed the nation's publicly funded employment and training delivery system through the creation of a one-stop delivery system. The reform embodied in the WIA is pivotal and not intended to be business as usual. The primary intent is to improve customer access to service through the creation of a seamless system of workforce services. Service integration requires partners to work collaboratively in the delivery of services available under multiple programs. The Wagner-Peyser Act, which focuses on providing a variety of employment-related labor exchange services for both job seekers and employers, was amended in 1998 to make it a mandatory partner in the one-stop service delivery system. The WIA goal of universal access to core services is to be achieved through close integration of Wagner-Peyser, WIA adult and dislocated worker and other partners in the New Mexico workforce connection centers (centers).

[11.2.7.8 NMAC - N, 8-15-2012]

11.2.7.9 M I N I M U M REQUIREMENTS FOR INTEGRATION:

A. Functional alignment.

Functional alignment is both an opportunity and a tool to effectively organize staff and facilities in a manner that streamlines customer service delivery, capitalizes on the strengths of staff and technology to deliver services, and thereby reduces duplication. It is not enough to co-locate partners, orient customers to partner programs, and refer customers to these programs. In order for the one-stop delivery system to succeed, services shall be integrated and delivered according to customer need rather than program focus. To meet the minimum requirements for integration, local boards shall ensure the following elements are incorporated into each comprehensive and affiliate center through their respective workforce system operator (operator) and functional management structure as follows.

(1) Welcome function. The center staff serving in the welcome function will strive to greet all customers and will not wait passively for customers to come to them in order to determine the best set of services for each customer. Every new job seeker will receive an evaluation of service needs and will be provided information about the skills assessment tools available that can assist the customer in determining the next appropriate set of services. Services associated with the welcome function include the following: registration,

orientation to services, provision of labor market information, access to resource room, initial assessment, provide access to assessment tools that assist individuals in the identification of basic skill, self-assisted job referral and placement, referral to generic workshops, and referral to other community services. The staff involved in the welcome function will coordinate with the skill/career development and business services teams to manage and coordinate services.

(2) Skill and career development function. The center staff involved in the skill and career development functions are responsible for assisting customers that require or desire more than informational and self-directed services. Services associated with the skill/career development function include but are not limited to intensive, training and supportive services.

(3) Business services function. The center staff involved in the business services function is responsible for building relationships with employers through regional initiatives including but not limited to sector partnerships and business alliances; and identifying opportunities to address the human resource needs of employers. The goal is to become the bridge between business and job candidates by coordinating with all center staff to actively recruit and refer qualified job candidates based on the needs of business. Services associated with the business services function include but are not limited to the following: business outreach; recruitment and referral for job vacancies primarily for targeted business and industry; job candidate qualification review; provision of economic, business and workforce trends; organize service delivery around business and industry needs; provide information on human resource services; job development; referral to community services.

B. Functional management.

(1) Operator. Local boards shall designate an operator that will ensure seamless service delivery within each center. The operator shall ensure seamless service delivery in all affiliate and comprehensive centers to include details of the day-to-day functional supervision that may take the form of a site manager or other means as determined effective. Duties include: organize and coordinate all co-located partner staff by function in accordance with state personnel rules, collective bargaining agreements and state policy and guidance; establish a service delivery model that is customizable to the needs of individual customers; develop operational procedures and protocols that promote effective and seamless service delivery ensuring that individual partner program performance and outcomes are not negatively impacted; communicate workforce system policy,

guidance and information according to communication protocol; establish policies and procedures for situations such as inclement weather, holidays, breaks or time off, accounting for relevant policies that may not be consistent across partners. (State employees shall be governed by state personnel rules, collective bargaining agreements and state policy). See 11.2.5 NMAC, One Stop Delivery System)

(2) Site manager or designee.

The local board may designate a site manager for each comprehensive and affiliate center. A site manager may be hired; selected from current partner staff; or other alternative method to ensure functional supervision of day-to-day operations. A site manager may oversee multiple sites. Duties at a minimum shall include: staffing plans that provide adequate office coverage at all times in a manner that allows fair and equitable opportunity for time off; ensure all staff adhere to internal policies and procedures; ensure all staff present a professional and positive image; and ensure consistent communication procedures are followed.

(3) State agency /workforce partner supervisor. A state or workforce partner supervisor shall be vested with the sole authority to hire, terminate, discipline, promote, assign, and transfer their employees. Further, the operator and site manager, in consultation with the state agency or workforce partner supervisor, shall determine the purpose and activities of the functional units incorporating individual partner activities of their employees. In any event, workforce partner supervisor retains authority over all actions that may affect the current base pay, status, or tenure of their employees. (11.2.5.10 NMAC)

C. Staff cross-training.

The local board through the operator shall ensure a comprehensive cross-training and development plan is established for each center and its staff. This plan shall ensure staff members are trained in each of the programs provided under the center's available funding streams for purposes of fostering program integration and eliminating functional silos. Cross training requires the collaboration of staff and services where it is most practical and supports the needs of customers.

D. Customer flow.

Each comprehensive center shall utilize a customer flow model based on customer need, not program requirements. Each customer flow design should incorporate a methodology to identify customer needs upon entry and provide immediate engagement and connectivity to services during the customer's first visit. The operator shall ensure staffing is adjusted according to customer needs and traffic flow. A customer flow model will create one customer pool that will be served jointly by WIA, Wagner-Peyser and other partner staff, specifically at

core service levels.

E. Co-enrollment. Co-enrollment of participants across programs and funding streams encourages the coordination and leveraging of resources among partners and facilitates the interdependence that is at the core of an integrated system. Co-enrollment is a strategic necessity in the context of limited and diminishing resources. See 11.2.10 NMAC, Co-Enrollments. [11.2.7.9 NMAC - N, 8-15-2012]

11.2.7.10 IMPLEMENTING SERVICE INTEGRATION AND FUNCTIONAL MANAGEMENT:

Each local board will develop and implement an integrated services and functional management plan. The plan will be developed with partner participation. The plan will be incorporated into the local plan and imbedded in local board documents including but not limited to; memoranda of understanding, operator agreements, and contracts with service providers. Operators will ensure the integration plan adequately addresses the requirements established by the state and local workforce boards. Each local board's plan shall include the following elements.

A. Description of the functional management structure and organization chart that includes state staff with supervisory responsibility for center staff.

B. List of centers (comprehensive and affiliate) and explanation on how the service integration will occur in each center.

C. Description of functional areas.

D. Description of customer flow for job seekers and business.

E. Description of service delivery methods.

F. Description of tools and technology that will be used to expand service delivery to increase efficiency and expand the customer pool.

G. List of skill assessment tools to be used.

H. Description of the measures of success, common measures, and other metrics defined by the state and local board and consistent with the state and local plans.

I. Explanation of continuous improvement initiatives and description of how it will be measured.

J. Description of training plan to build the capacity of staff.

K. Description of communication plan (intra office, inter office, local area to state).

L. Appropriate signatures of approval.

[11.2.7.10 NMAC - N, 8-15-2012]

11.2.7.11 RESCISSIONS:

[RESERVED]

[11.2.7.11 NMAC - N, 8-15-2012]

11.2.7.12 CONTACT ENTITY:

Inquiries regarding this rule should be directed to the New Mexico DWS/state administrative entity.

[11.2.7.12 NMAC - N, 8-15-2012]

11.2.7.13 DISTRIBUTION:

State board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal counsel, United States department of labor employment and training administration federal representative, and, the New Mexico commission on public records.

[11.2.7.13 NMAC - N, 8-15-2012]

HISTORY OF 11.2.7 NMAC:

History of Repealed Material:

11.2.7 NMAC, Workforce Investment Act (WIA) Performance Accountability Requirements, filed 6-16-2000 - Repealed effective 8-15-2012.

**NEW MEXICO
DEPARTMENT OF
WORKFORCE SOLUTIONS**

**TITLE 11 LABOR AND
WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 8 WORKFORCE
INVESTMENT ACT ELIGIBILITY
DETERMINATION AND
DOCUMENTATION**

11.2.8.1 ISSUING AGENCY:

New Mexico Department of Workforce Solutions (DWS)

[11.2.8.1 NMAC - Rp, 11.2.13.1 NMAC, 8-15-2012]

11.2.8.2 SCOPE:

State workforce development board (state board), state administrative entity (SAE), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners.

[11.2.8.2 NMAC - Rp, 11.2.13.2 NMAC, 8-15-2012]

11.2.8.3 STATUTORY

AUTHORITY: Title I of the WIA of 1998, as amended (29 U.S.C. 2801 et seq.); WIA Regulations, 20 CFR Part 652 et al, 29 CFR Part 95-97; Office of Management and

Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230; NMSA 1978, Section 50-14-1 *et seq.*

[11.2.8.3 NMAC - Rp, 11.2.13.3 NMAC, 8-15-2012]

11.2.8.4 DURATION: Permanent.

[11.2.8.4 NMAC - Rp, 11.2.13.4 NMAC, 8-15-2012]

11.2.8.5 EFFECTIVE DATE: August 15, 2012, unless a later date is cited at the end of a section.

[11.2.8.5 NMAC - Rp, 11.2.13.5 NMAC, 8-15-2012]

11.2.8.6 OBJECTIVE: To provide updated and comprehensive guidelines for local workforce development boards (local boards) and other WIA sub-recipients regarding the determination of eligibility for WIA programs, and to provide information on the use of appropriate documentation to support eligibility determinations.

[11.2.8.6 NMAC - Rp, 11.2.13.6 NMAC, 8-15-2012]

11.2.8.7 DEFINITIONS: Definitions related to this rule appear in the New Mexico state technical assistance guide on Workforce Investment Act participant eligibility.

[11.2.8.7 NMAC - Rp, 11.2.13.7 NMAC, 8-15-2012]

11.2.8.8 BACKGROUND: The WIA of 1998 details the basic parameters within which applicants for WIA services can be deemed eligible to receive employment and training services funded under the act. Local boards and other WIA sub-recipients shall adhere to the WIA eligibility guidelines to ensure all those who receive WIA funded services are eligible.

[11.2.8.8 NMAC - N, 8-15-2012]

11.2.8.9 WIA PARTICIPANT ELIGIBILITY: Local boards are required to establish and formally approve a local policy for making eligibility determinations for the three WIA funding streams under Title I – adult, dislocated worker, and youth. With this in mind, local boards are expected to modify local policies and procedures as needed to incorporate the changes and additions to this policy, including guidance on the use of self-attestation as a last resort when other documentation can't be found or accessed. WIA participant eligibility requirements are detailed in the state technical assistance guide updated July 31, 2012 and included as an attachment.

[11.2.8.9 NMAC - Rp, 11.2.13.8 NMAC, 8-15-2012]

11.2.8.10 REVISIONS: [RESERVED]
[11.2.8.10 NMAC - N, 8-15-2012]

11.2.8.11 CONTACT ENTITY: Inquiries regarding this rule should be directed to the New Mexico department of workforce solutions/state administrative entity.

[11.2.8.11 NMAC - Rp, 11.2.13.9 NMAC, 8-15-2012]

11.2.8.12 DISTRIBUTION: State board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal counsel, United States department of labor employment and training administration federal representative and the New Mexico commission on public records.

[11.2.8.12 NMAC - Rp, 11.2.13.11 NMAC, 8-15-2012]

11.2.8.13 ATTACHMENTS: New Mexico state technical assistance guide, workforce investment act participant eligibility.

[11.2.8.13 NMAC - Rp, 11.2.13.12 NMAC, 8-15-2012]

HISTORY OF 11.2.8 NMAC:

History of Repealed Material:

11.2.8 NMAC, Workforce Investment Act (WIA) Individual Training Accounts (ITAs), filed 6-16-2000 - Repealed effective 12-31-2005.

11.2.8 NMAC, Workforce Investment Act (WIA) Individual Training Accounts (ITAs), filed 12-15-2005 - Repealed effective 8-15-2012.

11.2.13 NMAC, Workforce Investment Act (WIA) Participant Eligibility, filed 5-17-2001 - Repealed effective 7-1-2003.

11.2.13 NMAC, Workforce Investment Act (WIA) Participant Eligibility, filed 5-13-2003 - Repealed effective 8-15-2012.

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 9 WORKFORCE INVESTMENT ACT ADULT AND DISLOCATED WORKER SERVICES

11.2.9.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions (DWS)

[11.2.9.1 NMAC - Rp, 11.2.16.1 NMAC, 8-15-2012]

11.2.9.2 SCOPE: State workforce development board (state board), state administrative entity (SAE), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners.

[11.2.9.2 NMAC - Rp, 11.2.16.2 NMAC, 8-15-2012]

11.2.9.3 STATUTORY AUTHORITY: Title I of the Workforce Investment Act (WIA) of 1998, as amended (29 U.S.C. 2801 *et seq.*); WIA Regulations, 20 CFR Part 652 *et al.*, 29 CFR Part 95-97; Office of Management and Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230; Department of Labor (DOL) Employment and Training Administration (ETA) Training and Employment Guidance Letter (TEGL) No. 17-05; NMSA 1978, Section 50-14-1 *et seq.*

[11.2.9.3 NMAC - Rp, 11.2.16.3 NMAC, 8-15-2012]

11.2.9.4 DURATION: Permanent.

[11.2.9.4 NMAC - Rp, 11.2.16.4 NMAC, 8-15-2012]

11.2.9.5 EFFECTIVE DATE: August 15, 2012, unless a later date is cited at the end of a section.

[11.2.9.5 NMAC - Rp, 11.2.16.5 NMAC, 8-15-2012]

11.2.9.6 OBJECTIVE: This policy defines WIA core, intensive and training services for adults and dislocated workers. It also provides instruction and guidance to enhance the range and quality of workforce development services offered through the core workforce programs and clarifies the point at which one-stop (non-employer) customers become part of required service counts and performance calculations. It provides instruction and guidance that supports a statewide, comprehensive one-stop system.

[11.2.9.6 NMAC - Rp, 11.2.16.6 NMAC, 8-15-2012]

11.2.9.7 DEFINITIONS: [RESERVED]

11.2.9.8 BACKGROUND: The DOL published common measures guidance through TEGL 17-05 on February 17, 2006. The WIA of 1998 reformed the nation's publicly funded employment and training delivery system through the creation of a one-stop delivery system. The primary intent is to improve customer access to service through the creation of a seamless system of workforce services.

Service integration requires WIA, Wagner-Peyser, and other workforce system partners (partners) to work collaboratively in the delivery of services available under multiple programs. Although the foundation of the common measures policy is established in TEGL 17-05, this state policy provides additional guidance and clarification.

[11.2.9.8 NMAC - N, 8-15-2012]

11.2.9.9 SELF-DIRECTED CORE SERVICE:

Self-directed core services occur when individuals serve themselves by accessing New Mexico's virtual one stop system (NMVOSS) or other state designated system either at a workforce connection center site or from a remote location. Self-directed core services do not involve staff assistance and are primarily informational in nature. Self-directed core service participants who register in system (i.e., provide identifying information) will be included in both Wagner-Peyser and WIA participant counts because the state's system is supported by both funding sources. (state reports such as ETA 9002A, WIA 9090, WIA 9091)

A. Self-directed core service for Wagner-Peyser. Individuals who access self-directed core services through Wagner-Peyser will be included in participant counts (ETA 9002A) and in performance calculations (ETA 9002C). Accordingly, registered individuals receiving only self-directed core services will be included in both Wagner-Peyser participant counts and performance calculations. The majority of participants will commence their one-stop experience through Wagner-Peyser, which may provide sufficient services.

B. Self-directed core service for WIA. Individuals who access self-directed core services will be included in participant counts under WIA adults (WIA 9090 quarterly report and WIA 9091 annual report) but will *not* be included in WIA performance calculations. In other words, individuals registered in the system, that receive only self-directed core service are included in WIA adult participant counts but are not included in WIA performance calculations, consistent with WIA Section 136(b)(2)(A).

[11.2.9.9 NMAC - N, 8-15-2012]

11.2.9.10 STAFF ASSISTED CORE SERVICES:

There are two types of staff-assisted core services— those with and those without “significant staff involvement.” Staff-assisted core services without significant staff involvement will not require inclusion in WIA performance calculations, whereas staff-assisted core services with significant staff involvement will require such inclusion. In both cases, these individuals will be included in WIA Adult participant counts.

A. Staff-assisted core services without significant staff involvement. Staff-assisted core services without significant staff involvement include the following: eligibility determination; outreach; intake and orientation to the information and other services available through the statewide one-stop delivery system; initial assessment; job search and placement assistance; job referral; provision of labor market information, including employment statistics information; provision of performance-related information; provision of information pertaining to the availability of supportive services, including transportation and child care, and the referral to such services; provision of information regarding filing claims for unemployment compensation; provision of information regarding financial aid assistance for training and education programs not funded under the WIA; generic workshops; and follow-up services that may be provided after entry into employment.

(1) Assessment tools such as WorkKeys, ProveIT, or other skill assessments that provide individuals with information to make more informed personal decisions consistent with the premise of customer choice are also considered staff assisted core services without significant staff involvement.

(2) Staff-assisted core services without significant staff involvement do not require co-enrollment. No WIA application needs to be completed. Individuals receiving this level of service will be part of WIA adult participant counts. They will not be part of performance calculations unless a higher level of service is received.

B. Staff-assisted core services with significant staff involvement. Staff-assisted core services with significant staff involvement include the following:

(1) Assisting individuals with interpretation of assessment results and determining appropriate next steps in the search for employment, training, and related services, including job referral when the referral is combined with or made part of this decision-making process. This type of staff-assisted core service goes beyond the provision of information and includes more than providing access to assessments. For example, if the Work-Keys instrument is used to assess an individual's current/basic skill levels and staff also provides substantive assistance that includes helping the individual work through the decision-making process as a result of the assessment and related information, this is significant staff involvement. Although an employment plan is not developed (which would represent an intensive service), the individual has a sense of the next steps that need to be taken.

(2) Assisting individuals in assessing their personal barriers to

employment is considered a service level “above” initial assessment (which is a staff-assisted core service without significant staff involvement per the previous paragraph) but “below” comprehensive assessment (which is an intensive service). In this case, the focus is exclusively on identifying, and helping the individual understand their employment barriers, so this is a staff-assisted core service with significant staff involvement.

(3) Assisting individuals in accessing services necessary to enhance their employability and individual employment-related needs. This type of staff-assisted core service may also include the following.

(a) Identifying skill gaps.

(b) Assisting the individual in accessing services that fill the skills gap, which may include supportive services.

(c) Assisting the individual in making contact with other organizations that might be able to provide needed services or otherwise assist the individual.

(4) Staff-assisted core services with significant staff involvement require co-enrollment. A WIA application shall be completed and date of birth shall be verified. WIA case manager shall enter a hard or electronic case note reflecting that the customer has shown proof of age, and shall include the uniquely identifiable information of the document consistent with 11.2.8 NMAC. Participant self-attestation is sufficient for all other components of eligibility. WIA case managers are responsible for compiling basic information, including eligibility documentation and documentation needed for data validation purposes. Individuals receiving this level of service will be part of WIA adult participant counts and performance calculations.

[11.2.9.10 NMAC - N, 8-15-2012]

11.2.9.11 INTENSIVE SERVICES:

A. Intensive services. Consistent with WIA Section 134(d)(3), intensive services may include the following activities.

(1) Comprehensive assessment of skill levels and service needs that can include diagnostic testing, as well as in-depth interviewing and evaluation to identify employment barriers and appropriate employment goals.

(2) Development of an individual employment plan (IEP) to identify employment goals, related achievement objectives, and the appropriate combination of services needed to attain the specified goals.

(3) Group counseling as an intensive service specifically requires additional action to be taken by both the individual and staff and may result in the development of an employment plan.

(Note: There is a distinction between generic workshops and job clubs, which would not trigger inclusion in performance calculations, and group counseling as an intensive service that is noted here.)

(4) Individual counseling and career planning services trigger inclusion in performance calculations and specifically require additional action to be taken by both the individual and the staff. In other words, this is the beginning of a more in-depth process that may result in the development of an employment plan.

(5) Case management for participants seeking or receiving training services.

(6) Short-term prevocational services, include the development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct for the purpose of preparing individuals for unsubsidized employment or future training. "Short-term prevocational services" is further defined to include "soft skills" instruction beyond those listed in the statute and noted above, as well as basic fundamental instruction such as computer applications that are not specific to an occupation.

B. Performance. All WIA adult or dislocated worker participants receiving intensive services will be included in participant counts and performance calculations. A WIA application shall be completed. WIA case managers are responsible for compiling eligibility and data validation documentation as outlined in 11.2.8 NMAC.

[11.2.9.11 NMAC - Rp, 11.2.16.8 NMAC, 8-15-2012]

11.2.9.12 TRAINING SERVICES:

A. Training services. Consistent with WIA section 134(d)(4), training services include the following activities.

(1) Occupational skills training.
 (2) On-the-job training.
 (3) Programs that combine workplace training with related instruction, which can include cooperative education programs and registered apprenticeship programs.

(4) Training programs operated by the private sector.

(5) Skill upgrading and retraining.

(6) Entrepreneurial training.

(7) Job readiness training (Note: This should not be mistaken as short-term prevocational training, which is an intensive service. This training service is occupation-specific).

(8) Work experience for adults.

(9) Adult education and literacy activities when provided in combination

with any of the previously listed training services.

(10) Customized training.

B. Performance. All WIA adult or dislocated worker participants receiving training services will be included in participant counts and performance calculations. A WIA application shall be completed. WIA case managers are responsible for compiling eligibility and data validation documentation as outlined in 11.2.8 NMAC.

[11.2.9.12 NMAC - Rp, 11.2.16.8 NMAC, 8-15-2012]

11.2.9.13 RESCISSIONS:
 [RESERVED]

[11.2.9.13 NMAC - Rp, 11.2.16.9 NMAC, 8-15-2012]

11.2.9.14 CONTACT ENTITY: Inquiries regarding this rule should be directed to the New Mexico department of workforce solutions/state administrative entity.

