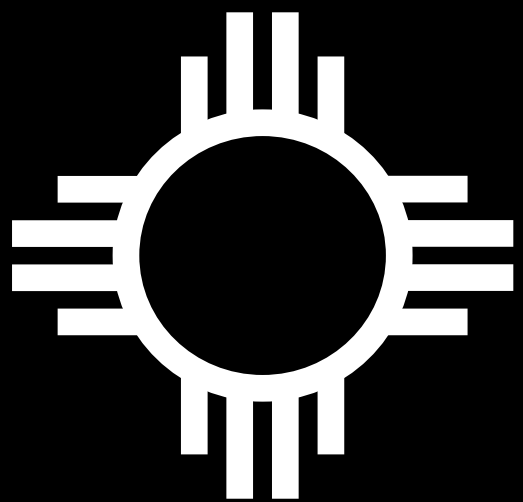


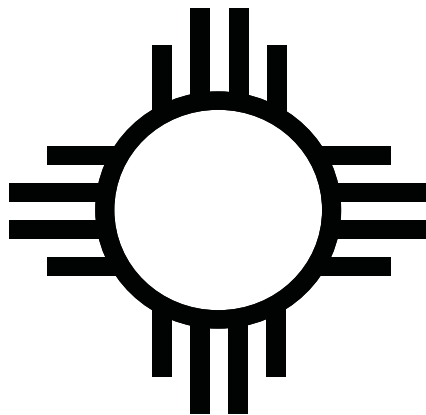
**NEW
MEXICO
REGISTER**



Volume XXIII
Issue Number 16
August 30, 2012

New Mexico Register

Volume XXIII, Issue Number 16
August 30, 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
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2012

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New Mexico Register

Volume XXIII, Number 16

August 30, 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.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND REGULAR MEETING

On October 10, 2012, at 5:30 pm, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM.

The hearing will address: Proposal to Amend 20.11.47 NMAC, *Emissions Inventory Requirements*, Incorporate Said Amendments into the New Mexico State Implementation Plan For Air Quality (SIP) and Repeal 20.11.48 NMAC, *Greenhouse Gas Emissions Reporting*. The Air Quality Division (AQD) of the City of Albuquerque Environmental Health Department is proposing these amendments for the following reasons:

1. The Air Board adopted 20.11.47 NMAC, *Emissions Inventory Requirements*, on March 12, 2008, which became effective on May 1, 2008. This new rule was adopted to facilitate the efficient collection and reporting of emissions inventory (EI) data from sources within Bernalillo County. These inventories are required by 40 CFR 51 Subpart A, entitled *Emissions Inventory Reporting Requirements*, as well as the consolidated emissions rule (CER). Before this rule the Division collected this data under the aegis of the individual source's permit or through data requests. This rule standardized the methodology and format for EI reporting. This rule also provided baseline data for specific air pollutants for specific area and source categories in order to analyze the conditions in our air shed. This information provides a basis for planning of future regulations and policies. This rule also provided consistency in EI reporting for sources in Bernalillo County and the rest of the state by mirroring provisions found in the State's rule 20.2.87 NMAC, *GHG Emissions Reporting*.

2. The Air Board adopted 20.11.48 NMAC, *Greenhouse Gas Emissions Reporting*, on November 29, 2007, which became effective on January 1, 2008. The purpose of 20.11.48 NMAC was to provide

a mechanism for measuring and reporting emissions of GHGs, thereby facilitating the collection of information that could provide a basis for policy decisions; enhance the County-wide GHG EI first compiled in 2005; and prepare GHG-emitting facilities for participating in a market-based emissions reduction program. 20.11.48 NMAC currently requires owners and operators of three categories of stationary facilities within Bernalillo County to submit annual GHG emissions reports to the Division. These categories are:

(a) electrical generating facilities with nameplate capacity to generate equal to or greater than 25 megawatts of electricity (presently only two facilities in Bernalillo County are in this category: the Public Service Company of New Mexico and Delta Power);

(b) petroleum refining facilities with the industry classification code specified in 20.11.48 NMAC (however no such oil and gas production facility operates in Bernalillo County, and no such petroleum refining facility is expected to ever operate within Bernalillo County); and

(c) cement manufacturing facilities that meet the requirements of 20.11.48 NMAC (which applies only to one facility in Bernalillo County: the GCC Rio Grande Portland cement facility located in Tijeras Canyon). [20.11.48.200.A NMAC].