[11.2.9.14 NMAC - Rp, 11.2.16.10 NMAC, 8-15-2012]

11.2.9.15 DISTRIBUTION: State board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal counsel, United States department of labor employment and training administration federal representative, and the New Mexico commission on public records.

[11.2.9.15 NMAC - Rp, 11.2.16.11 NMAC, 8-15-2012]

11.2.9.16 ATTACHMENTS: Attachment #1: State technical assistance guide

[11.2.9.16 NMAC - Rp, 11.2.16.12 NMAC, 8-15-2012]

HISTORY OF 11.2.9 NMAC:

History of Repealed Material:

11.2.9 NMAC, Workforce Investment Act (WIA) Sanctions and Corrective Actions and Liability, filed 6-16-2000 - Repealed effective 8-15-2012.

11.2.16 NMAC, Adult and Dislocated Worker Activities and Use of Funds Under Title I of the Workforce Investment Act (WIA), filed 6-16-2000 - Repealed effective 8-15-2012.

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 10 WORKFORCE INVESTMENT ACT PARTICIPATION AND CO-ENROLLMENT

11.2.10.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions (DWS)

[11.2.10.1 NMAC - N, 8-15-2012]

11.2.10.2 SCOPE: State workforce development board (state board), state administrative entity (SAE), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners.

[11.2.10.2 NMAC - N, 8-15-2012]

11.2.10.3 STATUTORY AUTHORITY: Title I of the Workforce Investment Act (WIA) of 1998, as amended (29 U.S.C. 2801 et seq.); WIA Regulations, 20 CFR Part 652 et al, 29 CFR Part 95-97; Office of Management and Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230; Department of Labor (DOL) Employment and Training Administration (ETA) Training and Employment Guidance Letter (TEGL) No. 17-05; NMSA 1978, Section 50-14-1 et seq.

[11.2.10.3 NMAC - N, 8-15-2012]

11.2.10.4 DURATION: Permanent.

[11.2.10.4 NMAC - N, 8-15-2012]

11.2.10.5 EFFECTIVE DATE: August 15, 2012, unless a later date is cited at the end of a section.

[11.2.10.5 NMAC - N, 8-15-2012]

11.2.10.6 OBJECTIVE: This policy provides instruction and guidance regarding co-enrollments across funding streams and serves to encourage coordination and leveraging of resources among workforce system partners (partners). In this policy, the DWS/state administrative entity outlines its expectations on co-enrollment and the framework for case management, file management and documentation requirements to support co-enrollment.

[11.2.10.6 NMAC - N, 8-15-2012]

11.2.10.7 DEFINITIONS:
 [RESERVED]

11.2.10.8 BACKGROUND: The WIA is designed to encourage coordination across partner agencies to help job seekers and business customers with a wide range of services. New Mexico workforce connection centers (center) provide a single location for customers to access these services. Partners who provide services through centers have varied eligibility and participation requirements and may have unique performance outcome goals. Enrollment in more than one program at a time provides a comprehensive menu of services and activities to help an individual get and keep a job.

[11.2.10.8 NMAC - N, 8-15-2012]

11.2.10.9 CO-ENROLLMENT:

No single partner can be everything to every customer, so it is critical to leverage the limited resources through the use of co-enrollment. When appropriate, the state administrative entity encourages partners to co-enroll across funding streams to leverage resources, eliminate duplication, and meet the needs and expectations of customers. Leveraging resources is not just an opportunity but an economic and social reality in the current and projected funding environment. The state administrative entity considers co-enrollment a strategic necessity in the context of limited and diminishing resources. Co-enrollment necessitates a greater level of communication and coordination, and can involve staff from different offices and with specialties in different disciplines. Coordination of services in a customer-focused manner minimizes the possibility of subsequent reentry into the system in cases where needed services were not provided or possible barriers not addressed. Coordination among partners also enhances performance outcomes across individual programs and facilitates the synergy across programs at the heart of the workforce system.

A. General population system entry. Wagner-Peyser is the typical point of entry for workforce system customers. Individuals seeking workforce development services will be registered as Wagner-Peyser program participants. Once registered as Wagner-Peyser program participants, individual attention will be given to job seekers using a triage approach that focuses on the most appropriate next step based on need. Wagner-Peyser participants, who require additional services, may be subsequently co-enrolled in the WIA adult program in addition to other partner programs.

B. Dislocated worker system entry. Individuals may initially present as dislocated workers. In these instances, the individual may not begin their system enrollment as a Wagner-Peyser participant, although they will be

subsequently co-enrolled in Wagner-Peyser. If a Trade Act petition is certified, co-enrollment between WIA dislocated worker and Trade Act programs is encouraged. In addition, an eligible WIA dislocated worker may be co-enrolled in the WIA adult program.

C. Youth system entry. WIA youth participants may be co-enrolled in all appropriate programs that serve youth, such as discretionary grant programs. Older youth may be co-enrolled in the WIA adult program. [11.2.10.9 NMAC - N, 8-15-2012]

11.2.10.10 POINT OF PARTICIPATION: Although the TEGL 17-05 requires a common exit date across the dol funded required system partner programs, TEGL 17-05 gives states flexibility to determine the point of participation when an individual receives services from multiple programs. Specifically, Wagner-Peyser, WIA adult, WIA dislocated worker, WIA national emergency grant (NEG), WIA youth, Trade Act, and veterans' employment and training services (VETS). New Mexico is not implementing a common participation date at this time; therefore, individuals participating in multiple programs (i.e., co-enrolled individuals) may have a different date of participation across programs.

A. Participant defined. The term "participant" is defined as an individual determined eligible to participate in a program who receives a service funded by the program. Only "qualifying" services, however, will trigger participation in most cases, as described below. Once these participants exit, they will be included in performance calculations. For the core workforce programs, this translates into the following.

(1) Wagner-Peyser. There are no eligibility requirements for Wagner-Peyser participants. Any service will trigger participation as long as the individual registers in the NM virtual one stop system (NMVOSS) or other management information system designated by the state and is, therefore, identifiable. In other words, an individual who anonymously browses the system will not be captured for self-directed core service reporting or performance calculations. All registered Wagner-Peyser participants are included in Wagner-Peyser participant counts and Wagner-Peyser performance calculations.

(2) WIA adults. Consistent with the previous subsection, since WIA funding supports the state's management information system, individuals who are identifiable, eligible, and who receive any level of service will be included in WIA (adult) participant counts. Individuals who receive only self-directed core service or staff-assisted core services without significant staff

involvement activities will not be included in performance calculations as addressed in 11.2.9 NMAC, Adult and Dislocated Worker Services. The point of participation and inclusion in performance calculations after exit is triggered when a WIA-funded qualifying service is received. The date of participation (i.e., for performance purposes) is the date of first qualifying service, as discussed later. The WIA adult program eligibility requirements are discussed in 11.2.8 NMAC, WIA Participant Eligibility.

(3) WIA dislocated workers. The WIA dislocated worker program has specific eligibility requirements, consistent with WIA section 101(9) and 11.2.8 NMAC, WIA Participant Eligibility. Therefore, the point of participation for this target group is after eligibility determination and receipt of the first dislocated worker-funded qualifying service. The date of participation (i.e., for performance purposes) is the date of first qualifying service.

(4) WIA youth. The WIA youth program also has specific eligibility requirements, consistent with WIA section 101(13) and 11.2.8 NMAC, WIA Participant Eligibility. However, unlike the adult and dislocated worker programs, which are based on graduated levels of service, any WIA-funded youth activity will trigger participation. Therefore, the point of participation for youth is after eligibility determination and receipt of the first youth activity. These youth participants are included in performance calculations.

(5) Trade Act. The point of participation is after eligibility determination, consistent with federal guidelines and receipt of a trade-funded service. The date of participation is the date of first qualifying service.

(6) Veterans' employment and training services (VETS). The point of participation is after eligibility determination, consistent with federal guidelines and receipt of a qualifying service provided by a local veterans' employment representative (LVER) or disabled veterans' outreach program (DVOP) specialist.

B. Services that commence participation. This phrase has the same meaning as the phrase "services that trigger participation" or the phrase "qualifying services" when used in the context of participation. The phrase does not apply to Wagner-Peyser programs because, as previously noted, any Wagner-Peyser funded service will trigger inclusion in participant counts and performance calculations for that program. Likewise, the phrase does not apply to WIA youth programs because any WIA-funded youth activity will trigger inclusion in youth participant counts and appropriate performance calculations. Also note that eligibility determination by itself does not trigger participation. By definition,

a participant shall be determined eligible and receive a program-funded service. In addition to program eligibility requirements, and consistent with 11.2.8 NMAC, WIA Participant Eligibility and 11.2.9 NMAC, Adult and Dislocated Worker Services, the following services will trigger participation (and inclusion in performance calculations) for the remaining core workforce programs.

(1) Core service with significant staff involvement. For WIA adults and dislocated workers, any staff-assisted core service(s) with significant staff involvement.

(2) Core service by partner staff. If a staff-assisted core service has been provided to an individual by a separate one-stop partner such as Wagner-Peyser or VETS, regardless of whether the staff-assisted core service was with or without significant staff involvement, WIA adult and dislocated worker participation can be triggered at the intensive service level, consistent with WIA Section 134(d)(3). In other words, receipt of any staff-assisted core service by a partner program prior to participation in a WIA Title I-funded program satisfies the requirement to provide a core service before an intensive-level service. The WIA program does not also have to provide a core-level service if a partner program has already done so. [11.2.10.10 NMAC - N, 8-15-2012]

11.2.10.11 POINT OF EXIT: The requirement for a common exit date across the core workforce programs at a minimum supports the philosophy of integrated service delivery and leveraging limited resources via co-enrollment options. This acknowledges that an "exit" should be an exit from the workforce system and not an individual program or activity. Based on TEGL 17-05, an exit occurs when a participant has not received a service for 90 consecutive days, has no documented gap in service, and is not scheduled for future services. After the 90 days of no service, the exit date is applied retroactively to the last date of service. The exit date is critical because federal common measures are based on this date.

A. Exit date. The exit date is derived by the system after a participant has not received any qualifying service for 90 consecutive days, has no documented gap in service, and is not scheduled for future services. The program or activity completion date may or may not coincide with the system-derived actual exit date. This is particularly true if a subsequent qualifying service from another program, such as Wagner-Peyser, is provided prior to the end of the 90-day period.

B. Services that extend exit. There are some services that can extend the exit date and services that cannot extend the exit date. In other words, in the same way there are "qualifying" services in order to be considered a participant for performance

purposes, there are also qualifying services that can and cannot extend the exit date as follows.

(1) Services that can extend the exit date are DOL funded required system partner services. Trade readjustment allowances and other needs-related payments funded by Trade Act, WIA or NEG grants that are tied to continuous participation can also extend exit.

(2) Services that cannot extend the exit date are listed below.

(a) Case management and follow up activities of an administrative nature that involve regular contact to obtain information regarding employment status, educational progress, or need for additional services.

(b) Income maintenance or support payments (e.g., UI, TANF).

(c) Post-employment follow-up services designed to verify job retention, wage gains and career progress. [11.2.10.11 NMAC - N, 8-15-2012]

11.2.10.12 CASE MANAGEMENT, FILE MANAGEMENT, AND DOCUMENTATION REQUIREMENTS TO SUPPORT CO-ENROLLMENT:

In a customer-focused environment that leverages limited resources, it would be most productive to coordinate services and case management as appropriate across multiple programs.

A. Co-enrollment key parameters.

(1) The majority of workforce system participants will begin with Wagner-Peyser enrollment, which may provide sufficient services without co-enrollment.

(2) If additional services are needed for an eligible and suitable participant, the individual may be co-enrolled in WIA programs.

(3) All WIA adult and dislocated worker participants shall be co-enrolled in Wagner-Peyser, but not all Wagner-Peyser participants will be co-enrolled in WIA programs.

(4) Wagner-Peyser participants who are veterans will be co-enrolled in VETS-funded programs and may subsequently be co-enrolled in WIA programs.

(5) WIA dislocated worker participants may be co-enrolled in a WIA adult program.

(6) All national emergency grant participants shall be co-enrolled in Wagner-Peyser and shall be co-enrolled in the WIA dislocated worker program and may be co-enrolled in the WIA adult program.

(7) All Trade Act participants shall be co-enrolled in Wagner-Peyser, should also be co-enrolled in the WIA dislocated worker program, and may be co-enrolled in the WIA adult program.

(8) WIA youth participants who are 18 years of age or above may be co-

enrolled in the WIA adult program and may be co-enrolled in Wagner-Peyser.

(9) When practical, participants should have one case manager who will serve as their primary contact.

(10) The case manager obtains and maintains all required information, including documentation pertaining to eligibility and documentation to support federal data validation.

(11) If case management functions are coordinated across multiple programs, the case managers are required to have a practical understanding of data validation requirements and documentation across the various programs.

(12) In the case of a disabled veteran working with a disabled veterans' outreach program specialist, the participant shall have two case managers. In the disabled veteran example, the WIA case manager working with the individual will also maintain their own case file.

B. Case management, file management and documentation. Staff that "owns" the case file as described in the following subsections will be required to ensure all appropriate information and documentation supporting the entire service plan and service history of the individual has been obtained and can be tracked. This is intended to fulfill federal audit requirements and to support the enhanced level of coordination and case management that co-enrollment requires. Specific case management, file management, and documentation requirements are as follows.

(1) Wagner Peyser participants only.

(a) Case management: none.

(b) File management: only electronic case file; hard copy file not required.

(c) Documentation: none. However, all services shall be data-entered in NM VOSS.

(2) Wagner Peyser plus WIA staff-assisted core services without significant staff assistance.

(a) Case management: none.

(b) File management: only electronic case file; hard copy file not required.

(c) Documentation: none. However, all services shall be data-entered in NM VOSS.

(3) Wagner Peyser plus WIA staff-assisted core services with significant staff assistance.

(a) Case management: minimal by WIA adult program.

(b) File management: WIA case manager.

(c) Documentation: WIA case manager responsible for basic information, including eligibility documentation and documentation needed for data validation

purposes, which consists of staff verification of date of birth and self-attested information for all other elements.

(4) Wagner-Peyser identified as veterans, not disabled.

(a) Case management: none unless co-enrolled in WIA adult program.

(b) File management: local veterans' employment representative responsible for eligibility documentation (e.g., DD-214); WIA case manager becomes responsible for all subsequent documentation if co-enrollment occurs.

(c) Documentation: If co-enrollment occurs, WIA case manager is responsible for all eligibility and data validation documentation (Wagner-Peyser, VETS, and WIA).

(5) Wagner-Peyser identified as disabled veterans.

(a) Case management: disabled veterans' outreach program specialist; if WIA co-enrollment occurs, WIA case manager also has case management responsibility.

(b) File management: disabled veterans' outreach program specialist maintains case file. WIA case manager maintains separate case file.

(c) Documentation: disabled veterans' outreach program specialist responsible for VETS eligibility and related data validation information. WIA case manager is responsible for eligibility and data validation information for WIA and documentation requirements for any subsequent co-enrollments.

(6) WIA dislocated workers co-enrolled in Wagner-Peyser.

(a) Case management: WIA dislocated worker program.

(b) File management: WIA dislocated worker case manager maintains case file, even if co-enrolled subsequently in WIA adult program.

(c) Documentation: WIA dislocated worker case manager responsible for all eligibility and data validation documentation including documentation requirements for any subsequent enrollment.

(7) National emergency grant.

(a) Case management: WIA dislocated worker program.

(b) File management: WIA dislocated worker case manager.

(c) Documentation: WIA dislocated worker case manager responsible for all eligibility, including national emergency grant, and data validation documentation.

(8) Trade Act.

(a) Case management: Trade Act program.

(b) File management: Trade-funded case manager. If co-enrolled in WIA, the WIA case manager will maintain a separate case file or ensure all required WIA documentation is maintained and

coordinated with trade case manager.

(c) Documentation: Trade-funded and WIA case manager responsible for all eligibility and data validation documentation including that necessary for additional and subsequent co-enrollments.

(9) WIA youth.

(a) Case management: WIA youth program.

(b) File management: WIA youth case manager.

(c) Documentation: WIA youth case manager responsible for all eligibility and data validation documentation, including for subsequent co-enrollments.

[11.2.10.12 NMAC - N, 8-15-2012]

11.2.10.13 RESCISSIONS:

[RESERVED]

[11.2.10.13 NMAC - N, 8-15-2012]

11.2.10.14 CONTACT ENTITY:

Inquiries regarding this rule should be directed to the DWS/state administrative entity.

[11.2.10.14 NMAC - N, 8-15-2012]

11.2.10.15 DISTRIBUTION:

State board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal counsel, United States department of labor employment and training administration federal representative, and, the New Mexico commission on public records.

[11.2.10.15 NMAC - N, 8-15-2012]

HISTORY OF 11.2.10 NMAC:

History of Repealed Material:

11.2.10 NMAC, Workforce Investment Act (WIA) Oversight and Monitoring, filed 6-16-

**NEW MEXICO
DEPARTMENT OF
WORKFORCE SOLUTIONS**

**TITLE 11 LABOR AND
WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 11 WORKFORCE
INVESTMENT ACT INDIVIDUAL
TRAINING ACCOUNTS**

11.2.11.1 ISSUING AGENCY:

New Mexico Department of Workforce Solutions (DWS)
[11.2.11.1 NMAC - Rp, 11.2.8.1 NMAC, 8-15-2012]

11.2.11.2 SCOPE:

State workforce development board (state board), state administrative entity (SAE), chief elected officials (CEOs), local workforce

development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners.

[11.2.11.2 NMAC - Rp, 11.2.8.2 NMAC, 8-15-2012]

11.2.11.3 STATUTORY

AUTHORITY: Title I of the Workforce Investment Act (WIA) of 1998, as amended (29 U.S.C. 2801 et seq.); WIA Regulations, 20 CFR Part 652 et al, 29 CFR Part 95-97; Office of Management and Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230; Department of Labor (DOL) Employment and Training Administration (ETA) Training and Employment Guidance Letter (TEGL) No. 17-05; NMSA 1978, Section 50-14-1 *et seq.*
[11.2.11.3 NMAC - Rp, 11.2.8.3 NMAC, 8-15-2012]

11.2.11.4 DURATION:

Permanent.
[11.2.11.4 NMAC - Rp, 11.2.8.4 NMAC, 8-15-2012]

11.2.11.5 EFFECTIVE DATE:

August 15, 2012, unless a later date is cited at the end of a section.

[11.2.11.5 NMAC - Rp, 11.2.8.5 NMAC, 8-15-2012]

11.2.11.6 OBJECTIVE:

This policy provides instruction and guidance on the use and administration of individual training accounts for training in demand occupations as identified in the state and local plans.

[11.2.11.6 NMAC - Rp, 11.2.8.6 NMAC, 8-15-2012]

11.2.11.7 DEFINITIONS:

[RESERVED]

11.2.11.8 INDIVIDUAL

TRAINING ACCOUNT (ITA): The individual training account (ITA) is established for eligible individuals to finance training services with eligible training providers.

A. ITA criteria. ITA funding is for individuals that meet the following criteria.

(1) Participant is unable to obtain grant assistance from other sources to pay the costs of their training.

(2) Participant requires assistance beyond that available under grant assistance from other sources to pay the cost of such training.

(3) Participant is determined eligible and based on the individual employment plan or individual service strategy is in need of training to obtain employment in a demand occupation.

B. Local board policy.

Local boards shall establish ITA policy that addresses the following.

(1) Process by which participants will receive assessment, counseling, and develop an individual employment plan before selecting a training program.

(2) Guidance and procedures for documenting participant training-related financial assistance needs, the methodology of how the needs were determined and the coordination of available resources to meet the training and education-related costs. This includes documenting how the other sources of funding were applied to meet the need.

(3) Assurance that training services are restricted to occupations in demand. If it is determined that WIA ITA funding is not appropriate for a customer because it is outside of the areas targeted by the state or local board as occupations in demand, centers will assist customers with other financial aid application (i.e., Pell, etc.) and alternative options.

(4) Limits on ITA award amount and duration.

(5) Procedures to gain authorization for the release of a participant's financial aid information by the post-secondary institution. This includes requiring the educational institution's financial aid officer to inform the local center staff of the amounts and disposition of financial aid to each participant awarded after the enrollment of the participant as part of an ongoing information sharing process.

(6) Process for customers to access the list of eligible training providers and approved programs. Individuals shall have access to and select from an approved statewide list of eligible training providers; the ultimate choice of training provider resides with the individual.

(7) Internal procedure for the issuance and modification of an ITA.

(a) Identify the type of document or form to be used, required signatures and staff authorized to issue the ITAs.

(b) Payment processes outlined to ensure full payment at the beginning of a semester, quarter or other training period will be allowed only if the provider has a published prorated refund policy applicable for students that withdraw. Full payment for entire programs beyond each training period are not allowed.

(c) An ITA supports the cost of training, including tuition and other training-related items supplied by the training provider (e.g., books, license fees, training materials, registration fees, supplies, uniforms.)

(8) Describe the monitoring of the local ITA system.

C. Exceptions regarding the use of ITAs. Contracts for services may

be used instead of an ITA for the following exceptions.

(1) On-the-job (OJT) or customized training activities.

(2) When the local board determines, justifies and documents that there are an insufficient number of eligible providers of training services in the local workforce development area (local area) to accomplish the purposes of the system of ITAs.

(3) Local board determines that there is a training program of demonstrated effectiveness offered in the area by a community-based organization or another private organization to serve special participant populations as defined in Section 134(d)(4)(G)(iv) of the WIA, that face multiple barriers to employment included in one or more of the following categories.

(a) Individuals with substantial language or cultural barriers.

(b) Offender.

(c) Homeless individuals.

(d) Other hard to serve population as defined by the local board.

(4) Local board shall establish criteria to be used in determining demonstrated effectiveness offered by a community-based organization or other private organization, particularly, as it applies to the special participant population to be served. The criteria may include, but is not limited to the following.

(a) Financial stability of the organization.

(b) Demonstrated performance in measures appropriate to the program including program completion rate; attainment of the skills, certificates or degrees the program is designed to provide; placement after training in unsubsidized employment and retention in employment.

(c) Relevance of the specific program to the local area needs identified in the state and local plan.

D. Coordination with other grant assistance. The WIA requires that training funds be coordinated with other grant sources for training such as the Pell grant. To avoid duplicate payment of costs when an individual is eligible for both WIA and other assistance, including a Pell grant, 20 CFR Section 663.320(b) requires the following.

(1) Program operators and training providers shall coordinate the alternate sources of funds by entering into arrangements with the entities administering the funds.

(2) The exact mix of funds should be determined based on the availability of funding for training costs and supportive services with the goal of ensuring that the costs of the training program are fully paid and that necessary supportive services are available so that the training is completed

successfully.

(3) Arrangements shall be made with the training provider and the WIA participant regarding allocation of the Pell grant, if it is subsequently awarded. In that case, the training provider should reimburse the workforce system operator the WIA funds used to underwrite the training for the amount the Pell grant covers. Reimbursement is not required from the portion of Pell grant assistance disbursed to the WIA participant for education-related expenses.

E. Customer choice. A key philosophical foundation of the WIA is "informed customer choice" with the ultimate decision resting with the customer within state and local parameters and policy.

(1) It is the responsibility of the local board and local service provider to assist customers in making informed choices regarding career paths and training through the dissemination of information on state and local targeted industry and occupations in demand.

(2) Participants shall be able to use their ITAs to acquire training services from any training provider on the statewide eligible training provider list in a manner that maximizes informed customer choice.

(3) WIA is not an entitlement program. Customer choice shall be exercised within the targeted industry and demand occupations designated. Individuals, eligible or otherwise, that seek training outside of these designated areas can be provided assistance in pursuing other sources of financial aid.

F. Occupations in demand. Local boards shall ensure all WIA training funds are aligned with and targeted to industries and demand occupations that provide the customer with the greatest opportunities for employment upon completion. Demand occupation and targeted industry sectors can be established in one or more of the following methods.

(1) Demand defined at the state board or state administrative level as part of a statewide vision.

(2) Demand defined to support state strategic initiatives or pilot projects.

(3) Demand defined by the local board through local economic and labor market assessments and evaluation of regional business needs to support the designation of demand occupations.

(a) Local boards shall assess local economic conditions through the evaluation of labor market information and regional business need on an annual basis.

(b) Local boards shall designate target industry and business most important to local economies including state designated priorities.

(c) Local boards shall target WIA resources to designated priorities. Targeted

industry and occupations in demand shall be documented for the region in the local plan and approved by the state administrative entity or the state workforce development board.

G. Exceptions. Local boards can outline procedures for exceptions to the "occupation in demand" provision through local board policy. The policy shall demonstrate that the funds are for training for an occupation with high employment opportunities although outside of the designated demand and shall ensure verifiable documentation is provided to justify the exception. Exceptions should be used infrequently and shall be monitored closely at the local and state level to prevent misuse.

[11.2.11.8 NMAC - Rp, 11.2.8.8 & 8.9 NMAC, 8-15-2012]

11.2.11.9 RESCISSIONS:
[RESERVED]

[11.2.11.9 NMAC - N, 8-15-2012]

11.2.11.10 CONTACT ENTITY:
Inquiries regarding this rule should be directed to the DWS/state administrative entity.

[11.2.11.10 NMAC - Rp, 11.2.8.10 NMAC, 8-15-2012]

11.2.11.11 DISTRIBUTION:
State board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal counsel, united states department of labor employment and training administration federal representative, and, the New Mexico commission on public records.

[11.2.11.11 NMAC - Rp, 11.2.8.11 NMAC, 8-15-2012,]

11.2.11.12 ATTACHMENTS:
None

[11.2.11.12 NMAC - N, 8-15-2012]

HISTORY OF 11.2.11 NMAC:

History of Repealed Material:

11.2.8 NMAC, Workforce Investment Act (WIA) Individual Training Accounts (ITAs), filed 6-16-2000 - Repealed effective 12-31-2005.

11.2.8 NMAC, Workforce Investment Act (WIA) Individual Training Accounts (ITAs), filed 12-15-2005 - Repealed effective 8-15-2012.

11.2.11 NMAC, Workforce Investment Act (WIA) Financial Management Guide, filed 6-16-2000 - Repealed effective 8-15-2012.

**NEW MEXICO
DEPARTMENT OF
WORKFORCE SOLUTIONS**

**TITLE 11 LABOR AND
WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 12 W O R K F O R C E
INVESTMENT ACT ON-THE-JOB-
TRAINING**

**11.2.12.1 ISSUING
AGENCY:** New Mexico Department of Workforce Solutions (DWS)
[11.2.12.1 NMAC - Rp, 11.2.19.1 NMAC, 8-15-2012]

11.2.12.2 SCOPE: State workforce development board (state board), state administrative entity (SAE), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners.
[11.2.12.2 NMAC - Rp, 11.2.19.2 NMAC, 8-15-2012]

**11.2.12.3 S T A T U T O R Y
AUTHORITY:** Title I of the Workforce Investment Act (WIA) of 1998, as amended (29 U.S.C. 2801 et seq.); WIA Regulations, 20 CFR Part 652 et al, 29 CFR Part 95-97; Office of Management and Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230; Department of Labor (DOL) Employment and Training Administration (ETA) Training and Employment Guidance Letter (TEGL) No. 17-05; NMSA 1978, Section 50-14-1 et seq.
[11.2.12.3 NMAC - Rp, 11.2.19.3 NMAC, 8-15-2012]

11.2.12.4 D U R A T I O N :
Permanent.
[11.2.12.4 NMAC - Rp, 11.2.19.4 NMAC, 8-15-2012]

11.2.12.5 EFFECTIVE DATE:
August 15, 2012, unless a later date is cited at the end of a section.
[11.2.12.5 NMAC - Rp, 11.2.19.5 NMAC, 8-15-2012]

11.2.12.6 OBJECTIVE: The objective of this rule is to establish requirements for the delivery of on-the-job-training services under the Workforce Investment Act.
[11.2.12.6 NMAC - Rp, 11.2.19.6 NMAC, 8-15-2012]

11.2.12.7 DEFINITIONS:
[RESERVED]

**11.2.12.8 O N - T H E - J O B -
TRAINING:** On-the-job training (OJT) provides financial assistance to employers who agree to train suitable WIA eligible individuals. The financial assistance is compensation for the extraordinary costs associated with training participants and the costs associated with lower productivity of new employees. Local boards are not required to procure employers for OJT and customized training. WIA 134(d)(4)(G) (ii)(I) specifies that OJT is exempt from ITA (ITA) and eligible training provider certification requirements.

A. Employer eligibility.
Within the parameters of WIA 181(d) (1), local boards may engage in OJT opportunities with any public, private non-profit, or private sector employer with the following exceptions.

(1) An employer who has been convicted of violating federal laws and regulations within the last two years of requesting and OJT regarding: submission of worker adjustment and retraining notification (WARN) notices, occupational safety and health administration (OSHA) and Americans with Disabilities Act (ADA) standards, equal employment opportunity (EEO) and wage and hour requirements, state unemployment insurance (UI) laws, and fair labor standards and collective bargaining agreements.

(2) An employer who has exhibited a pattern of not retaining OJT participants in permanent positions upon satisfactory completion of training.

(3) An establishment which is presently suspended or barred from doing procurement business with any branch of government.

(4) An employer providing workers on a temporary basis to employers for which they receive compensation from the employer.

(5) An employer who has exhibited a pattern of failing to provide OJT participants with continued long-term employment with wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work.

(6) An establishment that plans to use the WIA to relocate from another area, or locate new branches, subsidiaries, or affiliates.

(7) A business which has relocated within the last 120 days and dislocated workers at its previous location.

(8) Business in which the participants will be employed to carry out the construction, operation or maintenance of any part of a facility that is used or to be used for sectarian instruction or as a place for religious worship. 29 CFR 37.6(F)

B. Occupational

eligibility. OJT may not be utilized for any of the following occupations.

(1) Occupations dependent on commission or draw as a primary source of income.

(2) Intermittent seasonal occupations.

(3) Part-time occupations.

(4) Occupations temporary in design.

(5) Occupations which have not traditionally required specific occupational training as a prerequisite for performance, such as porters, janitors, stackers, laborers, etc.

(6) Occupations whose prior training, certification or license make the individual qualified to perform the occupation, such as school teacher, cosmetologist, LPN, RN, etc., unless they are unable to enter employment without additional on-the-job-training due to occupational skill gaps.

(7) Any occupation whose training time is less than 160 hours.

(8) When an employer has laid off workers in substantially equivalent positions or where the OJT will impair any existing labor agreements, contracts for services or promotional opportunities for current employees. For the purposes of the OJT, "substantially equivalent position" is one in which the job responsibilities and skill, experience, and performance requirements have remained unchanged since the time of the layoff. To provide evidence that the position has "substantially changed," there should be a new and different job description for the position.

C. Participant eligibility.

On-the-job training is available to adults, and dislocated workers as defined by the WIA, who are unemployed or underemployed and meet all of the following requirements.

(1) Participant meets all eligibility requirements.

(2) Participant received one or more core services.

(3) Participant received one or more WIA intensive services.

(4) Participant is enrolled into WIA prior to beginning training under an OJT contract.

(5) Participant was determined to be in need of training in order to become employed in a job which leads to a self-sufficient level of income.

(6) Participant was determined to be a good candidate for the particular vocation and position for which they are to receive OJT as evidenced in their individual employment plan.

(7) OJT contracts may be written for an employed worker as long as they meet all the requirements above and are not earning a self-sufficient wage at time of enrollment as defined by local board policy

and the employer verifies that the on-the-job training will relate to the introduction of new technologies, introduction to new production or service procedures, or is an upgrade to a new job that requires additional skills.

(8) OJT is an allowable activity for youth but should be discouraged when it conflicts with educational goals and achievement.

(9) Priority of service must be given as defined in 11.2.17 NMAC, WIA Priority of Service.

D. Employer orientation.

An official employer orientation shall be provided and documented before the OJT contract period begins. A pre-award review shall be completed to determine employer eligibility. This provides an additional opportunity to share information about OJT and learn about the needs of the employer. The orientation shall include the following.

(1) A review of the OJT contract, OJT training plan, OJT progress report and invoice forms and contact information for the case manager.

(2) Employers will be informed about the role they play in developing a structured training plan based on the skill gaps possessed by the OJT participant. Employers are informed of the importance of having experienced employees act as trainers for optimum results with predictable training outcomes.

(3) Benefits of OJT are explained including OJT provider assurances, contract terms and conditions including terms and conditions of employer reimbursement.

(4) Employers are informed about the requirements for local, state and possibly federal monitoring of the program.

(5) Employers are informed about records maintenance requirements.

E. Reverse referral.

Any individual referred to a center by an employer (commonly referred to as a "reverse referral") shall go through the system in the same manner as other job seekers and be determined to be eligible and in need of training in order to participate in OJT. This process shall be completed prior to the start date of the OJT training. A referral by an employer for an OJT position does not disqualify an individual, but neither shall it be considered to give higher priority to the individuals over other eligible candidates. The final selection of an eligible individual for OJT should be a joint decision of the employer and the local service provider.

F. Trainee orientation.

An official participant orientation shall be provided and documented before the OJT contract period begins. At a minimum the orientation should include the following.

(1) OJT training plan review.

(2) Participation requirements.

(3) Timesheet tracking and payroll verification requirements including the OJT

progress report and invoice form.

(4) Information regarding additional services and activities, including supportive services available through the workforce system, to ensure successful participation.

G. OJT participants allowed with an employer.

No more than 50% of the number of the employer's full-time work force at the location where training is to take place may be trained under OJT at any one time. Once a participant has been trained and retained by the employer, he/she is counted in the regular full-time work force number and additional individuals may be trained. An employer having a regular full-time work force of one may train one individual under OJT. A projected work force number may be used for new or expanding business. The projected number shall be attained within twelve months. If the projected number is not attained, appropriate adjustments in the number of OJT trainees allowed in further training should be made.

H. OJT wages and general working conditions.

(1) Wage reimbursement.

New employees hired under OJT shall at a minimum be paid the employer's usual entrance wage rate for the occupation in which they are to be trained and employed, which shall not be lower than the federal, state, or local minimum wage rate. Participants shall be paid the same entry wage rate as non-WIA funded employees in the same occupation. The reimbursement for training cost will be based on the number of hours worked and will not include overtime, shift differential, premium pay, and other non-regular wages paid by the employer. Reimbursement shall not be claimed for time which the OJT trainee is absent from training, including illness, holiday, plant downtime, or other events during which no training occurs.

(2) Workers' compensation.

Where state workers' compensation law is applicable, workers' compensation benefits in accordance with such law shall be available to all participants on the same basis as the compensation is provided to other individuals in the same employment.

[11.2.12.8 NMAC - Rp, 11.2.19.9 NMAC, 8-15-2012]

11.2.12.9 OJT CONTRACT:

An OJT contract shall include the sections outlined below. The OJT pre-award review, training contract, and training plan shall be signed by all required parties prior to any participant's training start date. Providers may use the OJT forms included in the state technical assistance guide or may create their own as long as all the information referenced herein is included.

A. OJT requirements.

(1) OJT employer contract.

- (2) OJT training plan.
- (3) OJT pre-award review.
- (4) Progress report and invoice form.

(5) OJT training plan modification (if applicable).

- (6) OJT contract assurances.

B. OJT training plan.

The OJT training plan shall be included in the OJT training contract. An OJT training plan shall be modified if a change is needed in any part of the original OJT training plan.

(1) The OJT training plan will be developed with the employer to establish training outcomes.

(2) The gap between the skills of a participant and the skills needed for the job will determine the number of training hours for which an employer will be reimbursed.

(3) An analysis of the OJT position will be conducted based on information from the employer combined with occupational information network (ONET) details or comparable information regarding specific qualifications and skill required for the OJT position.

(4) The training plan shall reflect the results of individual skill assessment and an analysis of employer job performance requirements to determine what training is needed.

(5) The training plan shall be maintained and updated as needed.

C. OJT training duration.

(1) The basis for contract training duration shall clearly be documented.

(2) The maximum duration for an OJT contracts is six months. (1040 training hours)

(3) Determining length of training should include the following.

(a) Skill gap is defined as the gap between the skills of an individual participant and the skills needed for a job. The skill gap will determine the number of training hours for which an employer will be reimbursed. The skill gap shall be clearly defined and incorporate the use of recognized skill assessment tools and occupational evaluation tools. An individual training plan shall be developed consistent with the duration of the contract. For example, a contract written for six months shall include a training plan that outlines six months of specific training to be provided by the employer which in turn should be consistent with the documented skill gap for the individual.

(b) Specific vocational preparation (SVP) is defined as the amount of time required by a typical worker to learn the techniques, acquire the information, and develop the expertise needed for average performance in a specific job. A table reflecting SVP levels is included in the state technical assistance guide to assist in determining the maximum contract duration.

D. OJT reimbursement

rate. Employers will be reimbursed for the extraordinary cost of training OJT participants up to 50% of the applicable wage consistent with WIA. The reimbursement frequency should be negotiated with individual employers to ensure greatest benefit to the employer and the OJT participant.

(1) Participants shall be paid the higher of federal, state, or local minimum wage, or the prevailing rate of pay, including periodic increases, as other trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills, pursuant to WIA 181(a)(1)(A), 29 U.S.C. 2931(a)(1)(A), and 20 C.F.R. 667.272. Provisions for wages under the amendments to the Fair Labor Standards Act (FLSA) apply to all participants employed.

(2) Participants may work overtime (subject to regulations of the Fair Labor Standards Act with respect to the level of compensation), provided that this is part of the training plan and consistent with other employees in comparable positions. Although overtime hours worked can be used to determine the reimbursement for a given period, an overtime wage rate cannot be used to calculate the reimbursement amount. To calculate the reimbursement, the provider would apply the standard wage rate to both the regular and the overtime hours.

(3) USDOL approved waivers can provide greater flexibility in the level of employer reimbursement. The state currently has a waiver that permits local boards to reimburse employers at a rate of up to 90% of the applicable wage level based on employer size. As long as this waiver is in effect, local boards will use the following sliding scale for employer reimbursement based on employer size:

(a) 50 or fewer employees - up to 90 percent;

(b) 51-250 employees – up to 75 percent; and

(c) 251+ employees - the standard WIA provision which allows up to 50 percent will apply.

E. Progress report and invoice form. A progress report and invoice form shall be completed at least monthly throughout the life of the OJT training. This provides a trainee evaluation of progress and documents hours worked and skills developed.

F. Contract assurances summary.

(1) Employer shall provide worker's compensation coverage for the participants on the same basis as the compensation is provided to other individuals in the same employment.

(2) When training employed workers, employer shall verify that the on-the-job training will relate to the introduction of new technologies, introduction to new

production or service procedures, or is an upgrade to a new job that requires additional skills.

(3) Employer certifies that the company is financially solvent on the date of the contract, and the employer's best projection is that they will remain financially able to meet contract obligations at the end of the training period, including on-the-job-training participant retention.

(4) Employer agrees that wage and labor standards will be adhered to and to pay the participants at the same rates, including increases, and benefits as trainees or employees who are situated in similar jobs. Such rates shall be in accordance with applicable law, but in no event less than the higher rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 or the applicable state or local minimum wage law. WIA sect. 181(a)(1)(A)

(5) Conditions of employment and training will be in full accordance with all applicable federal, state, and local laws and ordinances (including but not limited to anti-discrimination, labor and employment laws, environmental laws or health and safety laws). 29 CFR 37.38(b)

(6) Employer certifies that the on-the-job-training will not impair existing agreements for services or collective bargaining agreements and that either it has the concurrence of the appropriate labor organization as to the design and conduct of customized training, or it has no collective bargaining agreement with a labor organization that covers the participants' position.

(7) Employer assures that they are not debarred or suspended in regard to federal funding. 29 CFR Part 98

(8) Employer further assures that federal funds will not be used to assist, promote or deter union organizing. 20 CFR 663.730

(9) Employer certifies that no member of the on-the-job-training participant's immediate family will directly supervise the participant. For the purpose of this contract, immediate family is defined as spouse, children, parents, grandparents, grandchildren, brothers, sisters or person bearing the same relationship to the participant's spouse. 20 CFR 667.200(g)

(10) Employer assures that the participants will not be employed to carry out the construction, operation or maintenance of any part of a facility that is used or to be used for sectarian instruction or as a place for religious worship. 29 CFR 37.6(F)

(11) Employer assures that the participant(s) has not been hired into or will remain working in any position when any other person is on layoff from the same or a

substantially equivalent job within the same organizational unit or has been bumped and has recall rights to that position, nor if the on-the-job-training is created in a promotional line that infringes on opportunities of current employees. 20 CFR 667.270.

G. Supporting documentation.

- (1) OJT pre-award checklist
- (2) OJT employer contract
- (3) OJT training plan
- (4) OJT training plan modification
- (5) OJT progress report and invoice forms
- (6) Case notes (recorded in NM VOSS or other state designated system)

[11.2.12.9 NMAC - Rp, 11.2.19.9 NMAC, 8-15-2012]

11.2.12.10 RESCISSIONS:

[RESERVED]
[11.2.12.10 NMAC - N, 8-15-2012]

11.2.12.11 CONTACT ENTITY:

Inquiries regarding this rule should be directed to the New Mexico DWS/state administrative entity.
[11.2.12.11 NMAC - Rp, 11.2.19.10 NMAC, 8-15-2012]

11.2.12.12 DISTRIBUTION:

State board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal counsel, United States department of labor employment and training administration federal representative, and, the New Mexico commission on public records.
[11.2.12.12 NMAC - Rp, 11.2.19.11 NMAC, 8-15-2012]

HISTORY OF 11.2.12 NMAC:

History of Repealed Material:

11.2.12 NMAC, Workforce Investment Act (WIA) Identification of Eligible Providers of Training Services, filed 6-16-2000 - Repealed effective 8-15-2012.
11.2.19 NMAC, Workforce Investment Act (WIA) on-the-Job Training, filed 12-15-2005 - Repealed effective 8-15-2012.

**NEW MEXICO
DEPARTMENT OF
WORKFORCE SOLUTIONS**

**TITLE 11 LABOR AND
WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 13 WORKFORCE
INVESTMENT ACT CUSTOMIZED
TRAINING**

11.2.13.1 ISSUING AGENCY:

New Mexico Department of Workforce Solutions (DWS)
[11.2.13.1 NMAC - Rp, 11.2.20.1 NMAC, 8-15-2012]

11.2.13.2 SCOPE: State workforce development board (state board), state administrative entity (SAE), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners.

[11.2.13.2 NMAC - Rp, 11.2.20.2 NMAC, 8-15-2012]

11.2.13.3 STATUTORY AUTHORITY:

Title I of the Workforce Investment Act (WIA) of 1998, as amended (29 U.S.C. 2801 et seq.); WIA Regulations, 20 CFR Part 652 et al, 29 CFR Part 95-97; Office of Management and Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230; Department of Labor (DOL) Employment and Training Administration (ETA) Training and Employment Guidance Letter (TEGL) No. 17-05; NMSA 1978, Section 50-14-1 et seq.
[11.2.13.3 NMAC - Rp, 11.2.20.3 NMAC, 8-15-2012]

11.2.13.4 DURATION:

Permanent.
[11.2.13.4 NMAC - Rp, 11.2.20.4 NMAC, 8-15-2012]

11.2.13.5 EFFECTIVE DATE:

August 15, 2012, unless a later date is cited at the end of a section.
[11.2.13.5 NMAC - Rp, 11.2.20.5 NMAC, 8-15-2012]

11.2.13.6 OBJECTIVE:

This policy provides instruction and guidance on the use and administration of customized training.
[11.2.13.6 NMAC - Rp, 11.2.20.6 NMAC, 8-15-2012]

11.2.13.7 DEFINITIONS:

[RESERVED]

11.2.13.8 CUSTOMIZED TRAINING:

Customized training is training designed to meet the needs of a specific employer, or group of employers. It can be provided for the introduction of new technologies, introduction to new production or service procedures, upgrading existing skills, workplace literacy, or other appropriate purposes identified by the local board.