3. In the interim since these two rules were adopted, there have been two dramatic changes in the area of GHG EI reporting. First on October 30, 2009, the EPA promulgated their 'Mandatory Reporting of GHG Final Rule' [Federal Register Vol. 74, NO. 209, 56260-56519], effective December 29, 2009, codified at 40 CFR 98, entitled *Mandatory GHG Reporting*. This rule encompasses all of the GHG EI reporting requirements of 20.11.48 NMAC, as well as the reporting requirements for GHGs in 20.11.47 NMAC; thereby causing sources to report to both the Division and EPA, with two different reports each containing different information which results in duplicative and redundant information and places an unnecessary burden on the sources. Secondly, the New Mexico Environmental Improvement Board (EIB) has repealed their rules addressing GHGs, specifically 20.2.300 NMAC, *Reporting of Greenhouse Gas Emissions* (a/k/a 20.2.87 NMAC, *GHG Emissions Reporting*), upon which 20.11.48 NMAC was modeled. The Air Act requires the City of Albuquerque and the County of Bernalillo to enact enabling ordinances that provide for local Air Board regulations that are as "stringent as" the regulations adopted by the EIB [NMSA 74-2-4.C]. Since the EIB has repealed its' GHG

program, there are no longer any EIB rules addressing GHG EI reporting that the Air Board must be as 'stringent as'. Therefore, the Divisions is proposing to remove all provisions requiring local GHG emissions reporting [i.e. 20.11.47.15 NMAC] as well as concomitant definitions regarding GHGs from 20.11.47.7 NMAC, as well as repealing 20.11.48 NMAC in its entirety.

4. The use of the terms: "air contaminants" and "regulated air contaminant", are internally inconsistent within 20.11.47 NMAC, and so are proposed to be superseded by the term "regulated air pollutant" for clarity.

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the Proposal to Amend 20.11.47 NMAC, *Emissions Inventory Requirements*, Incorporate Said Amendments into the New Mexico State Implementation Plan For Air Quality (SIP) and Repeal 20.11.48 NMAC, *Greenhouse Gas Emissions Reporting*.

The Air Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Air Board to administer and enforce the CAA and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards and regulations.

Hearings and meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony is required by 20.11.82 NMAC, *Rulemaking Procedures - AQCB*, to submit a written Notice Of Intent (NOI) before 5:00 pm on September 25, 2012 to: Attn: October Hearing Record, Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW. The NOI shall identify the person's name, address and affiliation.

Non-technical testimony may be provided at the hearing pursuant to 20.11.82.22 NMAC, but to ensure adequate time for review of

submitted testimony, the AQD requests that written comments to be incorporated into the public record be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on October 3, 2012. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to nbutt@cabq.gov and shall include the required name and address information.

Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or by phone 768-2660, or by e-mail at nbutt@cabq.gov, or by downloading a copy from the City of Albuquerque Air Quality Division website.

NOTICE FOR PERSON WITH DISABILITIES: If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

NOTICE OF PUBLIC HEARING 8.15.2 NMAC

The Children, Youth and Families Department (CYFD), Early Childhood Services (ECS), will hold a formal public hearing on Monday, October 1, 2012 at 11:00 a.m. in Apodaca Hall on the second floor of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico, to receive public comments regarding changes to regulations 8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers and 8.16.2 NMAC Child Care Licensing, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs.