A. Customized training criteria.

(1) Training is designed to meet the special requirements of an employer

(including a group of employers).

(2) Training is a participant and a business service.

(3) Training is conducted with a commitment by the employer to employ or continue to employ an individual upon successful completion of the training.

(4) Training enables trainees to obtain industry or employer-recognized skills identified by the employer (or group of employers).

(5) Employer pays for not less than 50% of the cost of the training.

B. Trainee eligibility criteria:

(1) WIA eligibility requirements apply and shall be documented for all customized training conducted with WIA funds.

(2) Customized training agreements may be written for unemployed as well as employed workers. 11.2.8 NMAC, Eligibility outlines the eligibility requirements and documentation for employed workers.

(3) Employed workers may include full-time or part-time employees.

(4) Unless the trainee is unemployed, in order to participate in customized training, an "employer-employee" relationship shall exist between the trainee and the business that is seeking customized training. Individual workers who are independent contractors are not eligible to participate in customized training.

C. Customized training processes.

While customized training is a service that focuses on the needs of business, it shall still follow all the regular requirements for providing individual participant training. All required customized training documentation shall be kept on file with the service provider or business. Service providers shall make all files and documentation available for monitoring, audits and date validation as required.

(1) Adults and dislocated workers shall go through the sequence of services before receiving customized training for all intensive and training activities including customized training.

(2) Eligibility shall be determined and eligibility documents shall be compiled and kept on file with the service provider or business.

(3) An individual employment plan shall be completed for each participant identifying the need for customized training and kept on file with the service provider or business.

(4) Streamlined customized training processes can include the following.

(a) Customized training participants do not have to physically visit a workforce connection center or meet with a case manager to receive the sequence of service required.

(b) Service providers may work with an employer to provide the eligibility documentation on potential trainees (staff-assisted core service without significant staff involvement). Special attention shall be paid to eligibility documentation requirements to ensure all data validation requirements are met.

(c) Once eligibility is determined, the service provider may work with the employer to complete an individual employment plan for each participant, identifying the need for customized training (intensive level service). For purposes of the customized training activity, an abbreviated individual employment plan may consist of the employment goal, achievement objective and services to achieve the employment goal.

(d) Service providers do not have to maintain individual file folders for each participant as long as all required information and documentation is kept on file collectively for each customized training contract by the service provider or business.

D. Selecting training providers. Employers play a major role in the development of customized training and curriculum. An employer may conduct training as follows.

(1) Provide the customized training to its employees through in-house training resources. If an employer provides customized training through in-house resources, the local board may proceed without the need for procurement.

(2) Partner with a training provider, such as a community college or other training institution, to provide all or part of the training on behalf of the employer. If an employer chooses to partner with a training provider to provide customized training for its employees, the local board shall conduct the following.

(a) Evaluate the training provider's ability to provide training that meets the specific skill requirements of the employer or group of employers.

(b) Ensure that if the curriculum is taken directly from the training provider's catalog is customized to the employer's need.

(c) Obtain an attestation from the employer stating that the training offered by the training provider meets the needs of the employer.

(3) Request that the local board select a training provider on the employer's behalf. If an employer requests that the local board selects a training provider on its behalf. The local board may do the following.

(a) Select a training provider from the eligible training provider list.

(b) Procure a different training provider.

E. Customized training agreement provisions. Customized training

agreements shall at a minimum include the following elements.

(1) The occupation for which training will be provided; the skills and competencies to be achieved and the length of time for the training.

(2) The name of each employee to be trained.

(3) The employer's assurance that customized training is needed based upon the individual skill sets of trainees.

(4) Training outline.

(5) Method and maximum amount of reimbursement.

(6) The cost and documented description of any ancillary items or supportive services that may be needed.

(7) Other appropriate training outcomes related to the training (i.e. increases in earnings).

(8) Appropriate assurances and certifications as listed below.

(a) Employer shall provide worker's compensation coverage for the participants on the same basis as the compensation is provided to other individuals in the same employment.

(b) Employer shall verify that the customized training will relate to the introduction of new technologies, introduction to new production or service procedures, or is an upgrade to a new job that requires additional skills.

(c) Employer certifies that the company is financially solvent on the date of the contract, and the employer's best projection is that they will remain financially able to meet contract obligations at the end of the training period, including customized training participant retention.

(d) Employer agrees that wage and labor standards will be adhered to and to pay the participants at the same rates, including increases, and benefits as trainees or employees who are situated in similar jobs. Such rates shall be in accordance with applicable law, but in no event less than the higher rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 or the applicable state or local minimum wage law, WIA sect. 181(a)(1)(A).

(e) Conditions of employment and training will be in full accordance with all applicable federal, state, and local laws and ordinances (including but not limited to anti-discrimination, labor and employment laws, environmental laws or health and safety laws), 29 CFR 37.38(b).

(f) Employer certifies that the customized training will not impair existing agreements for services or collective bargaining agreements and that either it has the concurrence of the appropriate labor organization as to the design and conduct of customized training, or it has no

collective bargaining agreement with a labor organization that covers the participants' position.

(g) Employer assures that they are not debarred or suspended in regard to federal funding. 29 CFR Part 98.

(h) Employer further assures that federal funds will not be used to assist, promote or deter union organizing, 20 CFR 663.730.

(i) Employer certifies that no member of the customized training participant's immediate family will directly supervise the participant. For the purpose of this contract, immediate family is defined as spouse, children, parents, grandparents, grandchildren, brothers, sisters or person bearing the same relationship to the participant's spouse, 20 CFR 667.200(g).

(j) Employer assures that the participants will not be employed to carry out the construction, operation or maintenance of any part of a facility that is used or to be used for sectarian instruction or as a place for religious worship, 29 CFR 37.6(F).

(k) Employer assures that the participant(s) has not been hired into or will remain working in any position when any other person is on layoff from the same or a substantially equivalent job within the same organizational unit or has been bumped and has recall rights to that position, nor if the customized training is created in a promotional line that infringes on opportunities of current employees, 20 CFR 667.270.

F. Employer match requirements. Local boards may decide if the 50% employer requirement is cash or in-kind. In-kind match shall benefit the training and shall be documented. The employer match cannot include other federal grant funds.

G. Customized training costs.

(1) Allowable costs may include only costs directly related to training. Examples of allowable costs include, but are not limited to the following.

(a) Instructor's training-related wages.

(b) Curriculum development.

(c) Textbooks, instructional equipment, manuals, materials and supplies.

(2) **Unallowable costs for customized training.** Unallowable costs include but are not limited to the following.

(a) WIA funds cannot be used to pay trainee wage and fringe benefits.

(b) Costs that are not directly related to customized training for eligible individuals.

(c) Travel.

(d) Purchase of capital equipment.

H. Customized training documentation. Customized training agreement, related information and documentation may be kept by the service provider or business. The local board and service provider are responsible for ensuring the information and documentation is available for monitoring and review as required.

(1) Customized training agreement/contract.

(2) Customized training plan.

(3) Customized training plan modification.

(4) Customized training progress report and invoice forms.

(5) Case notes (recorded in NM VOSS or other state designated system to track customer interactions) [11.2.13.8 NMAC – Rp, 11.2.20.8 & 9 NMAC, 8-15-2012]

11.2.13.9 RESCISSIONS: [RESERVED] [11.2.13.9 NMAC - Rp, 11.2.20.10 NMAC, 8-15-2012]

11.2.13.10 CONTACT ENTITY: Inquiries regarding this rule should be directed to the New Mexico DWS/state administrative entity. [11.2.13.10 NMAC - Rp, 11.2.20.11 NMAC, 8-15-2012]

11.2.13.11 DISTRIBUTION: State board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal counsel, United States department of labor employment and training administration federal representative, and, the New Mexico commission on public records. [11.2.13.11 NMAC - Rp, 11.2.20.12 NMAC, 8-15-2012]

HISTORY OF 11.2.13 NMAC:

History of Repealed Material:

11.2.13 NMAC, Workforce Investment Act (WIA) Participant Eligibility, filed 5-17-2001 - Repealed effective 7-1-2003.

11.2.13 NMAC, Workforce Investment Act (WIA) Participant Eligibility, filed 6-13-2003 - Repealed effective 8-15-2012.

11.2.20 NMAC, Workforce Investment Act (WIA) Customized Training, filed 12-15-2005 - Repealed effective 7 - 1 - 2003.

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 14 WORKFORCE INVESTMENT ACT YOUTH ACTIVITIES

11.2.14.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions (DWS) [11.2.14.1 NMAC - Rp, 11.2.18.1 NMAC, 8-15-2012]

11.2.14.2 SCOPE: State workforce development board (state board), state administrative entity (SAE), chief elected officials (CEOs), local workforce development boards (local boards), local workforce administrative entities (local administrative entities), WIA sub-recipients and workforce system partners. [11.2.14.2 NMAC - Rp, 11.2.18.2 NMAC, 8-15-2012]

11.2.14.3 STATUTORY AUTHORITY: Title I of the WIA of 1998, as amended (29 U.S.C. 2801 et seq.); WIA Regulations, 20 CFR Part 652 et al, 29 CFR Part 95-97; Office of Management and Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230; Department of Labor (DOL) Employment and Training Administration (ETA) Training and Employment Guidance Letters (TEGL) No. 17-05, 15-10, and 18-11; NMSA 1978, Section 50-14-1 *et seq.* [11.2.14.3 NMAC - Rp, 11.2.18.3 NMAC, 8-15-2012]

11.2.14.4 DURATION: Permanent [11.2.14.4 NMAC - Rp, 11.2.18.4 NMAC, 8-15-2012]

11.2.14.5 EFFECTIVE DATE: August 15, 2012, unless a later date is cited at the end of a section. [11.2.14.5 NMAC - Rp, 11.2.18.5 NMAC, 8-15-2012]

11.2.14.6 OBJECTIVE: The WIA establishes a framework for a comprehensive year-round program for youth in which activities and services are tailored to meet the unique needs of youth within a local workforce area. This policy will describe local program requirements for youth activities funded under WIA. [11.2.14.6 NMAC - Rp, 11.2.18.6 NMAC, 8-15-2012]

11.2.14.7 DEFINITIONS:

[RESERVED]

11.2.14.8 INTRODUCTION: Youth activities offer a broad range of coordinated services to include opportunities for assistance in both academic and occupational learning, developing leadership skills, and preparing for further education and training and eventual employment. The varied services may be provided in combination or alone during a youth's participation. Strong connections are to exist between youth program activities and the workforce connection center delivery system so that youth learn early how to access the services and continue to use those services throughout their working lives. [11.2.14.8 NMAC - Rp, 11.2.18.6 NMAC, 8-15-2012]

11.2.14.9 PROGRAM DESIGN: The purpose of WIA youth services is to assist youth in making a successful transition to employment and further education. Programs shall be designed using effective practices; shall be held accountable for success; and shall make a clear contribution to the overall goals of the local workforce area. The local board shall ensure that applicants and participants are provided with information on the full array of applicable or appropriate services including the ten program elements that are available through the local youth providers. Applicants that do not meet enrollment requirements shall be referred for further assessment, as necessary, and referred to appropriate programs to meet their basic skills and training needs. Furthermore, programs shall incorporate elements to prepare individuals who lack adequate basic academic skills in order to support success in education and employment. The development of literacy and numeracy skills shall be an integral part of youth program design. Local areas should develop partnerships with secondary and postsecondary education and other service providers to take a systemic approach to ensure literacy and numeracy skill development supports a broader strategy that moves youth towards the goal of postsecondary education, training and employment. Recommended approaches include but are not limited to integrating basic and remedial education with occupational skills training; linkages with bridge programs that provide contextualized learning within a career pathway framework. For more information on improving literacy and numeracy performance through program design reference TEGL18-11. The program design shall include the following components.

A. Objective assessment.

An objective assessment shall be conducted to include a review of basic skills, academic and occupational skill levels, prior work

experience, employability, interests, aptitude, support service needs, and developmental needs. A new assessment of a participant is not required if the local service provider carrying out such a program determines it is appropriate to use a recent assessment of the participant conducted pursuant to another education or training program as long as all the required elements are addressed.

B. Individual service strategy (ISS). An ISS shall be developed which outlines a service strategy that identifies an employment goal; appropriate achievement objectives; and appropriate services for the participant based on the results of the objective assessment. The ISS shall be a joint effort between the youth and the youth program provider. When appropriate, the ISS should include specific literacy and numeracy goals as well as steps for attainment based on an assessment of youth's literacy and numeracy levels. A new service strategy for a participant is not required if the provider carrying out such a program determines it is appropriate to use a recent service strategy developed for the participant under another education or training program as long as all the required elements are addressed.

C. Preparation for postsecondary education. When determined appropriate for the participant, the following shall be made available: linkages between academic and occupational learning, preparation for employment and effective connections to intermediary organizations that provide strong links to the job market and employment.

D. Program elements. The WIA requires that 10 program elements be made available to all youth who are served by the WIA youth system. These program elements are designed to address their essential needs. Local programs shall make all of these program elements available to youth participants. However, this does not mean that every youth participant shall receive all program elements. Local programs have the discretion to determine what specific program services will be provided to a youth participant, based on each participant's objective assessment and individual service strategy (20 CFR 664.410(b)). The ten program elements are the following.

(1) Tutoring- study skills and instruction leading to secondary school completion, including drop-out prevention strategies.

(a) Tutoring is a teaching relationship that is focused on addressing specific needs to help youth succeed in school by offering individualized instruction delivered in structured sessions held regularly by a qualified tutor who monitors and reinforces the youth's progress. Tutoring may be provided one-on-one or in a group

setting. Tutoring should be designed to improve the academic knowledge and skills of youth in specific areas.

(b) Study skills are a set of abilities that allow youth to learn effectively and efficiently on their own. Good study skills allow a youth to do well in all phases of education and to make all phases of life an opportunity for learning. A study skills program may include instruction and practice activities on a range of areas such as planning and organizing study time; reading for comprehension; increasing concentration and test taking.

(c) Drop-out prevention strategies. Dropout prevention strategies are interventions that address causes of dropout problems such as disengagement; lack of successful experiences in school; or learning styles not suited to traditional academic instruction. Dropout prevention strategies help to ensure that youth stay in school.

(2) Alternative secondary school services. Alternative secondary school services offer specialized and structured curriculum inside or outside of the public school system. This environment should provide academic intervention for students who have not been successful in traditional education programs. To be classified as an alternative school or alternative course of study for WIA purposes, the alternative school shall be recognized and approved by the state public education department before students may be reported as attending an alternative school.

(3) Summer employment opportunities. Summer employment opportunities directly linked to academic and occupational learning. Summer employment opportunities linked to academic and occupational learning activity shall provide youth work experience in the career field in which they are interested and assists them in developing academic and occupational skills that will transfer to employment in that field. The summer youth employment opportunities element is not intended to be a stand-alone program. Local workforce areas shall integrate a youth's participation in that element into a comprehensive year-round strategy for addressing employment and training needs.

(4) Work experiences. Paid and unpaid work experiences including internships and job shadowing.

(a) Work experience activities are planned and structured learning experiences that are conducted in the workplace for a limited period of time. The activities are designed to provide youth with exposure to work.

(b) Work experience may be conducted in the private for profit sector; non-profit sector; or the public sector.

(c) Work experience shall be based on the needs identified in the

objective assessment of the individual youth participant and documented in the youth's individual service strategy.

(d) Stipends and incentives are allowable expenditures for paid work experience when the stipend provision is included in the participant's individual service strategy. See 11.2.16 NMAC, supportive services.

(5) Occupational skill training. Occupational skill training constitutes an organized program of study that provides specific vocational skills that lead to proficiency in performing actual tasks and technical functions required by certain occupations at entry, intermediate, or advanced levels.

(a) Occupational skill training should be focused on a goal as specified in the youth's individual service strategy and result in attainment of a certificate as defined in TEGL 17-05 regarding common measures and TEGL 15-10 regarding credential, degree, and certificate attainment.

(b) Out-of-school youth participants, ages 16-21 may receive an individual training account to access occupational skill training without co-enrolling in the adult and dislocated workers program under current waiver authority. Without the waiver, individual training accounts are not allowed for youth participants, however, individuals 18 or above, who are eligible for the adult or dislocated worker programs, may receive ITAs through those programs.

(6) Leadership. Leadership development opportunities are a broad set of activities that include community service and peer-centered activities that encourage responsibility, employability, and other positive social behaviors. Leadership activities can also include those designed to help youth develop "soft skills" or promote positive social behaviors such as self-esteem building, positive attitudinal development and maintaining healthy lifestyles, maintaining positive relationships with adults and peers, and encouraging a commitment to learning and academic success.

(7) Supportive services. Supportive services include assistance such as transportation, child care, dependent care, housing, referrals to medical services, and assistance with uniforms or other appropriate work attire and work-related tool costs that make it possible for a youth to participate in and successfully complete program activities. For more information on supportive services see 11.2.16 NMAC.

(8) Mentoring. Adult mentoring programs include an adult role model who builds a relationship with a youth and fosters the development of positive life skills. Youth shall receive adult mentoring for a minimum of 12 months that may occur both during

and after program participation. Delivery of WIA youth service by a case managers or service provider does not constitute adult mentoring.

(9) Comprehensive guidance and counseling. Comprehensive guidance and counseling, including drug and alcohol abuse counseling and referrals to counseling, is a process of helping youth make and implement informed educational, occupational, and life choices. These services shall be based on the needs of the individual youth and tailored accordingly. An effective comprehensive guidance and counseling program develops a youth's competencies in self-knowledge, educational and occupational exploration, and career planning.

(10) Follow-up. Follow-up services are activities provided after completion of participation in WIA services and activities to monitor a youth's success during their transition to employment or education. Follow-up services include but are not limited to: leadership development and supportive service activities; assistance in securing better paying jobs, career development, work-related peer support groups; and tracking the progress of youth in employment after training. Follow-up services shall be provided for not less than 12 months after the completion of participation in WIA services consistent with WIA section 129(c)(2)(I) and 20 CFR 664.450(a). However, local areas may choose to provide follow-up services for a longer period. The types of services provided and the duration of services shall be determined based on the needs of the individual.

[11.2.14.9 NMAC - Rp, 11.2.18.8 NMAC, 8-15-2012]

11.2.14.10 PERFORMANCE MEASURES: Measuring the success and overall effectiveness of youth programs is a critical but challenging responsibility. Local boards shall consider the overall goals of the program and demonstrate that funded activities lead to outcomes that contribute to these goals. Under waiver authority, New Mexico replaced the statutory performance measures with common measures. Local boards and service providers shall monitor common measures, output and additional outcomes to evaluate program effectiveness.

A. Common measures. Common measures for youth consist of three measures; placement in employment or education; attainment of a degree or certificate; and literacy/numeracy as defined in TEGL 17-05.

B. Output measures. Output is evidence that a service has been provided. Participation by itself is an output. For example, "sixty percent of youth will be engaged in community service projects" indicates an activity took place. It is an indication that the program provided

service. Output alone does not demonstrate the success of a program.

C. Outcome measures. Outcome is a measure of the change that occurs in a participant as a result of program activities. Attaining a particular skill is an example of such a change. Programs should specify a benchmark of the number or percentage of participants who achieve a particular outcome.
[11.2.14.10 NMAC - Rp, 11.2.18.8 NMAC, 8-15-2012]

11.2.14.11 OUT-OF-SCHOOL FUNDING REQUIREMENT: At least 30 percent of the total amount of all youth formula funds allocated to a local workforce area shall be used to provide activities to out-of-school youth. Out-of-school youth is defined as a youth who is a school dropout, or who has received a secondary school diploma or its equivalent but is basic skills deficient, unemployed, or underemployed and those who are attending post-secondary school and are basic skills deficient consistent with WIA.
[11.2.14.11 NMAC - Rp, 11.2.18.8 NMAC, 8-15-2012]

11.2.14.12 SELECTION OF SERVICE PROVIDERS: Youth service providers shall be competitively procured in accordance with local, state and federal procurement practices. Acceptable local procurement practices cannot be less restrictive than federal or state requirements in the awarding of grants and contracts. In no instance will a local procurement process violate New Mexico's procurement policies.
[11.2.14.12 NMAC - N, 8-15-2012]

11.2.14.13 REVISIONS : [RESERVED]
[11.2.14.13 NMAC - Rp, 11.2.18.9 NMAC, 8-15-2012]

11.2.14.14 CONTACT ENTITY: Inquiries regarding this rule should be directed to the New Mexico department of workforce solutions/state administrative entity.
[11.2.14.14 NMAC - Rp, 11.2.18.10 NMAC, 8-15-2012]

11.2.14.15 DISTRIBUTION: State board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal counsel, united states department of labor employment and training administration federal representative, and, the New Mexico commission on public records.
[11.2.14.15 NMAC - Rp, 11.2.18.11 NMAC, 8-15-2012]

11.2.14.16 ATTACHMENTS:

None.

[11.2.14.16 NMAC - Rp, 11.2.18.12 NMAC, 8-15-2012]

HISTORY OF 11.2.14 NMAC:

History of Repealed Material:

11.2.14 NMAC, Workforce Investment (WIA) Act Local Boards, filed 6-16-2000 - Repealed effective 8-15-2012.

11.2.18 NMAC, Workforce Investment (WIA) Act Youth Activities, filed 8-1-2001 - Repealed effective 8-15-2012.

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 15 WORKFORCE INVESTMENT ACT YOUTH COUNCILS

11.2.15.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions (DWS)
[11.2.15.1 NMAC - Rp, 11.2.17.1 NMAC, 8-15-2012]

11.2.15.2 SCOPE: State workforce development board (state board), state administrative entity (SAE), chief elected officials (CEOs), local workforce development boards (local boards), local workforce administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners.
[11.2.15.2 NMAC - Rp, 11.2.17.2 NMAC, 8-15-2012]

11.2.15.3 STATUTORY AUTHORITY: Youth council regulations are promulgated through the Workforce Investment Act of 1998 (Public Law 105-220, 29 U.S.C. 2801, et. seq.; Final Rule at Title I, Chapter 4, "Youth Activities," Sections 126 through 129 and in the Federal Register Volume 65, Number 156, dated August 11, 2000, Part 661, "Statewide and Local Governance of the Workforce Investment System Under Title I of the Workforce Investment Act," Part 664, "Youth Activities Under Title I of the Workforce Investment Act," any amendments to the aforementioned references, Section 506(c); Pub. L. 105-220; 20 U.S.C. 9276(c); NMSA 1978, Section 50-14-1 et seq.
[11.2.15.3 NMAC - Rp, 11.2.17.3 NMAC, 8-15-2012]

11.2.15.4 DURATION : Permanent.
[11.2.15.4 NMAC - Rp, 11.2.17.4 NMAC, 8-15-2012]

11.2.15.5 EFFECTIVE DATE: August 15, 2012, unless a later date is cited at the end of a section.

[11.2.15.5 NMAC - Rp, 11.2.17.5 NMAC, 8-15-2012]

11.2.15.6 OBJECTIVE: WIA youth councils shall exist as a subgroup of the local workforce development board and will serve the board in an advisory capacity. Youth council members will provide their individual and collective expertise to assist in the development and recommendation of local youth employment and training policies and practices. Youth councils shall incorporate the youth perspective into the service delivery strategies, establish linkages with community organizations, and, identify ways to collaborate with educational institutions.

[11.2.15.6 NMAC - Rp, 11.2.17.6 NMAC, 8-15-2012]

11.2.15.7 DEFINITIONS:
[RESERVED]

11.2.15.8 YOUTH COUNCIL MEMBERSHIP:

A. Each local board shall have one youth council formed as a subgroup of the board for the purpose of advising the board in matters related to youth policies and practices. Youth council members are appointed by the chair of the board in consultation with the local chief elected officials. Youth council members who are not board members shall not be voting members of the board, but will be a voting member of the youth council. There is no required number of members who may participate on a youth council.

B. Representation. The youth council shall include the following representation.

(1) Members of the local board with special interest or expertise in youth policy.

(2) Members who represent service agencies such as juvenile justice and local law enforcement agencies.

(3) Members who represent local public housing authorities.

(4) Parents of eligible youth seeking assistance under Subtitle B of Title I of WIA.

(5) Individuals who represent organizations with experience relating to youth activities, including former participants in youth activities.

(6) Job corps (if there is a job corps center in the local area).

(7) Private sector business representatives.

(8) Other individuals deemed appropriate by the chair of the local board in consultation with the local chief elected officials.

[11.2.15.8 NMAC - Rp, 11.2.17.8 NMAC, 8-15-2012]

11.2.15.9 YOUTH COUNCIL RESPONSIBILITIES: A youth council shall carry out duties as assigned by the chair of the local board including the following.

A. Coordinate youth activities in a local area.

B. Develop portions of the local plan relating to youth.

C. Recommend eligible providers of youth activities based on a competitive bidding process approved by the board.

D. P r o v i d e recommendation on meeting youth performance measures.

E. Identify resources to leverage Workforce Investment Act funds.

F. Conduct oversight of eligible providers of youth activities in the local area, subject to local board approval.

G. Carry out other duties as authorized by the chairperson of the local board.

[11.2.15.9 NMAC - Rp, 11.2.17.8 NMAC, 8-15-2012]

11.2.15.10 CODE OF CONDUCT:

Youth council members shall be subject to a code of conduct pertaining to unfair competitive advantage and conflict of interest. The unfair competitive advantage provisions prohibit a contractor that develops specifications, requirements, statements of work, invitations for bid, and requests for proposals from competing for the award. To enable members who are service providers or contractors vendors to provide needed input while not creating an unfair competitive advantage, the youth council needs to ensure that youth service providers, or potential service providers, do not participate in certain processes. At a minimum, youth council members who are youth service providers should be excluded from the development of the request for proposal, statement of work, evaluation, and selection criteria. In order to avoid the conflict of interest, a youth council member shall excuse themselves from the decision-making process on contract selection that could benefit the member's organization. This applies to any decision regarding the youth council member's organization. It also applies to participating in the decision-making on competitors' proposals, since their rejection improves the chances of the member's proposal being selected. The local board shall maintain signed statements of youth council members that disclose possible unfair competitive advantages and conflicts of interest.

[11.2.15.10 NMAC - N, 8-15-2012]

11.2.15.11 REVISIONS:

[RESERVED]

[11.2.15.11 NMAC - Rp, 11.2.17.9 NMAC, 8-15-2012]

11.2.15.12 CONTACT ENTITY: Inquiries regarding this rule should be directed to the New Mexico department of workforce solutions/state administrative entity.

[11.2.15.12 NMAC - Rp, 11.2.17.10 NMAC, 8-15-2012]

11.2.15.13 DISTRIBUTION: State board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal counsel, united states department of labor employment and training administration federal representative, and, the New Mexico commission on public records.

[11.2.15.13 NMAC - Rp, 11.2.17.11 NMAC, 8-15-2012]

11.2.15.14 ATTACHMENTS:
None.

[11.2.15.14 NMAC - Rp, 11.2.17.12 NMAC, 8-15-2012]

HISTORY OF 11.2.15 NMAC:

History of Repealed Material:

11.2.15 NMAC, Workforce Investment Act (WIA) Grievance Procedures, filed 6-23-2000 - Repealed effective 12-31-2005.

11.2.17 NMAC, Workforce Investment Act (WIA) Youth Councils, filed 8-1-2001 - Repealed effective 8-15-2012.

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 16 W O R K F O R C E INVESTMENT ACT SUPPORTIVE SERVICES

11.2.16.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions (DWS)

[11.2.16.1 NMAC - N, 8-15-2012]

11.2.16.2 SCOPE: State workforce development board (state board), state administrative entity (SAE), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners.

[11.2.16.2 NMAC - N, 8-15-2012]

11.2.16.3 STATUTORY

AUTHORITY: Title I of the WIA of 1998, as amended (29 U.S.C. 2801 et seq.); WIA Regulations, 20 CFR Part 652 et al, 29 CFR Part 95-97; Office of Management and Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230; NMSA 1978, Section 50-14-1 *et seq.*

[11.2.16.3 NMAC - N, 8-15-2012]

11.2.16.4 DURATION :

Permanent.

[11.2.16.4 NMAC - N, 8-15-2012]

11.2.16.5 EFFECTIVE DATE:

August 15, 2012, unless a later date is cited at the end of a section.

[11.2.16.5 NMAC - N, 8-15-2012]

11.2.16.6 OBJECTIVE :

Provide information and direction for the development of a local policy that define the process for the use of supportive services to eligible adult, dislocated worker and youth participants.

[11.2.16.6 NMAC - N, 8-15-2012]

11.2.16.7 DEFINITIONS :

[RESERVED]

11.2.16.8 BACKGROUND:

The WIA Title I outlines the responsibility of the local boards in developing a policy to define supportive services available to the adult, dislocated worker and youth participants. Supportive services for adults, dislocated workers, and youth include services such as transportation, child care, dependent care, housing, needs related payments, incentives, and stipends that are necessary to enable an individual to participate in activities authorized under WIA Title I.

[11.2.16.8 NMAC - N, 8-15-2012]

11.2.16.9 LOCAL BOARD POLICY ON SUPPORTIVE SERVICES:

Local boards, in consultation with the workforce system partners (partners) and other community service providers, shall develop a policy on supportive services, payments and other compensation that ensures resource and service coordination in the local area. The policy at a minimum shall address the following.

A. Adult and dislocated worker supportive services.

(1) Address coordination with partners and other entities to ensure non-duplication of resources and services.

(2) Define types of WIA funded supportive services that may be made available to eligible participants. Needs related payments as defined in 20 CFR 663.815 are an allowable supportive service; however, if they will be made available, the local board shall include guidance as outlined in this policy. Additionally, if

incentives or stipends will be allowed as a supportive service, the local board shall include guidance as outlined in this policy.

(3) Procedures for referral to supportive services including how they will be funded and what documentation will be required to indicate that no other resources are available.

(4) Supportive services funded by the WIA may only be provided to individuals who meet the following criteria.

(a) Participating in core, intensive or training services.

(b) Unable to obtain supportive services through other programs.

(c) Necessary for the individual to participate in Title I activities.

(5) The need for supportive services shall be documented in the individual employment plan or individual service strategy prior to the provision of WIA funded supportive services.

(6) Local boards shall establish limits on the provision of supportive services including a maximum amount of funding and maximum length of time for supportive services to be available to eligible and suitable participants.

B. Youth supportive services. Supportive services are one of the ten required program elements for youth and shall be made available to all WIA youth participants.

(1) Address coordination with partners and other entities to ensure non-duplication of resources and services. Local boards shall ensure that WIA funded supportive services are not available through other agencies or programs.

(2) Include types of WIA funded supportive services that may be made available such as linkages to community services; assistance with transportation costs; assistance with child care and dependent care costs; assistance with housing costs; referrals to medical services; and assistance with uniform or other appropriate work attire and work-related tool costs, including such items as eye glasses and protective-eye gear. If incentives or stipends will be allowed as a supportive service, the local board shall include guidance as outlined in this policy.

(3) The need for supportive services shall be documented in the participant's individual service strategy. It shall also indicate how each need will be addressed, through WIA funded supportive service or referral.

(4) Procedures for referral to supportive services funded through a source other than WIA.

(5) Local boards shall establish limits on the provision of supportive services or provide the workforce system operator with the authority to establish such limits, including a maximum amount of funding and maximum length of time for supportive

services to be available to participants.

[11.2.16.9 NMAC - N, 8-15-2012]

11.2.16.10 NEEDS RELATED

PAYMENTS: Needs related payments are payments which may be used to provide payments to adults and dislocated workers who are unemployed and do not qualify for (or have ceased to qualify for) unemployment compensation for the purpose of enabling individuals to participate in programs of training services under sub section (d)(4) as stated at WIA Sections 101(46) and 134(e) (2) and (3). Only WIA adult and dislocated worker funds may be used to fund needs related payments, as this is not an allowable activity with WIA youth funds. Any local board that chooses to make needs related payments available to participants shall develop guidance based on the following information to be included in its supportive service policy.

A. Criteria. Needs related payments are not intended to meet all needs of an individual enrolled in training. Needs related payments provide financial assistance to adults and dislocated workers for the purpose of helping individuals participate in training. A needs related payment allows a participant to have the means to pay living expenses while receiving training. Local boards may determine the frequency of needs related payments including aligning the payment with case management contact. Local boards may provide needs related payments up to 30 days prior to the start of training, as long as the adult or dislocated worker participant is enrolled in training.

B. Eligibility.

(1) **Adults.** In order to be eligible to receive needs related payments, adults shall meet the following criteria.

(a) Be unemployed.

(b) Not qualify for, or have ceased qualifying for, unemployment compensation.

(c) Be enrolled in a program of training services funded under the WIA.

(2) **Dislocated workers.** In order to be eligible to receive needs related payments, a dislocated worker shall meet the following criteria.

(a) Be unemployed.

(b) Not qualify for, or have ceased to qualify for unemployment compensation or trade readjustment assistance under Trade Adjustment Act.

(c) Be enrolled in a program of training services under the WIA by the end of the 13th week after the most recent layoff that resulted in a determination of the worker's eligibility as a dislocated worker, or if later, by the end of the 8th week after the worker is informed that a short-term layoff will exceed 6 months.

C. Payments. Payments may be provided if the participant is waiting to start training classes and has been accepted

in a training program that will begin within 30 calendar days. The needs related payment level for adults shall be established by the local board.

(1) **Adults.** It is recommended the local boards establish the same limits for adults as required under the WIA for dislocated workers as described below.

(2) **Dislocated workers.** For dislocated workers, payments shall not exceed the greater of either of the following levels.

(a) For participants who were eligible for unemployment compensation as a result of a qualifying dislocation, the payment may not exceed the applicable weekly level of the unemployment compensation benefit.

(b) For participants who did not qualify for unemployment compensation as a result of the qualifying layoff, the weekly payment may not exceed the poverty level for an equivalent period. The weekly payment level shall be adjusted to reflect changes in total family income as determined by local board policies.

(3) **Verification.** Local boards shall ensure that appropriate staff verifies unemployment insurance claimants have ceased to qualify for unemployment insurance benefits before providing a needs-based payments.

[11.2.16.10 NMAC - N, 8-15-2012]

11.2.16.11 STIPENDS: A stipend is a fixed and regular small payment such as an allowance. Reasonable stipends are allowable expenditures for work experience for youth when the provision of stipend is included in the participant's individual service strategy. Only WIA youth funds may be used to fund stipends. Such stipends are not considered income for WIA eligibility purposes. Any local board that chooses to make stipends available to participants shall develop guidance based on the following information to be included in its supportive service policy.

A. Only WIA youth participating in work experience are eligible for stipends.

B. Develop guidelines and strategies that provide for the use of the stipend.

C. Local boards shall ensure that guidelines set forth realistic minimum and maximum duration for WIA participants receiving a stipend. Additionally, local boards shall ensure that guidelines include deadlines for claiming stipends. This provision will ensure that participants maintain communication with workforce connection center staff and providing appropriate documentation as needed.

D. Ensure that the stipends are accurately documented in NM VOSS

or other management information system designated by the state in a timely manner.

[11.2.16.11 NMAC - N, 8-15-2012]

11.2.16.12 INCENTIVES :

Incentives are compensation in the form of cash, checks, gift cards, and nonmonetary gifts or vouchers provided to a customer in exchange for meeting specified goals and outcomes as defined by the local board. Issuing incentives gives local boards opportunities to improve employment, training, and education outcomes. Incentives do not include support services such as child care, transportation, or reimbursement of work-related expenses. Incentives are a way to encourage workforce participants' participation or to reward participants for achieving specific elements defined in an individual employment plan or individual service strategy. Incentives are not considered income for WIA eligibility purposes.

[11.2.16.12 NMAC - N, 8-15-2012]

11.2.16.13 REVISIONS :

[RESERVED]

[11.2.16.13 NMAC - N, 8-15-2012]

11.2.16.14 CONTACT ENTITY:

Inquiries regarding this rule should be directed to the New Mexico department of workforce solutions/state administrative entity.

[11.2.16.14 NMAC - N, 8-15-2012]

11.2.16.15 DISTRIBUTION :

State board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal counsel, united states department of labor employment and training administration federal representative, and, the New Mexico commission on public records.

[11.2.16.15 NMAC - N, 8-15-2012]

11.2.16.16 ATTACHMENTS :

None

[11.2.16.16 NMAC - N, 8-15-2012]

HISTORY OF 11.2.16 NMAC:

History of Repealed Material:

11.2.16 NMAC, Adult and Dislocated Worker Activities and Use of Funds Under Title I of the Workforce Investment Act (WIA), filed 6-16-2000 - Repealed effective 8-15-2012.

**NEW MEXICO
DEPARTMENT OF
WORKFORCE SOLUTIONS**

**TITLE 11 LABOR AND
WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 17 WORKFORCE
INVESTMENT ACT PRIORITY OF
SERVICE**

11.2.17.1 ISSUING AGENCY:

New Mexico Department of Workforce Solutions (DWS)

[11.2.17.1 NMAC - Rp, 11.2.23.1 NMAC, 8-15-2012]

11.2.17.2 SCOPE:

State workforce development board (state board), the state administrative entity (SAE), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners.

[11.2.17.2 NMAC - Rp, 11.2.23.2 NMAC, 8-15-2012]

11.2.17.3 STATUTORY

AUTHORITY: Title I of the Workforce Investment Act of 1998, as amended (29 U.S.C. 2801 et seq.); WIA Regulations, 20 CFR Part 652 et al, 29 CFR Part 95-97; Office of Management and Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230; Veteran's Benefits, Title 38, United States Code (U.S.C.), Section 101(2) (38 U.S.C.101(2)); Eligibility Requirements for Veterans Under Federal Employment and Training Programs, 38 U.S.C. 4213; The Jobs for Veterans Act (JVA) of 2002, Public Law (P.L.) 107-288, section 2(a) codified at 38 U.S.C. 4215; Veterans' Benefits, Health Care and Information Technology Act of 2006, P.L.109- 461; Priority of Service for Covered Persons Final Rule, 20 CFR Part 1010, Fed. Reg.78132 Dec.19, 2008; Training and Employment Guidance Letter (TEGL) 10-09 Implementing Priority of Service for Veterans and Eligible Spouses in all Qualified Job Training Programs Funded in whole or in part by the U.S. Department of Labor (DOL NMSA 1978, Section 50-14-1 et seq

[11.2.17.3 NMAC - Rp, 11.2.23.3 NMAC, 8-15-2012]

11.2.17.4 DURATION :

Permanent

[11.2.17.4 NMAC - Rp, 11.2.23.4 NMAC, 8-15-2012]

11.2.17.5 EFFECTIVE DATE:

August 15, 2012, unless a later date is cited at the end of a section.

[11.2.17.5 NMAC - Rp, 11.2.23.5 NMAC, 8-15-2012]

11.2.17.6 OBJECTIVE: To provide local workforce development boards (local boards) and other Workforce Investment Act (WIA) sub-recipients with instruction and guidance on WIA priority of service for adults and the veterans and eligible spouses' priority mandate.

[11.2.17.6 NMAC - Rp, 11.2.23.6 NMAC, 8-15-2012]

11.2.17.7 DEFINITIONS:
[RESERVED]

11.2.17.8 BACKGROUND: WIA Section 134(d)(4)(E) states that in the event that funds allocated to a local area for adult employment and training activities are limited, priority for intensive and training services funded with Title I adult funds shall be given to recipients of public assistance and other low-income individuals in the local area. On November 7, 2002, the Jobs for Veterans Act (JVA) of 2002, Public Law (P.L.) 107-288 was signed into law. One provision of the JVA establishes a priority of service requirement for covered persons (i.e. veterans and eligible spouses, including widows and widowers, as defined by this statute) in qualified job training programs. Since passage of the JVA, employment and training administration (ETA) and veterans' employment and training service (VETS) have provided policy guidance to the workforce investment system regarding the implementation of priority of service, including the ETA's issuance of TEGL -5-03 in September 2003. On December 22, 2006, the Veterans' Benefits, Health Care, and Information Technology Act of 2006 (P.L. 109-461) was enacted. Section 605 of that statute requires priority of service via regulation. 20 CFR Part 1010, published on December 19, 2008, reflects the United States department of labor's (DOL) response to that statutory requirement. The final rule took effect on January 19, 2009. While recipients of DOL funds for qualified job training programs have been required to provide priority of service since 2002, the publication of the final rule signals that those recipients subject to the regulations should review, and if necessary, enhance their current policies and procedures to ensure that adequate protocols are in place. DOL states that the JVA is applicable to operations under current law when a program has its own statutory priorities for certain population groups. WIA Title I has such priorities at section 134(d)(4)(E).

[11.2.17.8 NMAC - Rp, 11.2.23.8 NMAC, 8-15-2012]

11.2.17.9 LOCAL WORKFORCE DEVELOPMENT

BOARD POLICY REQUIREMENTS: Local boards shall develop a policy that addresses veterans and eligible spouses and adult priority of service. When a local board makes a determination that priority of service is required because funding is limited, the local board shall notify the state administrative entity in writing. The local board shall also notify the state administrative entity in writing when reverting back to a non-priority status. At a minimum, it shall include the following.

A. Veterans and eligible spouses. Local boards shall incorporate priority of service provisions within the local priority of service policy for veterans and eligible spouses sufficient to meet the requirements of Public Law 107-288, the JVA, and in accordance with TEGL No. 10-09 and 20 CFR Part 1010.

B. Adults.
(1) Local boards shall develop a policy to establish criteria by which the local workforce development area (local area) can determine the availability of funds and the process by which any priority will be applied under the WIA Section 134(d)(4)(E). Such criteria may include the availability of other funds for providing employment and training related services in the local area and the needs of specific groups within the local area. The statutory priority applies to adult funds for intensive and training services only. Funds allocated for dislocated workers are not subject to this requirement.

(2) When a local board provides intensive and training services without the limited funds provision for priority of services, veterans receive priority over non-veterans.

C. Order of priority. Upon a determination that local adult funds are limited and priority of service is required for the provision of intensive or training services, a veterans' priority as well as priority to public assistance recipients and low income individuals required in WIA regulations will be established as follows.

(1) First priority will be provided to recipients of public assistance and other low-income individuals who are also veterans or spouses of veterans that fall into the following categories.

(a) Any veteran who dies of a service connected disability.

(b) Any member of the armed services serving on active duty who, at the time of application, is listed in one or more of the categories below for a total of more than 90 days as listed outlined below:

(i) missing in action;
(ii) captured in the line of duty by a hostile force;

(iii) forcibly detained or interned in the line of duty by a foreign government or power.

(c) Any veteran who has a total

disability resulting from a service-connected disability.

(d) Any veteran who dies while a disability so evaluated was in existence.

(2) Recipients of public assistance and other low-income individuals who meet priority of service guidelines.

(3) Veterans, or spouses of veterans as defined above.

(4) Any additional targeted groups for priority of service identified by the local board.

[11.2.17.9 NMAC - Rp, 11.2.23.9 NMAC, 8-15-2012]

11.2.17.10 CONTACT ENTITY: Inquiries regarding this rule should be directed to the New Mexico department of workforce solutions/state administrative entity.

[11.2.17.10 NMAC - Rp, 11.2.23.10 NMAC, 8-15-2012]

11.2.17.11 DISTRIBUTION: State board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal counsel, united states department of labor employment and training administration federal representative, and, the New Mexico commission on public records.

[11.2.17.11 NMAC - Rp, 11.2.23.11 NMAC, 8-15-2012]

HISTORY OF 11.2.17 NMAC:

History of Repealed Material:

11.2.17 NMAC, Workforce Investment Act (WIA) Youth Councils, filed 8-1-2001 - Repealed effective 8-15-2012.

11.2.23 NMAC, Workforce Investment Act (WIA) Priority of Service, filed 12-15-2005 - Repealed effective 8-15-2012.

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 18 WORKFORCE INVESTMENT ACT ELIGIBLE TRAINING PROVIDER LIST

11.2.18.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions (DWS)

[11.2.18.1 NMAC - N, 8-15-2012]

11.2.18.2 SCOPE: State workforce development board (state board), state administrative entity (SAE), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities

(local administrative entities), workforce system sub-recipients and workforce system partners.