The proposed regulation changes may be obtained at www.newmexicokids.org or by calling 505-827-7499 or 1-800-832-1321. Interested persons may testify at the hearing or submit written comments by no later than 5:00 p.m. on October 1, 2012. Written comments will be provided the same consideration as oral testimony given

at the hearing. Written comments should be emailed to policyinput.ecs@state.nm.us or addressed to: Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-827-9978. For questions regarding the proposed regulation changes, please call 505-827-7499 or 1-800-832-1321.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please call 505-827-7499. ECS requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NOTICIA DE AUDICIÓN PÚBLICA 8.15.2 NMAC

El Departamento de Children, Youth and Families, Servicios de Niñez Temprana, tendrá una audición formal para el público el lunes día 1 de octubre 2012, a las 11:00 de la mañana en el salón Apodaca Hall en el segundo piso del Edificio de PERA localizado en 1120 Paseo de Peralta, Santa Fe, New Mexico, para recibir comentarios públicos con respecto a cambios propuestos a las regulaciones NMAC 8.15.2 Licencias de Guarderías, Centros de Guardería, Programas de Fuera de Escuela, Guardería en Casa y otros Programas de Niñez Temprana y Educación.

Los cambios propuestos de la regulación pueden ser obtenidos en www.newmexicokids.org o por llamar al 800-832-1321. Las personas interesadas pueden testificar en la audición o someter comentarios escritos hasta las 5:00 de la tarde el día 1 de octubre de 2012. Los comentarios escritos se dará la misma consideración como testimonio oral en la audición. Los comentarios escritos deben ser enviado por correo electrónico a policyinput.ecs@state.nm.us o dirigidos a: Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax #: 505-827-9978. Preguntas con respecto a los cambios propuestos de regulación, llamar por favor al 505-827-7499 o 1-800-832-1321.

Si es una persona con una incapacidad y usted requiere esta información en un formato alternativo o requiere acomodaciones especiales a tomar parte en la audición pública, comunicase por favor con Early Childhood Services at 800-832-1321. CYFD requiere aviso de las peticiones por lo menos 10 días antemano para proporcionar formatos alternativos y acomodaciones especiales.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION LOCAL GOVERNMENT DIVISION

Notice of Hearing of Amendments to Rule 2.110.2 NMAC Small Cities Community Development Block Grants

New Mexico Department of
Finance and Administration

The Department of Finance and Administration ("DFA") hereby gives notice that DFA will conduct a public hearing, during the Community Development Council meeting in room 317, State Capital Building, 415 Old Santa Fe Trail, Santa Fe, NM, 87501, on October 3, 2012 at 9:00 a.m., concerning amendments to the following regulations: 2.110.2.07 NMAC, 2.110.2.14 NMAC, 2.110.2.15 NMAC, 2.110.2.16 NMAC, 2.110.2.17, NMAC, 2.110.2.19, NMAC, 2.110.2.26 NMAC, Attachment 2.110.2.14 NMAC, 2.110.2.16 NMAC, 2.110.2.17 NMAC, Small Cities Development Block Grants (hereinafter collectively referred to as the "CDBG Rule").

Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m. on September 30, 2012, to the Office of the Secretary, DFA, Bataan Memorial Building, Room 180, and Santa Fe, New Mexico, 87501. All written and oral testimony will be considered prior to adoption of the amendments. Copies of the text of the proposed CDBG Rule are available from Ms. Dolores Gonzales, Local Government Division, Bataan Memorial Building, Santa Fe, New Mexico, 87501, or at 505-827-4972, or from the DFA internet website: <http://www.dfaintranet/indexdfa.html>

NEW MEXICO LIVESTOCK BOARD

NEW MEXICO LIVESTOCK BOARD

NOTICE OF RULE MAKING AND ADOPTION OF RULE HEARING AND REGULAR BOARD MEETING

NOTICE IS HEREBY GIVEN that a rule making and adoption of rule hearing and a regular board meeting will be held on Monday, September 17, 2012, Silver Square Plaza, 625 Silver Ave., SW, (metered parking), first floor conference room, Albuquerque, New Mexico at 9:00 a.m. The Board will initiate rule changes regarding Use of Livestock Drugs and Biologicals, Transportation of Livestock, and Animal

Enterprise Protection and discuss other matters of general business.