[11.2.18.2 NMAC - N, 8-15-2012]

11.2.18.3 STATUTORY

AUTHORITY: Title I of the WIA of 1998, as amended (29 U.S.C. 2801 et seq.); WIA Regulations, 20 CFR Part 652 et al, 29 CFR Part 95-97; Office of Management and Budget (OMB) circulars applicable to the entity, such as OMB Circulars A-21, A-87, or A-122 NMSA 1978, Section 50-14-1 et seq.

[11.2.18.3 NMAC - N, 8-15-2012]

11.2.18.4 DURATION:

Permanent.

[11.2.18.4 NMAC - N, 8-15-2012]

11.2.18.5 EFFECTIVE DATE:

August 15, 2012, unless a later date is cited at the end of a section.

[11.2.18.5 NMAC - N, 8-15-2012]

11.2.18.6 OBJECTIVE:

The primary goal of the Workforce Investment Act is to ensure participant access to a variety of quality training programs. Local boards have the primary responsibility for working directly with training providers to facilitate timely submission of complete, acceptable applications. This policy provides information and direction to support and govern the operation and dissemination of the statewide eligible training provider list (ETPL).

[11.2.18.6 NMAC - N, 8-15-2012]

11.2.18.7 DEFINITIONS:

[RESERVED]

11.2.18.8 ACTION:

In order to maximize customer choice and assure that all significant population groups are served, an eligible training provider process shall assure that significant numbers of competent providers, offering a wide variety of training programs and occupational choices, are available to customers. After receiving core and intensive services and in consultation with case managers, eligible participants who need training use the list of eligible providers to make an informed choice. In this way, the ETPL helps to provide customer choice, while also supporting increased performance accountability. Only those programs that are approved and listed on the state's ETPL are eligible for referral and enrollment of a WIA customer.

A. Eligible training provider process.

(1) The state procedures and a system for developing and disseminating the eligible training provider list [WIA Section 122(b)(2) and 122(c)(1)] and the local board shall make these procedures available to

training providers.

(2) Providers shall submit initial eligibility criteria; performance and cost information; and annually meet performance levels on specified performance measures as required. Minimum performance levels may be established by the state. The local board may require higher levels on the specified performance measures or may require additional measures and corresponding levels. [WIA Section 122(c)(5) and (d)(1)]

(3) Local boards receive applications from training providers for a program listing and determine if the applicant meets state and local board criteria for the listing. [WIA Section 122(e)(1), (2), and (3)].

(4) The state receives the information approved by local boards on training providers and compiles a single state list (ETPL), and disseminates the ETPL with performance and cost information to the workforce system. [WIA Section 122(e)(4)(A)]

(5) Participants utilizing an individual training account (ITA) shall have the opportunity to select any of the approved eligible providers and programs on the ETPL.

(6) Types of training to which these procedures apply [WIA Section 134(d)(4)(D); 20 CFR 663.300].

(a) Occupational skills training.

(b) Programs that combine workplace training with related instruction.

(c) Skill upgrading and retraining.

(d) Entrepreneurial training.

(e) Adult education and literacy activities provided in combination with any other training service outlined above.

(f) Apprenticeship programs.

B. Training provider eligibility. To be eligible to receive the funds, the training provider shall be one of the following.

(1) A postsecondary educational institution that is eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.); and provides a program that leads to an associate degree, baccalaureate degree, or certificate.

(2) An entity that carries out programs under the act of August 16, 1937 (commonly known as the "National Apprenticeship Act;" 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.).

(3) Another public or private provider of a program of training services that provides training for special participant populations that face multiple barriers to employment which are populations of low-income individuals that are included in one or more of the following categories.

(a) Individuals with substantial language or cultural barriers.

(b) Offenders.

(c) Homeless individuals.

(d) Other hard-to-serve populations as defined by the governor. (Sections 117(f)(1) and 122(a)(2)(C) of the act and Section 663.430 of 20 CFR Part 652 et al.)

(4) Community-based organization and other private organizations providing training under 663.430.

C. Program of training.

A program of training services is defined as follows.

(1) One or more courses or classes that upon successful completion leads to a certificate, an associate degree, or baccalaureate degree, or a competency or skill recognized by employers.

(2) A training regimen that provides individuals with additional occupational skills or competencies generally recognized by employers.

(3) Identical programs offered in different locations by the same training provider shall be considered as one program, and will not require separate applications unless the location is a factor in defining a unique program.

D. ETPL exemptions.

The following training activities are exempt from utilizing the ETPL process.

(1) On-the-job training and customized training (as defined by WIA).

(2) Intensive services as listed below.

(a) Skill enhancement and workplace literacy are considered to be short-term prevocational, and therefore, intensive services and are not defined as training services for the purposes of this policy.

(b) Short-term prevocational services are not tied to a specific occupation and include course-like services such as literacy and adult basic education, workplace literacy, introductory computer classes, as well as development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills and professional conduct to prepare individuals for unsubsidized employment or training.

[11.2.18.8 NMAC - N, 8-15-2012]

11.2.18.9 ETPL APPLICATION POLICY AND PROCEDURES: ETPL application procedure.

This section covers general application policies and procedures that govern both initial and subsequent eligibility.

A. Local boards will utilize the NM virtual one stop system (NMVOSS) or other management information system as determined by the state to compile information on training providers, the courses and programs they offer and the performance for each so that individuals can make informed decisions when selecting a training provider.

B. Applications for initial

and subsequent eligibility shall be initiated by the training provider by completing a registration and an on-line application consistent with [WIA Section 122(b)(1)(D) and 122(c)(5)(A)].

C. Local boards will ensure all of the required data elements required for the ETPL training provider and program application forms are complete; ensure the training provider meets the criteria; and approve the training provider and the associated programs.

D. Applications shall be submitted in the time and manner determined by the local board [20CFR Section 663.515 and 663.535]. New training provider program application(s) may be submitted on any day of the year. Revision(s) to already approved and existing program curriculums are subject to review and shall be approved by the local board.

E. Training providers shall agree to provide such information as may be necessary to determine program performance and to meet other requirements of the WIA. The provider shall agree to make available verifiable data to validate any information submitted [WIA Section 122(d)(1)(A)].

F. Training providers that are headquartered outside of New Mexico who do not have in-state training facilities may apply to any local board where they wish to provide services. [WIA Section 122(e)(5)]. Applications shall include all information required by these policies and procedures.

[11.2.18.9 NMAC - N, 8-15-2012]

11.2.18.10 INITIAL AND SUBSEQUENT ELIGIBILITY DETERMINATION:

A. Initial eligibility.

(1) Initial eligibility is extended automatically to certain training provider programs. [WIA Section 122]. These training providers are required to apply to the local board in order to be included on the statewide list of eligible training providers. They are not required to submit performance information for initial eligibility determination. These providers are listed below.

(a) Postsecondary educational institutions eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) and that provides a program that lead to an associate degree, baccalaureate degree or certificate.

(b) An entity that carries out programs under the National Apprenticeship Act, 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.).

(2) Initial eligibility for non-exempt training providers also requires application to the local board for eligibility determination. The submission of performance information is required if, at

any time, the applicant has delivered the program/course to any student, regardless of funding source, on or before the date of application submission. Non-exempt training providers include the following.

(a) Postsecondary educational institutions that provide training service programs that do not lead to an associate degree, baccalaureate degree or certificate.

(b) Entities that provide apprenticeship programs that are not registered under the National Apprenticeship Act.

(c) All other public or private providers of training service programs.

B. Subsequent eligibility.

All programs that are initially listed on the ETPL shall be determined to be eligible to remain on the ETPL within 18-24 months of initial listing and annually thereafter. This determination is called "subsequent eligibility" [WIA Section 122(c)(1) and 20 CFR 663.530]. Subsequent eligibility determinations will be made on an annual basis. The NMVOSS, provider services system, (or other system as determined by the state) will require the local board to determine subsequent eligibility and make the appropriate approvals in order to continue as an eligible training provider. WIA Section 122(d)(1) specifies the following performance measures that shall be considered by local boards in determining the subsequent eligibility of programs to remain on the ETPL.

(1) Completion rates for all individuals in the listed program.

(2) Percentage of all individuals participating in the listed program who obtain unsubsidized employment.

(3) Wages at placement in employment of all individuals participating in the listed program.

(4) Percentage of WIA participants who completed the listed program and were placed in unsubsidized employment.

(5) Retention rate in unsubsidized employment of participants who have completed the listed program; six-months after the first day of their employment.

(6) Wages received by participants who have completed the listed program; six-months after the first day of employment.

(7) Where appropriate, the rates of licensure or certification, attainment of academic degrees or equivalents, or attainment of other measures of skills, for the WIA participants who completed the listed program.

(8) Program costs to participate in the listed program.

C. Waiver of provision 20 CFR 663.530. The state currently has a waiver of provision 20 CFR 663.530 that prescribes a time limit on the period of initial eligibility for training providers. The state is allowed to postpone the determination

of subsequent eligibility as outlined above. The waiver allows the state to provide an opportunity to training providers to reenroll and be considered as initially eligible providers without consideration of the federally mandated performance measures. The state and local boards can require levels of performance for training providers but it is not a requirement as long as the waiver is in place.

[11.2.18.10 NMAC - N, 8-15-2012]

11.2.18.11 DISSEMINATION OF THE ETPL: Statewide dissemination and customer access.

A. The state will ensure that the ETPL is updated as data is received. The updated list is available to all local boards [WIA Section 122(e)(4)(A)], workforce connection centers; and on the NMVOSS wherever internet service is available.

B. The local board is responsible for ensuring that all workforce connection center staff in its area have access to the ETPL; knowledgeable about utilizing the ETPL; and ensure it is available to customers. [WIA Section 122(e)(4)(A)].

[11.2.18.11 NMAC - N, 8-15-2012]

11.2.18.12 DENIAL AND REMOVAL:

A. Reasons for denial of application for initial or subsequent listing.

(1) Local board or the state may deny eligibility if the application from a provider is not complete or not submitted within required timeframes.

(2) Local board or the state shall deny eligibility if an applicant fails to meet the minimum criteria for initial or subsequent listing specified in this procedure. [WIA Section 122(e)(2)]

(3) Local board or the state shall deny eligibility if it is determined that the applicant intentionally supplied inaccurate information. [WIA Section 122(f)(1)]

(4) Local board or the state may deny eligibility to a provider who has been found to have substantially violated any WIA requirements. [WIA Section 122(f)(2)]

B. Provider application denial.

(1) If a local board denies a provider's application for listing on the ETPL, the local board shall within 30 days of receipt of the application, inform the provider in writing including the reason(s) for the denial and complete information on the appeal process.

(2) If the state denies a provider's program listing on the ETPL, the state shall within 30 days of receipt of the nomination from a local board, inform local board in writing and include the reason(s) for the denial and complete information on the appeal process.

C. Removal of provider or program on the ETPL.

(1) Local board or the state may remove a program if the provider fails to provide all the data required for subsequent eligibility determination within the required timeframes. [WIA Section 122(d)(1)]

(2) Local board may remove a program if a provider fails to notify the board of any program changes including but not limited to costs, location of training, or change in state initial approval status.

(3) Local board or the state shall de-list a program at any point at which it is determined that the program does not meet the minimum criteria for initial listing specified in this procedure. For example, a program can be removed if its eligibility depended on accreditation, and the accreditation was lost. [WIA Section 122(c)(6)]

(4) Local board or the state shall remove a program if, as a result of the subsequent eligibility determination process, the program is found not to have met the minimum levels of performance set by the state. [WIA Section 122(e)(6)]

(5) Local board or the state shall remove a program if it is determined that the applicant intentionally supplied inaccurate information. [WIA Section 122(f)(1)].

(6) Local board or the state may de-list a program if the provider is found to have violated any WIA requirements. [WIA Section 122(f)(2)].

D. Process for removal from ETPL list. Local board shall, within ten days of its decision, inform the provider in writing and include the reason(s) for the denial and complete information on the appeals process. If the state de-lists a program from the ETPL, the state shall, within ten-days of its decision, inform the local board in writing and include the reason(s) for the denial and complete information on the appeal process. Within 10 days of receipt of the notification of de-listing from the state, the local board shall inform the provider of the de-listing and the associated appeal rights.

[11.2.18.12 NMAC - N, 8-15-2012]

11.2.18.13 PENALTIES AND APPEALS:

A. Penalties. Penalties shall be imposed as follows.

(1) If the state, in consultation with local board, determines that a provider intentionally supplied inaccurate information for ETPL purposes, the state shall terminate the eligibility of the provider to receive any funds under WIA Section 133(b) for a minimum of two years. [WIA Section 122(f)(1)]

(2) If the state, in consultation with local board, determines that an eligible provider intentionally violates any WIA

requirements, the state or local board working with the state may terminate the eligibility of the provider to receive any funds under WIA Section 133(b) for a minimum of two years or take other such action as the state deems appropriate. [WIA Section 122(f)(2)]

B. Appeals. Training providers may file complaints and appeal the denial of a provider's application for initial or subsequent listing on the ETPL or the removal of a program(s) already listed on the ETPL as outlined in 11.2.21 NMAC, Grievance and Complaint Resolutions Procedures.

[11.2.18.13 NMAC - N, 8-15-2012]

11.2.18.14 RESCISSIONS:

[RESERVED]

[11.2.18.14 NMAC - N, 8-15-2012]

11.2.18.15 CONTACT ENTITY: Inquiries regarding this rule should be directed to the DWS/state administrative entity.

[11.2.18.15 NMAC - N, 8-15-2012]

11.2.18.16 DISTRIBUTION: State board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal counsel, United States department of labor employment and training administration federal representative, and, the New Mexico commission on public records.

[11.2.18.16 NMAC - N, 8-15-2012]

11.2.18.17 ATTACHMENTS:

None

[11.2.18.17 NMAC - N, 8-15-2012]

HISTORY OF 11.2.18 NMAC:

History of Repealed Material:

11.2.18 NMAC, Workforce Investment Act (WIA) Youth Activities, filed 8-1-2001 - Repealed effective 8-15-2012.

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 19 WORKFORCE INVESTMENT ACT OVERSIGHT AND MONITORING

11.2.19.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions (DWS)

[11.2.19.1 NMAC - Rp, 11.2.10.1 NMAC, 8-15-2012]

11.2.19.2 SCOPE: State workforce development board (state board),

state administrative entity (SAE), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners.

[11.2.19.2 NMAC - Rp, 11.2.10.2 NMAC, 8-15-2012]

11.2.19.3 STATUTORY AUTHORITY: Title I of the WIA of 1998, as amended (29 U.S.C. 2801 et seq.); WIA Regulations, 20 CFR Part 652 et al, 29 CFR Part 95-97; Office of Management and Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230; NMSA 1978, Section 50-14-1 et seq.

[11.2.19.3 NMAC - Rp, 11.2.10.3 NMAC, 8-15-2012]

11.2.19.4 DURATION: Permanent.

[11.2.19.4 NMAC - Rp, 11.2.10.4 NMAC, 8-15-2012]

11.2.19.5 EFFECTIVE DATE: August 15, 2012, unless a later date is cited at the end of a section.

[11.2.19.5 NMAC - Rp, 11.2.10.5 NMAC, 8-15-2012]

11.2.19.6 OBJECTIVE: To provide the DWS/state administrative entity's monitoring provisions and respective responsibilities of the local boards, sub-recipients, and contract service providers.

[11.2.19.6 NMAC - Rp, 11.2.10.6 NMAC, 8-15-2012]

11.2.19.7 DEFINITIONS:

A. Contract service provider - an entity other than a vendor as defined in the OMB Circular A-133 engaged to provide goods, services, or both under a contract with a sub-recipient, or other provider of services pursuant to an executed contract funded with monies administered by the state administrative entity.

B. Sub-recipient - an entity other than a vendor as defined in the OMB Circular A-133 receiving funds through a direct contract with the state administrative entity. For example, New Mexico local boards are sub-recipients.

[11.2.19.7 NMAC - N, 8-15-2012]

11.2.19.8 COMPLIANCE WITH PROGRAM AND FISCAL MONITORING: Sub-recipients and contract service providers shall comply with state program and fiscal monitoring activities including site visits, reviews of documentation and requests for information, and review all relevant records or a sample of the records as needed to determine subrecipient and contract service provider

performance. Failure to comply with this rule will result in corrective action and possible sanctions pursuant to 11.2.20 NMAC, WIA Incentives, Sanctions, and Technical Assistance.
[11.2.19.8 NMAC - N, 8-15-2012]

11.2.19.9 PROGRAM AND FISCAL MONITORING ACTIVITIES:

The state is required by WIA section 184(a) (4) to ensure the accountability of sub-recipients and contract service providers. Therefore, monitoring activities have been developed to: ensure programs achieve intended results; ensure resources are efficiently and effectively used for authorized purposes and are protected from waste, fraud, and abuse; and ensure reliable and timely information is captured and reported to serve as the basis for improved decision-making and required reporting. Comprehensive monitoring activities include site visits, interviews, desk reviews, and analyses of both financial and program outcomes to help identify compliance violations and potential weaknesses before such activities result in substandard performance or questioned costs. Monitoring activities will assess a subrecipient's or contract service provider's compliance with applicable federal, state, and local laws, regulations, contract provisions/grant agreement, policies, and official directives. The state administrative entity will assess the sub-recipient's or contract service provider's compliance with the appropriate uniform administrative requirements for grants and agreements applicable to the type of entity receiving funds, as promulgated in the circulars or rules of the office of management and budget (OMB). Monitoring reviews may result in findings that require immediate corrective action or recommendations that provide practical solutions.

A. Program monitoring activities. The state administrative entity will conduct annual onsite program monitoring activities to ensure compliance with federal, state, and local requirements and that programs achieve both intended and expected results. Processes and procedures used to determine subrecipient and contract service provider performance may include review and evaluation of one or more of the following.

- (1) Program results or outcomes.
- (2) Performance measures.
- (3) Reporting accuracy.
- (4) Record keeping and file maintenance.
- (5) Monitoring functions.
- (6) Self-monitoring activities.
- (7) Service delivery.
- (8) Automated systems and reporting.
- (9) Human resources.
- (10) Policies and procedures.

B. Fiscal monitoring activities. The state administrative entity will conduct annual onsite fiscal monitoring activities to ensure that grant funds and other assets are adequately safeguarded and that their use is in compliance with federal, state and local requirements. Processes and procedures used to determine subrecipient and contract service provider performance may include the review and evaluation of one or more of the following.

- (1) Accounting and reporting systems.
- (2) Budget methodologies.
- (3) Cash management practices.
- (4) Cost allocation plans and processes.
- (5) Cash disbursement compliance and documentation.
- (6) Program income identification and reporting.
- (7) Insurance coverage and risk exposure.
- (8) Oversight and monitoring functions.
- (9) Payroll administration.
- (10) Purchasing and procurement processes and procedures.
- (11) Property accountability and safeguarding.
- (12) Internal controls.

[11.2.19.9 NMAC - N, 8-15-2012]

11.2.19.10 STATE ADMINISTRATIVE ENTITY MONITORING REPORTS:

Within 45 days of the exit conference that concludes the monitoring activity, the state administrative entity will issue a report summarizing the results, which will include findings, required actions, areas of concern, suggestions, and positive practices as applicable.

A. Finding and required action. Findings are identified issues, policies, or practices that are non-compliant with applicable federal, state, or local laws, regulations, contract provisions/grant agreement, policies, or official directives. Each finding will have a corresponding required action that identifies what the state administrative entity shall see as action taken or documentation provided in order for a finding to be resolved.

B. Area of concern and suggestion. Areas of concern are issues, policies or practices observed during the review that negatively impact the subrecipient or contract service provider's ability to effectively manage the grant or provide services to participants. They may also be "red flags" or "risk areas" that, if not corrected, could lead to an area of non-compliance in future monitoring reviews. Each area of concern will have a corresponding suggestion for improving the issue or practice. New Mexico sub-recipients and contract service providers are

encouraged, but not required, to implement the suggested action for improving the issue or practice.

C. Positive practice.

Positive practices are sub-recipient or contract service provider's practices or outcomes observed during the review that are sufficiently effective or innovative to warrant "highlighting" in the report and may be shared with other sub-recipients and contract service providers.

[11.2.19.10 NMAC - Rp, 11.2.10.8 NMAC, 8-15-2012]

11.2.19.11 RESOLUTION ACTIVITIES:

A. Resolution activities.

(1) Within 45 days of the date of report issued by the state administrative entity, the sub-recipient or contract service provider shall provide a corrective action plan and supporting documentation to the state administrative entity regarding unresolved findings for review and evaluation. The corrective action plan shall identify actions the entity will take to correct the finding and the date by which the action will be completed. The subrecipient or contract service provider may be required to provide a monthly progress report to describe the progress the entity has made toward correcting the finding identified in the corrective action plan.

(2) After the review and evaluation of the corrective action plan and supporting documentation, the state administrative entity will issue an initial determination identifying both allowed and questioned costs, if any, as well as addressing the acceptability of corrective actions taken or planned to resolve findings.

(3) If questioned costs or findings are not resolved, the state administrative entity may require the sub-recipient or contract service provider, within 30 days of the date of the initial determination, to submit an additional response and provide additional evidence or documentation to justify the costs or administrative actions.

(4) If questioned costs and findings remain unresolved after the timeline specified in the initial determination, a final determination will be issued identifying the allowed and questioned costs as well as the unresolved findings. If questioned costs remain, the final determination will establish a debt against the subrecipient or contract service provider for the questioned amount. If findings are not resolved and debts are not paid, the sub-recipient or contract service provider will be subject to corrective actions and sanctions pursuant to 11.2.20 NMAC, WIA Incentives, Sanctions, and Technical Assistance.

B. Appeal process. All final determinations issued by the state administrative entity may be appealed

pursuant to the process provided in 11.2.21 NMAC and 20 CFR Section 667.500. [11.2.19.11 NMAC - N, 8-15-2012]

11.2.19.12 MONITORING AND ACCESS:

A. Access to records. The state administrative entity, or its authorized representatives, has the right of timely access to any books, documents, papers, computer records, emails, or other records of sub-recipients and contract service providers that are pertinent to the use of any funds administered by DWS, in order to conduct monitoring, audits, and examinations, and to make excerpts, transcripts, and photocopies of such documents.

B. Access to personnel. The right of access also includes timely access to subrecipient and contract service provider personnel for the purpose of interview and discussion related to such documents.

C. Record retention. The right of access is not limited to any required record retention period but will last as long as the records are retained. Except as otherwise provided, records shall be retained for three years from date of exit as outlined in 29 CFR Section 97.40. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records shall be retained until completion of the action and resolution of all issues which arise.

[11.2.19.12 NMAC - N, 8-15-2012]

11.2.19.13 EVALUATION OF LOCAL BOARD OVERSIGHT CAPACITY: This section outlines the process and criteria used by the state administrative entity to evaluate local board capacity to oversee and manage local funds and the delivery of local workforce services.

A. According to 20 CFR Section 667.410, each recipient and sub-recipient shall conduct regular oversight and monitoring of its WIA activities and those of its sub-recipients and contractors in order to accomplish the following.

(1) Determine expenditures have been made against the cost categories and within the cost limitations specified in the WIA and the regulations.

(2) Determine whether there is compliance with other applicable federal, state, and local laws, regulations, contract provisions, grant agreement, policies, and official directives.

(3) Provide technical assistance as necessary and appropriate.

B. The state administrative entity will use oversight methods outlined in this rule to evaluate each local board's performance and compliance with applicable federal, state, and local laws, regulations,

contract provisions/grant agreement, policies, official directives and local board plans. In particular, the state administrative entity will evaluate local board fulfillment of responsibilities relating to the following.

(1) Developing and maintaining, comprehensive fiscal management and programmatic systems.

(2) Hiring, training, and retaining qualified staff to carry out the local board's oversight activities.

(3) Selecting and overseeing contract service providers to improve delivery of workforce services.

(4) Overseeing and improving operations of workforce connection centers in the local area.

(5) Managing contract service provider performance across multiple local board programs and achieving required performance standards.

(6) Identifying and resolving long-standing oversight problems of the local board and performance problems of contract service providers.

[11.2.19.13 NMAC - N, 8-15-2012]

11.2.19.14 MONITORING CONDUCTED BY SUBRECIPIENT AND CONTRACT SERVICE PROVIDER:

A. Oversight responsibility. Sub-recipients and contract service providers shall assure that regular oversight of their own activities and regular monitoring of the activities of their contract service providers which receive public funds is conducted, completed, and documented. Monitoring shall include monitoring of both the fiscal and program performance of the entities or contract service providers administering and delivering services. These monitoring activities should be designated to ensure compliance with federal, state, and local requirements and that programs achieve intended results and grant funds and other assets are adequately safeguarded. Monitoring activities shall be planned to ensure the most effective use of monitoring resources.

B. Minimum requirements. Monitoring activities shall assess a contract service provider's compliance with applicable federal, state, or local laws, regulations, contract provisions/grant agreement, policies, and official directives. The sub-recipient shall assess the contract service provider's compliance with the appropriate uniform administrative requirements for grants and agreements applicable to the type of entity receiving funds, as promulgated in the OMB circulars or rules. These activities shall encompass both financial and programmatic monitoring and shall be evaluated on no less than an annual basis at a minimum. Each sub-recipient and contract service provider shall conduct regular oversight and monitoring

of its own sub-recipients and contractors in order to ensure the following.

(1) Determine that expenditures have been charged to the cost categories and within the cost limitations specified in the applicable laws and regulations.

(2) Determine whether or not there is compliance with other provisions of applicable laws and regulations.

(3) Provide technical assistance as necessary and appropriate.

C. Monitoring plan. Sub-recipients and contract service providers shall develop their own local-level monitoring plan. This monitoring plan shall incorporate the following.

(1) Schedule or timetable for monitoring WIA funded activities.

(2) Identification of the type of review planned, such as on-site review, comparative financial analysis, desk review, staff analysis, or other type of appropriate review.

D. Controls over monitoring. To ensure comprehensive and effective monitoring, sub-recipients and contract service providers shall ensure the following.

(1) Require periodic reports from their contract service providers outlining monitoring reviews, noncompliance issues, and the status of corrective actions.

(2) Ensure that a briefing regarding monitoring activities and findings is provided to the local board or appropriate local board subcommittee at regularly scheduled meetings and that this briefing is documented.

(3) Perform an annual evaluation of the monitoring function to determine its effectiveness.

(4) Develop a written monitoring procedure to be used in monitoring both program and fiscal operations.

E. Reporting and resolution requirements. Sub-recipients and contract service providers shall ensure that monitoring reports identify instances of noncompliance with applicable federal, state, and local laws, regulations, contract provisions/grant agreement, policies, and official directives, and provide recommendations for corrective action and program quality enhancements. Sub-recipients and contract service providers shall ensure that timelines are established for the completion of corrective actions, based on the severity of the deficiency, and shall work with the contract service providers to ensure implementation of corrective actions. Timelines shall support prompt correction of any instances of non-compliance. Sub-recipients and contract service providers shall ensure that a copy of monitoring reports is made available to all local board members.

[11.2.19.14 NMAC - N, 8-15-2012]

11.2.19.15 CONTACT ENTITY: Inquiries regarding this rule should be directed to the DWS/state administrative entity.
[11.2.19.15 NMAC - Rp, 11.2.10.9 NMAC, 8-15-2012]

11.2.19.16 DISTRIBUTION: State board chair, DWS state administrative entity, local board chairs, local board administrative entities, local boards sub-recipients, DWS/state administrative legal counsel, United States department of labor employment and training administration federal representative, and the New Mexico commission on public records.
[11.2.19.16 NMAC - Rp, 11.2.10.10 NMAC, 8-15-2012]

11.2.19.17 ATTACHMENTS: None
[11.2.19.17 NMAC - Rp, 11.2.10.11 NMAC, 8-15-2012]

HISTORY OF 11.2.19 NMAC:

History of Repealed Material:

11.2.10 NMAC, Workforce Investment Act (WIA) Oversight and Monitoring, filed 6-16-2000 - Repealed effective 8-15-2012.

11.2.19 NMAC, Workforce Investment Act (WIA) On-the-Job Training, filed 12-15-2005 - Repealed effective 8-15-2012.

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 20 WORKFORCE INVESTMENT ACT INCENTIVES, SANCTIONS, AND TECHNICAL ASSISTANCE

11.2.20.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions (DWS)
[11.2.20.1 NMAC - N, 8-15-2012]

11.2.20.2 SCOPE: State workforce development board (state board), state administrative entity (SAE), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients, and workforce system partners.
[11.2.20.2 NMAC - N, 8-15-2012]

11.2.20.3 STATUTORY AUTHORITY: Title I of the Workforce Investment Act (WIA) of 1998, as amended (29 U.S.C. 2801 et seq.); WIA Regulations,

20 CFR Part 652 et al, 29 CFR Part 95-97; Office of Management and Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230; NMSA 1978, Section 50-14-1 *et seq.*
[11.2.20.3 NMAC - N, 8-15-2012]

11.2.20.4 DURATION: Permanent.
[11.2.20.4 NMAC - N, 8-15-2012]

11.2.20.5 EFFECTIVE DATE: August 15, 2012, unless a later date is cited at the end of a section.
[11.2.20.5 NMAC - N, 8-15-2012]

11.2.20.6 OBJECTIVE: To establish the framework for making incentive grants available, implementing sanctions and corrective actions, and providing technical assistance to local boards and other sub-recipients.
[11.2.20.6 NMAC - N, 8-15-2012]

11.2.20.7 DEFINITIONS:

A. Allocation of funds. The total yearly funds initially identified for allocation to a local board for all programs, including both program and fiscal year allocations. This may include new allocations or distributions made during a year that result from changes in law or new funding made available to the local boards during a year.

B. Exceeds performance. A local board performance result that is higher than 100% of the local negotiated performance level.

C. Extraordinary circumstances. Conditions beyond a local board's control, which may have an impact on the determination of which local boards may receive or be excluded from receiving incentive awards. This includes, but is not limited to, matters such as serious unforeseen events, unanticipated changes in economic conditions, the occurrence of a disaster, or legislative changes having a direct impact on the DWS or local boards.

D. Fails performance. Local board fails performance if the performance result is less than 80% of the local negotiated performance level.

E. Local performance measures. The state's common measures waiver allows the state of New Mexico to replace the 17 performance measures under WIA Section 136(b) with the common measures outlined in training and employment guidance letter (TEGL) No. 17-05 and subsequent issuances; nine common measures for adult, dislocated worker, and youth programs.

F. Meets performance. Local board meets performance if the performance result is between 80% and 100% of the local negotiated performance

level.

G. Sanction. Corrective action or penalty imposed by the state administrative entity on a local board or other sub-recipient for significant inability or failure to perform as required.
[11.2.20.7 NMAC - N, 8-15-2012]

11.2.20.8 INCENTIVES: The purpose of incentive awards is to reward local boards that meet or exceed the performance benchmarks identified in each incentive award. This will help the DWS accomplish the goals of fulfilling the workforce needs of employers; putting New Mexicans to work; and meeting the state performance levels negotiated with the United States department of labor (USDOL). The local board is responsible for providing strategic and operational planning for its local area (local area). The development of a seamless and coherent workforce development system at the local level is the primary focus of local boards, thus this policy seeks to recognize local boards for achieving high performance as a system, as well as high performance in the areas targeted by the state administrative entity. Incentives will emphasize accountability, high performance, seamlessness, and continuous improvement, supporting New Mexico in achieving its workforce development goals.

A. Funding of incentive awards. The state administrative entity will determine annually the total amount of funds to be awarded from funds available through the WIA Section 128(a) and 133(a) (1) for local incentive awards. Additional incentive funds may be made available to local boards when New Mexico receives USDOL incentive funds.

B. Types of incentive awards. WIA incentive awards will be made available under the following circumstances.

(1) Exemplary performance award. Local boards with exemplary performance is defined as a local board that meets all of the following.

(a) Exceed, at a minimum, three of the nine common performance measures for adult, dislocated worker, and youth programs.

(b) Meet all other common performance measures for adult, dislocated worker, and youth programs.

(c) Have no outstanding or unresolved monitoring/audit findings or has performed the required corrective action toward resolving the outstanding monitoring or audit findings.

(2) Regional cooperation among local boards. Regional cooperation demonstrated by local boards working together as a cooperative unit in a region to provide excellence in customer service through one or more of the following.

(a) Submit joint plans or

agreements.

(b) Engage in ongoing and regular communication regarding promising practices and working together to implement those practices by sharing ideas, data, staff, and other resources.

(c) Provide opportunities for joint training, conferences, and staff interaction.

(d) Demonstrate regional cooperation through other means as determined by the state administrative entity.

(3) Local coordination of activities carried out under WIA. Coordination of WIA activities as demonstrated by local boards fostering leadership and cooperation to achieve the most effective customer service results for their employers and residents through one or more of the following.

(a) Memoranda of understanding with required workforce system partners named in WIA Section 121(b)(1) that demonstrates achievement seamless delivery of related services as outlined in 11.2.5 NMAC, WIA One-Stop Delivery Services and 11.2.7 NMAC, Service Integration.

(b) Ongoing and regular communication and training on promising practices and benchmarks in building systems or delivering services.

(c) Local coordination demonstrated through other means as determined by the state administrative entity, such as demonstrating coordination with discretionary grants, apprenticeship programs, and other agencies.

(4) State administrative entity local incentive award. The governor, state board and state administrative entity may establish additional program metrics and outcomes set forth in annual grant agreements for which local boards may qualify for additional incentive funds.

C. Data collection. Local boards are responsible for complete, accurate and timely data entry into the New Mexico reporting system. The state administrative entity reserves the right not to consider data submitted after the deadline established by the state or data that it finds to be inaccurate in its evaluation of performance for awards.

D. Application for incentive awards. The state administrative entity will issue instructions identifying the amount of funds available for awards and instructions for submitting applications.

[11.2.20.8 NMAC - Rp, 11.2.21.9 NMAC, 8-15-2012]

11.2.20.9 SANCTIONS: The state administrative entity may impose sanctions on a local board or other sub-recipient for significant inability or failure to perform as required, including performing or failing to perform due to a sanctionable act as described in this section. The purpose of imposing sanctions is to ensure

accountability of local boards and other sub-recipients in meeting the needs of employers and job seekers; ensure performance in reaching outcome measures; ensure adequate returns on New Mexico investments; and support New Mexico in achieving its goals. To accomplish the purposes of this section, the state administrative entity may require at any point during the year that a local board or WIA sub-recipient to cooperate with remedial actions, including, but not limited to, entering into a performance improvement plan, additional performance reviews or technical assistance activities.

A. Sanctionable acts.

The state administrative entity may place a local board or WIA sub-recipient in sanction status or assess a corrective action or penalty for failure to ensure at any time during the program year compliance with one or more contracted performance measures; contract provisions; or federal or New Mexico statutes, regulations, guidances, directives, or circulars. The state administrative entity may assess penalties for sanctionable acts listed in Subsection D related to corrective actions and penalties. Notwithstanding the list of sanctionable acts appearing after each specific level of sanction, the state administrative entity may assign a higher or lower level of sanction status based on the severity or mitigating circumstances surrounding the sanctionable acts.

B. Intent to sanction. An intent to sanction letter may be issued by the state administrative entity. The purpose of the intent to sanction letter is to describe technical assistance available and a specific timeline for the implementation by a local board or sub-recipient and to provide an opportunity to cure the sanctionable acts. An intent to sanction letter will not be required prior to the state administrative entity placing a local board in sanction status or assessing a penalty. There will be no appeal to an intent to sanction letter; however local boards and other sub-recipients may appeal a sanction determination as described in Subsection G below.

C. Sanction status. There are three levels of sanction status that may be assigned by the state administrative entity to a local board or other sub-recipient.

(1) Level one sanction status. A level one sanction status is assigned for significant inability or failure to perform as required by the state administrative entity, including performing or failing to perform due to a sanctionable act as described below. A level one sanction status may be associated with the assessment of one or more penalties as referenced in the corrective actions and penalties section. Sanctionable acts that occur during or after the program, grant, fiscal, contract, or calendar year, include but are not limited to the following.

(a) Failure to submit timely and

accurate required financial or performance reports.

(b) Failure to take corrective action to resolve findings identified during monitoring, investigative or program reviews, including failing to comply with a performance improvement plan.

(c) Failure to resolve all independent audit findings or questioned costs within required time frames.

(d) Failure to submit the annual audit required by OMB Circular A-133, as may be amended.

(e) Breach of administrative and service contract requirements.

(f) Failure to retain required service delivery and financial records.

(g) Failure to meet one or more local negotiated performance levels in a single program year based on annual performance outcomes.

(2) Level two sanction status. A level two sanction status is a higher sanction status than level one assigned for severe inability or failure to perform as required by the state administrative entity, including performing or failing to perform due to a sanctionable act as described below. A level two sanction may be associated with the assessment of more severe penalties than those assessed to a local board or sub-recipient in level one sanction status. Sanctionable acts that occur during or after the program, grant, fiscal, contract, or calendar year include but are not limited to the following.

(a) Failure to resolve or implement corrective action on a level one sanction within 180 days of notice.

(b) Committing the same violation a second time within an 18 month period.

(c) Failure to meet negotiated performance levels for the same performance measure(s) for two consecutive program years.

(3) Level three sanction status. This is the highest sanction status assigned for extreme inability or failure to perform as required by the state administrative entity, including performing or failing to perform due to a sanctionable act as described below. A level three sanction may be associated with the assessment of the most severe penalties being assessed against the local board or sub-recipient. Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year include but are not limited to the following.

(a) Failure to resolve or implement corrective action on a level one sanction within 360 days of notice.

(b) Failure to resolve or implement corrective action on a level two sanction within 180 days of notice.

(c) Committing the same violation three or more times within a 36 month period.

(4) Notwithstanding Paragraphs (1), (2) and (3) of this subsection, the state administrative entity may use the criteria set forth in section A of this title regarding sanctionable acts to determine the appropriate level of sanction.

D. Corrective actions and penalties. Corrective actions and penalties may be assessed based on the following criteria as determined appropriate by the state administrative entity. The totality of the circumstances surrounding the occurrence of the sanctionable act or acts including severity, nature, duration, and extent including previous occurrences of sanctionable acts may also be considered. Additionally, efforts by the local board or sub-recipient to prevent the occurrence of the sanctionable act, including efforts to obtain technical assistance, training, or other assistance from the state or another entity, resolved monitoring findings, and efforts to prevent potential sanctionable acts may be considered. To assist the local board or sub-recipient in correcting any deficiencies, the state administrative entity may assess for each occurrence of a sanctionable act one or more of the following corrective actions or penalties.

(1) Participation in technical and quality assurance activities.

(2) Mandatory participation in training.

(3) On-site visits by the state administrative entity or its designee to monitor and assist with daily operations of a local board, local board's contractor, or sub-recipient.

(4) State administrative entity-developed and local board-implemented corrective action plan to address the weaknesses identified.

(5) Timely implementation of the corrective action plan.

(6) Submission of additional or more detailed financial or performance reports.

(7) Designation as a high-risk local board or sub-recipient requiring additional monitoring visits.

(8) Appearances by the local board's executive director, other administrative officer or the sub-recipient to report on activities and progress in state board meetings until performance is satisfactory.

(9) State administrative entity meetings with the local area's chief elected officials, local board chair, local board members, local board's executive director, or the sub-recipient.

(10) State administrative entity or its designee oversight and management of problem situations, such as the appointment of a steward.

(11) State administrative entity approval of specified actions (i.e.,

prohibition against entering into specific contracts or engaging in certain activities without explicit prior approval of the state administrative entity).

(12) Prohibiting the use of designated service providers, including state agencies and New Mexico workforce system operators.

(13) Payment by reimbursement only, with required supporting documentation.

(14) Delay, suspension, or denial of contract payments.

(15) Issuing a notice of intent to cease immediately reimbursement of local program costs.

(16) Ineligibility for additional discretionary or other funds.

(17) Contract cancellation or termination.

(18) Other actions deemed appropriate by the state administrative entity to assist the local board or sub-recipient in correcting deficiencies. More than one penalty may be assessed in response to one occurrence of a sanctionable act. The number and severity of penalties assessed for one or more occurrences of sanctionable acts may correlate with the sanction status level assigned to a local board or sub-recipient. If a local board or sub-recipient is already in sanction status when another sanctionable act occurs or is discovered, the state administrative entity may assign a higher level of sanction.

E. Corrective actions and penalties specific to WIA performance measures.

(1) **Penalties for first-year nonperformance.** If a local board fails to meet one or more local negotiated performance levels in a single program year based on annual performance outcomes, the local board shall develop a performance improvement plan within 45 days of the final performance outcome reported in the New Mexico annual report. The state administrative entity may also require the local board to modify its local plan or take other action designed to improve the local board's performance.

(2) **Penalties for second-year nonperformance.** If a local board fails to meet one or more local negotiated performance levels for the same performance measure(s) for a second consecutive program year, the state administrative entity will review the performance deficiencies and may make a recommendation to the governor to impose a reorganization plan for the local area. The state administrative entity recommendation to the governor for reorganization of a local area may include one or more of the following penalties be imposed: requiring modification of the local board's local plan; issuing a notice of intent to revoke all or part of the affected local

plan; restructuring the local board, including decertification of the current local board and a plan for appointment and certification of a new local board; or merging the local area into one or more other local areas.

(3) **Local board performance improvement plan.** The local board performance improvement plan for addressing the failure to meet performance shall include, at a minimum, the following.

(a) List of the performance measure(s) for which the local board failed to achieve at least 80% of the negotiated performance level.

(b) Detailed analysis and explanation of why the local board failed to achieve at least 80% of the negotiated level.

(c) Description of the corrective actions to be taken and the timeline for such actions to address performance deficiencies in subsequent program years.

(d) Identification of the technical assistance needed to support successful performance, including the source and type of assistance.

(e) Local board monitoring plan of its subrecipient(s) with timelines for evaluating effectiveness of corrective action plan.

(f) The local board performance improvement plan shall be submitted to the state administrative entity within 45 days of the final performance outcome reported in the New Mexico annual report and shall be fully implemented by the end of the current program year (June 30). The performance improvement plan may be modified by the state administrative entity in conjunction with the local board as deemed appropriate by state administrative entity.

F. Sanction determination.

(1) The state administrative entity determines whether a sanction will be assessed, including whether it is appropriate to place the local board or sub-recipient in a sanction status level and whether it is appropriate to assign a penalty.

(2) For local boards, the state administrative entity will send a written notice of sanction determination to the local board's executive director or administrative officer and the local board's chair. For other sub-recipients, the state administrative entity will send a written notice of sanction determination to its executive director.

(3) The sanction determination date of notice will be the date the sanction determination is sent to the local board or sub-recipient's executive director by certified mail. All notices of sanctions will be sent by certified mail, return receipt requested.

(4) The sanction determination will include the sanctionable act upon which the sanction was based; the sanction status level in which the local board or sub-recipient is placed and the conditions upon which the

local board or sub-recipient may be removed from sanction status; the penalty and the effective date of the penalty; the corrective action required, including the timeline for completing the corrective action; and the technical assistance requested from the state administrative entity or other entity to assist in completing the corrective action.

(5) The state administrative entity will send the sanction determination at least ten working days in advance of the effective date of the sanction.

G. Appeal. A local board or sub-recipient may appeal a sanction determination by filing a request for appeal of a sanction determination within 10 working days following the receipt of the sanction determination by the local board administrative entity. The appeal shall be in writing and filed in accordance with 11.2.21 NMAC.