Copies of the rule and agenda can be obtained by contacting Myles C. Culbertson, Executive Director, New Mexico Livestock Board, 300 San Mateo NE Suite 1000, Albuquerque, NM 87108-1500, (505) 841-6161. Interested persons may submit their views on the proposed rule to the Board at the above address and/or may appear at the scheduled hearing and make a brief verbal presentation of their view.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting or need to make handicap parking arrangements, please contact the New Mexico Livestock Board at (505)841-6161 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the New Mexico Livestock Board if a summary or other type of accessible formats is needed.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

Case No. 12-00200-UT

PROPOSED RULEMAKING REGARDING REPORTING REQUIREMENTS FOR ELECTRIC UTILITIES UNDER 17.5.440.9NMAC.

NOTICE OF PROPOSED RULEMAKING

THIS MATTER comes before the New Mexico Public Regulation Commission upon the June 25, 2012 filing of the *Joint Petition To Initiate Rulemaking To Amend Reporting Requirements For Electric Utilities Under 17.5.440.9 NMAC* by Public Service Company of New Mexico ("PNM"), the Commission's Utility Division Staff ("Staff"), New Mexico Industrial Energy Consumers ("NMIEC"), and Southwestern Public Service Company ("SPS") (collectively "Joint Petitioners"); whereupon, having reviewed the Joint Petition and being duly informed,

THE COMMISSION FINDS AND CONCLUDES:

1. On June 25, 2012, Joint Petitioners filed their Joint Petition, asking the Commission to issue a Notice of Proposed Rulemaking ("NOPR") pursuant to 1.2.2 NMAC, et. seq. to amend Rule 17.5.440.9 NMAC as provided by the Final Order Partially Approving Certification of Stipulation issued August 8, 2011 in Case No.10-00086-UT and the Final Order Adopting Amended Certification of Stipulation dated December 28, 2011 in Case No. 10-00395-UT.

2. The Petitioners propose that 17.5.440.9.A(2) NMAC be amended to increase the cost threshold for reporting on planned transmission and distribution projects from \$250,000 to \$500,000 and that 17.5.440.9.A(3) NMAC be amended to require reports on all generation projects where the utility's share of the projected costs exceed \$1,000,000, regardless of the size of the affected plant or whether such projects increase or decrease generating capacity.

3. Joint Petitioners explain that their proposal to amend 17.5.440.9.A(2) NMAC to increase the threshold amount for reporting on transmission and distribution projects from \$250,000 to \$500,000 is appropriate because of the effects of inflation since the rule was adopted. The current threshold amount of \$250,000 requires reporting on many routine projects that have no significant effect on rates. This creates an unnecessary administrative burden on the utilities and Staff. The proposed amendment, according to the Joint Petitioners, would lessen this undue burden by increasing the threshold for review to \$500,000.

4. Joint Petitioners further explain that over the past few years, PNM and Staff have disagreed on the scope of Paragraph (3) of Subsection A of Section 9 of Rule 17.5.440 NMAC. Through the requested NOPR, the Joint Petitioners seek to have the Commission promulgate the stipulated amendment to clarify the requirements of this provision and to bring it up-to-date.

5. According to the Joint Petitioners, under the proposed amendment to 17.5.440.9.A(3) NMAC, utilities would be required to report on all planned generating plant additions costing \$1,000,000 or more, regardless of the size of the facility to which the addition will be made or whether or not the addition will affect the generating capacity of the facility.