H. Finality of decision. The decision of the DWS cabinet secretary is the final administrative decision unless within 30 days DWS assumes continuing jurisdiction to modify or correct the decision. [11.2.20.9 NMAC - Rp, 11.2.9.8 & 9 NMAC, 8-15-2012]

11.2.20.10 TECHNICAL ASSISTANCE: Technical assistance is vital in addressing performance and encouraging an environment of continuous improvement. The state administrative entity will assist the local board or sub-recipient with identification of technical assistance resources upon request. Subject to the availability of funds, local boards or sub-recipients may apply to the state administrative entity for funds to support technical assistance initiatives. Such funds will not be provided for administrative costs, staff salaries or benefits, out-of-state travel, meals or refreshments, capital equipment purchases, including computers or other equipment. Local boards or sub-recipients may not receive more funding for technical assistance than it would have been eligible to receive for performance incentive awards for the program year. Technical assistance may include, but is not limited to, training or support on the following.

- A. Improving assessment processes and methodology.
- B. Performance management and associated record-keeping.
- C. Case management.
- D. Monitoring of services and providers.
- E. Use of management information system.
- F. Follow-up services.
- G. Linkages with business, required workforce system partners and stakeholders.
- H. Restructuring of staff.
- I. Staff development.

[11.2.20.10 NMAC - Rp, 11.2.21.9 NMAC, 8-15-2012]

11.2.20.11 RESCISSIONS:
[RESERVED]

11.2.20.12 CONTACT ENTITY: Inquiries regarding this policy should be directed to the New Mexico DWS/state administrative entity.

[11.2.20.12 NMAC - Rp, 11.2.7.10, 9.9 & 21.10 NMAC, 8-15-2012]

11.2.20.13 DISTRIBUTION: Sstate board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal counsel, United States department of labor employment and training administration federal representative, and the New Mexico commission on public records.

[11.2.20.13 NMAC - Rp, 11.2.7.11, 9.10 & 21.11 NMAC, 8-15-2012]

HISTORY OF 11.2.20 NMAC:

History of Repealed Material:

11.2.7 NMAC, Workforce Investment Act (WIA) Performance Accountability Requirements, filed 6-16-2000 - Repealed effective 8-15-2012.

11.2.9 NMAC, Workforce Investment Act (WIA) Sanctions and Corrective Actions and Liability, filed 6-16-2000 - Repealed effective 8-15-2012.

11.2.21 NMAC, WIA Technical Assistance and Corrective Action - Local Workforce Development Board Failure to Meet Performance, filed 12-15-2005 - Repealed effective 8-15-2012.

**NEW MEXICO
DEPARTMENT OF
WORKFORCE SOLUTIONS**

**TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 21 WORKFORCE INVESTMENT ACT GRIEVANCE AND COMPLAINT RESOLUTION PROCEDURES**

11.2.21.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions (DWS)
[11.2.21.1 NMAC - N, 8-15-2012]

11.2.21.2 SCOPE: State workforce development board (state board), state administrative entity (SAE), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients, and workforce system

partners.
[11.2.21.2 NMAC - N, 8-15-2012]

11.2.21.3 STATUTORY AUTHORITY: [Title I of WIA and part of 20 CFR, Title 38 for veterans' programs, Wagner-Peyser Act, Trade Reform Act and regulations, citation(s) for NEG], NMSA 1978, Section 50-14-1 *et seq.*
[11.2.21.3 NMAC - N, 8-15-2012]

11.2.21.4 DURATION: Permanent.
[11.2.21.4 NMAC - N, 8-15-2012]

11.2.21.5 EFFECTIVE DATE: August 15, 2012, unless a later date is cited at the end of a section.
[11.2.21.5 NMAC - N, 8-15-2012]

11.2.21.6 OBJECTIVE: To establish procedures for processing complaint and grievance procedures as mandated by the Workforce Investment Act (WIA) and its regulations. These procedures apply to all levels of the New Mexico workforce system. This policy covers: 1) equal opportunity (EO) requirements; 2) discrimination EO grievance; 3) local and state WIA complaints; and, 4) criminal fraud and abuse complaints; Section 188 of the Workforce Investment Act
[11.2.21.6 NMAC - N, 8-15-2012]

11.2.21.7 DEFINITIONS: 29 C.F.R. Section 37.4 contains the definitions of the terms used in the implementation of nondiscrimination and equal opportunity requirements of the Workforce Investment Act. For convenience, some of the definitions found in that section are listed below. If a conflict exists between terminology, as defined in this policy and 29 C.F.R. Section 37.4, the definition in 29 C.F.R. Part 37.4 is controlling.

A. Applicant. An individual who is interested in being considered for Workforce Investment Act Title I financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request by a recipient.

B. Participant. An individual who has been determined to be eligible to participate in and who is receiving aid, benefits, services or training under a program authorized by Title I of Workforce Investment Act. Examples of who is a participant are listed in 29 C.F.R. 37.4. Participation will be deemed to commence on the first day, following determination of eligibility, on which the participant began receiving subsidized aid, benefits, services, or training provided under Title I of the Workforce Investment Act.

C. Recipient. An entity

to which financial assistance under the Workforce Investment Act Title I is extended, either directly or through the governor or through another recipient (including any successor, assignee, or transferee of a recipient) and any mandatory or discretionary partner, but excluding the ultimate beneficiaries of the Workforce Investment Act Title I funded program or activity. Recipients are listed in 29 C.F.R. 37.4.

D. Retaliation. Retaliation may include but is not limited to denial of right to oppose discrimination or participate in grievance or complaint procedure, harassment, intimidation denial of employment benefits, denial of training or employment opportunities, discharge, discipline, demotion, reassignment, unjustified evaluations and reports, acceleration of disciplinary actions. All persons are protected by law against retaliation because he/she has filed a grievance or complaint, testified, assisted, or participated in any manner in an investigation, review, proceeding, or hearing under this policy.

[11.2.21.7 NMAC - N, 8-15-2012]

11.2.21.8 BACKGROUND: Section 188 of the Workforce Investment Act provides that no individual will be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex, national origin, age, disability, or political affiliation or belief or, for any beneficiary, because of the beneficiary's citizenship status as a lawfully admitted immigrant authorized to work in the United States or for participation in any Workforce Investment Act Title I financially assisted program or activity. The federal regulations (29 C.F.R. Part 37) clarify the nondiscrimination and equal opportunity provisions of the Workforce Investment Act. Examples of discriminatory acts specifically prohibited, other than those based on a disability, are set forth in 29 C.F.R. Sections 37.6. The regulatory requirements associated with employment practices and communications with individuals with disabilities are set forth in 29 C.F.R. Sections 37.7, 37.8 and 37.9.

[11.2.21.8 NMAC - N, 8-15-2012]

11.2.21.9 EQUAL OPPORTUNITY REQUIREMENTS: References include the following: Public Law 105-220, Workforce Investment Act (WIA), 29 CFR, Part 37, 20 CFR Section 667.275, 20 CFR Section 667.600(g)(1)(2) and Training and Employment Information Notice (TEIN) No. 16-99.

A. R e c i p i e n t

requirements. Recipients of WIA Title I federal financial assistance have basic requirements which are summarized as follows.

(1) Designate an equal employment opportunity officer.

(2) Communicate equal employment opportunity policy and train staff to carry it out.

(3) Review all contracts, plans, and agreements for equal opportunity.

(4) Make efforts to provide equitable services among substantial segments of the eligible population.

(5) Ensure program and site access to individuals with disabilities.

(6) Collect and maintain data to examine discrimination.

(7) Monitor recipients for compliance.

(8) Receive and process discrimination complaints.

(9) Obtain corrective action or apply sanctions for violating nondiscrimination requirements.

B. Annual self-appraisal.

All WIA recipients shall perform an annual self-appraisal to ensure and document compliance with the above listed requirements. This will include completion by each local board and service providers of the five (5) accessibility checklists, set forth in USDOL Training and Information Notice no. 16-99, available on the web at: www.doleta.gov/directives.

[11.2.21.9 NMAC - Rp, 11.2.27.8 NMAC, 8-15-2012]

11.2.21.10 DISCRIMINATION AND EQUAL OPPORTUNITY GRIEVANCE:

A. Who may file.

(1) Any person who believes that either he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIA or its implementing regulations may file a written complaint, either by him/herself or through an authorized representative.

(2) WIA prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, discrimination on the basis of either citizenship or status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA title I financially assisted program or activity; Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin; section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, as amended, which prohibit discrimination against qualified individuals with disabilities; The Age Discrimination Act of 1975, as amended, which prohibits

discrimination on the basis of age; and Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

B. Time and place for filing.

(1) Discrimination complaints shall be filed within 180 days of the alleged discrimination. However, a complainant may petition the director of the civil rights center for an extension of the filing time.

(2) Discrimination complaints may be filed with a state or local administrative entity, service provider, one-stop operator or with the director of the civil rights center (CRC), U.S. department of labor, 200 Constitution Ave. NW, room N-4123, Washington D.C. 20210.

C. Time limit for completing complaint processing procedures.

The discrimination complaint processing procedures shall be completed and a written notice of final action issued within 90 calendar days from the date the complaint was filed.

(1) EO complaint process - step 1.

(a) Initial review of written complaints. Written complaints will be taken by the state or local administrative entity, service provider, or one-stop operator from the complainant or the complainant's designated representative. A written complaint shall include: the complainant's name and address; the identity of the individual or entity that the complainant alleges is responsible for the discrimination; a description of the complainant's allegations in enough detail to allow an initial determination of jurisdiction, timeliness and the apparent merit of the complaint; and the complainant's signature or the signature of the complainant's authorized representative.

(b) Record keeping. All complaints shall be logged. The log shall include: the name and address of the complainant; the basis for the complaint; a description of the complaint; the disposition and date of disposition of the complaint; and any other pertinent information. Information that could lead to the identification of the person filing the complaint shall be kept confidential.

(c) Jurisdiction of the discrimination complaint shall be determined. In order to have jurisdiction to process the discrimination complaint: the respondent against whom the complaint was filed shall be a WIA recipient; the complaint shall allege a basis for discrimination that is prohibited by WIA; and the complaint shall be filed within 180 calendar days of the alleged discrimination.

(d) Notice of lack of jurisdiction. If a determination is made that there is no jurisdiction to process the complaint, a notice of lack of jurisdiction shall be sent

to the complaint that includes the reason for the determination and notice that the complainant has the right to file a complaint directly with the civil rights center within 30 calendar days from receipt of the notice of lack of jurisdiction.

(e) Joint jurisdiction. Where the complaint alleges discrimination by a WIA recipient, or service provider on a basis that is prohibited by both WIA and by a civil rights law independently enforced by that WIA recipient or service provider, the complaint shall be referred to that WIA recipient or service provider for processing under their procedures. For example, WIA prohibits discrimination on the basis of national origin. If a discrimination complaint on the basis of national origin is made against a WIA recipient or service provider and they are also prohibited from discriminating on the basis of national origin, then the complaint will be referred to them for processing according to their own procedures. Notice shall be sent to the complainant about the referral.

(f) Sole jurisdiction. Where the complaint alleges discrimination by a WIA recipient or service provider on a basis that is prohibited by WIA and is not covered by a civil rights law independently enforced by that WIA recipient or service provider (e.g., political affiliation or belief, citizenship or participation in WIA Title I), the complaint shall be processed by that WIA recipient or service provider under these procedures. When it is determined that WIA has sole jurisdiction over the discrimination complaint, the complaint will be referred to the equal opportunity (EO) officer of the New Mexico department of workforce solutions as the state administrative entity.

(2) EO complaint process: step 2.

(a) Formal resolution. The EO officer shall send written notice to the complainant stating that the complaint has been received. The notice shall list the issues raised in the complaint and state for each issue whether it has been accepted for investigation or rejected and the reason for its rejection. The notice shall advise that the complainant has the right to be represented by an attorney or another person of the complainant's choice. The notice shall also give the complainant the right to choose between an alternative dispute resolution (ADR) process or hearing.

(b) ADR process. If the party filing the complaint requests to use the ADR process for resolving the complaint, the EO officer will request a mediator and monitor the processing of the complaint. The mediator will schedule mediation by written notice, mailed to all interested parties at least 7 calendar days prior to the first mediation session. The notice will include the date, time, and place of the mediation. The

mediation process shall be concluded within 45 calendar days from the date the complaint was filed. The complaint is considered resolved when all parties to the complaint enter into a written agreement resolving the issues raised in the complaint. The written agreement shall give notice that if the terms of the agreement are breached, the non-breaching party may file a complaint with CRC within 30 calendar days of the date the non-breaching party learns of the breach. If the parties do not reach an agreement, the EO officer will forward the complaint to an impartial hearing officer for a hearing.

(c) Hearing process. If the party filing the complaint requests a hearing to resolve the complaint, or if the ADR process fails to result in an agreement, the EO officer will forward the complaint to the impartial hearing officer and monitor the processing of the complaint. The hearing officer will schedule a formal hearing by written notice, mailed to all interested parties at least 7 calendar days prior to the hearing. The notice will include the date, time, and place of the hearing. The hearing shall be conducted within 60 calendar days from the date the complaint was filed. Parties may present witnesses and documentary evidence, and question others who present evidence and witnesses. Parties may be represented by an attorney or other designated representative, and may request that records and documents be produced. All testimony will be taken under oath or affirmation. The hearing will be recorded. The hearing officer's recommended resolution will include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based. The hearing officer's recommended resolution shall be completed and sent to the state administrative entity within 75 calendar days from the date the discrimination complaint was filed. The department of workforce solutions as state administrative entity will review the recommendation of the hearing officer and will issue a notice of final action within 90 calendar days from the date the discrimination complaint was filed.

(3) EO complaint process - Step 3: notice of final action. The notice of final action shall contain: the WIA recipient's decision on each issue and the reasons for the decision; a description of the way the parties resolved the issue; and notice that the complainant has the right to file an appeal with CRC within 30 calendar days from the date the notice of final action is issued if dissatisfied with the WIA recipient's final action on the complaint.

[11.2.21.10 NMAC - Rp, 11.2.27.8 NMAC, 8-15-2012]

11.2.21.11 LOCAL AND STATE WIA COMPLAINTS:

A. Program complaints

against local WIA programs and policies.

(1) Who may file. Applicants, participants, service providers, recipients and other interested parties, may file a complaint alleging a non-criminal violation of local WIA programs, agreements or the local workforce development board's policies and activities.

(2) Time and place for filing. Local program complaints shall be filed with the service provider or local administrative entity within 1 year from the date of the event or condition that is alleged to be a violation of WIA.

(3) Local complaint process - step 1 - initial review.

(a) Written complaints will be taken by the service provider or local administrative entity from the complainant or the complainant's designated representative. All complaints will be logged.

(b) If the complaint alleges a violation of any statute, regulation, policy, or program that is not governed by WIA, the complaint will be referred to the appropriate organization for resolution. Notice of the referral will be sent to the complainant.

(c) If the complaint is retained, a complaint file should be established that contains: all application and enrollment forms, if appropriate; the complaint statement and form; chronological log of events; relevant correspondence; and a record of the resolution attempted.

(4) Local complaint process: step 2 - informal resolution. An attempt should be made to informally resolve the complaint to the satisfaction of all parties. This informal resolution process shall be completed within 10 calendar days from the date the complaint was filed. If all parties are satisfied, the complaint is considered resolved. The terms and conditions of the resolution shall be documented in the complaint file.

(5) Local complaint process: Step 3 - formal resolution.

(a) When no informal resolution is possible, the service provider will forward the complaint and a copy of the file to the local administrative entity that will review the complaint file, conduct a further investigation if necessary, and issue a determination within 20 calendar days from the date the complaint was filed. If further review of the determination is not requested, the complaint is considered resolved. The complaint file should be updated to reflect the determination.

(b) Any party dissatisfied with the determination may request a hearing within 10 calendar days of the date of the determination. The local administrative entity will schedule the hearing and forward the program complaint to the impartial hearing officer for resolution. The local administrative entity will monitor the

processing of the complaint.

(6) Local complaint process: step 4 - hearing. The hearing officer will schedule a formal hearing by written notice, mailed to all interested parties at least 7 calendar days prior to the hearing. The notice will include the date, time, and place of the hearing. The hearing shall be conducted within 45 calendar days from the date the complaint was filed. Parties may present witnesses and documentary evidence, and question others who present evidence and witnesses. Parties may be represented by an attorney or another designated representative, and may request that records and documents be produced. All testimony will be taken under oath or affirmation. The hearing will be recorded. The hearing officer's recommended resolution will include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based.

(7) Local complaint process: step 5 - final decision. The local administrative entity will review the recommendation of the hearing officer and will issue a final decision within 60 calendar days from the date the complaint was filed.

(8) Local complaint process: step 6 - appeal.

(a) Any party dissatisfied with the final decision, or any party who has not received a decision or a final resolution within 60 calendar days from the date the complaint was filed, may file a request for review. A request for review shall be filed with the department of workforce solutions as the state administrative entity within 90 calendar days from the date the complaint was originally filed.

(b) The state administrative entity will review the record and issue a final decision on appeal within 30 calendar days from the date the appeal was received by the state administrative entity.

B. Program complaints against state WIA programs and policies.

(1) Who may file. Applicants, participants, service providers, recipients and other interested parties, may file a complaint alleging a non-criminal violation of statewide WIA policies, activities or agreements.

(2) Time and place for filing. Statewide program complaints shall be filed with the statewide service provider or state administrative entity within 1 year from the date of the event or condition that is alleged to be a violation of WIA.

(3) State complaint process: step 1 - initial review.

(a) Written complaints will be taken from the complainant or the complainant's designated representative. All complaints will be logged.

(b) When the complaint alleges a violation of local WIA programs, policies or

agreements, the complaint will be referred to the local administrative entity for processing under the complaint procedures for program complaints against local WIA programs. If the complaint alleges a violation of any statute, regulation, policy, or program that is not part of WIA, the complaint will be referred to the appropriate organization. Notice of the referral will be sent to the complainant.

(c) If the complaint is retained, a complaint file should be established that contains: the complaint statement and form; chronological log of events; relevant correspondence; and a record of the resolution attempted.

(4) State complaint process: step 2 - informal resolution. An attempt should be made to informally resolve the complaint to the satisfaction of all parties. This informal resolution process shall be completed within 10 calendar days from the date the complaint was filed. If all parties are satisfied, the complaint is considered resolved and the terms and conditions of the resolution shall be documented in the complaint file.

(5) State complaint process: step 3 - formal resolution.

(a) When no informal resolution is possible, the statewide service provider will forward the complaint together with a copy of the complaint file to the department of workforce solutions as state administrative entity who will review the complaint file, conduct a further investigation if necessary, and issue a determination within 20 calendar days from the date the complaint was filed. If further review of the determination is not requested, the complaint is considered resolved and the resolutions should be documented in the complaint file.

(b) Any party dissatisfied with the determination may request a hearing within 10 calendar days of the date of the determination. The state administrative entity will schedule the hearing and forward the program complaint to the impartial hearing officer for resolution. The state administrative entity will monitor the processing of the complaint.

(6) State complaint process: step 4 - hearing. The hearing officer will schedule a formal hearing by written notice, mailed to all interested parties at least 7 calendar days prior to the hearing. The notice will include the date, time, and place of the hearing. The hearing shall be conducted within 45 calendar days from the date the complaint was filed. Parties may present witnesses and documentary evidence, and question others who present evidence and witnesses. Parties may be represented by an attorney or another designated representative, and may request that records and documents be produced. All testimony will be taken under oath or affirmation.

The hearing will be recorded. The hearing officer's recommended resolution will include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based.

(7) Step 5 - final decision. The state administrative entity will review the recommendation of the hearing officer and will issue a final decision within 60 calendar days from the date the complaint was filed.

[11.2.21.11 NMAC - Rp, 11.2.26.8 NMAC, 8-15-2012]

11.2.21.12 CRIMINAL FRAUD AND ABUSE: Information and complaints involving criminal fraud, waste, abuse or other criminal activity shall be reported immediately to the state administrative entity or to the Regional Inspector General for Investigations, U.S. Department of Labor, 525 Griffin Street, Dallas, TX 75202 with a copy simultaneously provided to the Employment and Training Administration: Administrator, Employment and Training Administration, United States Department of Labor, Griffin Street, Dallas, Texas 75202. [11.2.21.12 NMAC - Rp, 11.2.26.8 NMAC, 8-15-2012]

11.2.21.13 REVISIONS: [RESERVED] [11.2.21.13 NMAC - N, 8-15-2012]

11.2.21.14 CONTACT ENTITY: Inquiries regarding this rule should be directed to the New Mexico department of workforce solutions/state administrative entity. [11.2.21.14 NMAC - Rp, 11.2.26.9 & 27.9 NMAC, 8-15-2012]

11.2.21.15 DISTRIBUTION: State board chair, DWS/state administrative entity, local board chairs, local administrative entities, local board sub-recipients, DWS/state administrative legal counsel, United States department of labor employment and training administration federal representative, and, the New Mexico commission on public records. [11.2.21.15 NMAC - Rp, 11.2.26.10 & 27.10 NMAC, 8-15-2012]

HISTORY OF 11.2.21 NMAC:

History of Repealed Material:

11.2.15 NMAC, Workforce Investment Act (WIA) Grievance Procedures, filed 6-23-2000 - Repealed effective 12-31-2005.

11.2.21 NMAC, WIA Technical Assistance and Corrective Action - Local Workforce Development Board Failure to Meet Performance, filed 12-15-2005 - Repealed effective 8-15-2012.

11.2.26 NMAC, WIA Program Complaint Resolution Procedures and Procedures for Reporting Criminal Fraud and Abuse, filed

12-15-2005 - Repealed effective 8-15-2012.
11.2.27 NMAC, WIA Equal Opportunity Requirements and Discrimination Complaint Resolution Procedures, filed 12-15-2005 - Repealed effective 8-15-2012.

End of Adopted Rules Section

Submittal Deadlines and Publication Dates 2012

Volume XXIII	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 17
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Issue Number 3	February 1	February 15
Issue Number 4	February 16	February 29
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