6. The Commission, having jurisdiction over the subject matter of the Joint Petition, finds that a rulemaking should be initiated, and that the rule submitted for consideration by the Joint Petitioners should be noticed as the Commission's Proposed Rule.

IT IS THEREFORE ORDERED:

A. A rulemaking is hereby initiated for the purpose of consideration for the proposed rule, a copy of which is attached hereto as Exhibit A.

B. A public hearing shall be held before the Commission en banc beginning at **10:00 a.m. or immediately after the regular open meeting**, whichever occurs earlier, on **Thursday, October 25, 2012**, at the offices of the Commission, at the following location:

**PERA Building
4th Floor Hearing Room
1120 Paseo de Peralta
Santa Fe, New Mexico 87501
Tel. 1-888-427-5772**

C. Initial comments shall be due on **September 25, 2012**. Response comments shall be due on **October 9, 2012**.

D. The record in this case shall close at the conclusion of the hearing, unless otherwise ordered by the Commission.

E. This Notice of Proposed Rulemaking, without Exhibit A, shall be published in at least two newspapers of regular 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.

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

G. Copies of this Order shall be served, electronically to all persons whose e-mail addresses are known, or otherwise by regular mail, on all persons listed on the attached Certificate of Service.

H. This Order is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 7th day of August, 2012.

NEW MEXICO PUBLIC REGULATION COMMISSION

PATRICK H. LYONS, CHAIRMAN
THERESA BECENTI-AGUILAR, VICE CHAIRMAN
JASON A. MARKS, COMMISSIONER
DOUGLAS J. HOWE, COMMISSIONER
BEN L. HALL, COMMISSIONER

NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

BEFORE THE NEW MEXICO PUBLIC UTILITY COMMISSION

**IN THE MATTER OF ADOPTION OF A PROPOSED)
RULE REGARDING ANNUAL AUDITED)
FINANCIAL REPORTS AND AMENDMENTS TO) 11-00410-IN
THE RULES REGARDING PROPERTY AND)
CASUALTY ACTUARIAL OPINIONS)**

AMENDED 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 disallowing certain conduct by insurers in connection with the preparation of financial audits, and to amend the rules for exempting property and casualty insurers from the requirement to file annual statements of actuarial opinion, which will be codified at 13.2.25, 26, 27, 28 NMAC, and 13.2.9.8 NMAC, respectively. (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 adoption of a new rule disallowing certain conduct by insurers in connection with the preparation of financial audits is being proposed in order to incorporate provisions of the National Association of Insurance Commissioners' Annual Financial Reporting Model Regulation.

3. The amendment of the rules for exempting property and casualty insurers from the requirement to file annual statements of actuarial opinion is being proposed in order to customize generic language contained in the National Association of Insurance Commissioners' Property and Casualty Actuarial Opinion Model Law and to require that such requests be made in writing in a timely manner.

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

5. 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 24, 2012**. Any response comments shall be filed no later than **October 1, 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.

6. 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:

Nick Guillen
Records and Docketing Division
New Mexico Public Regulation Commission
Attention: Case No. 11-00410-IN
1120 Paseo de Peralta
PO Box 1269
Santa Fe, NM 87504-1269

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

8. The Superintendent will review all timely submitted written comments and will hold a public comment hearing beginning at **1:30 p.m. on October 17, 2012**, at the Superintendent of Insurance, Public Regulation Commission Hearing Room, 4th Floor Hearing Room, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

9. 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.

10. 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 16, 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.

11. 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 24, 2012** and written response comments must be filed by **October 1, 2012**.

D. A public hearing on the proposed rule amendments shall be held beginning at 1:30 p.m. on **October 17, 2012** at the offices of the Superintendent, at the following location:

Superintendent of Insurance
4th Floor 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 Alan Seeley, Actuary, Insurance Division, to preside over this matter and to take all action necessary and convenient thereto within the limits of his 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 16th day of August, 2012

JOHN G. FRANCHINI
Superintendent of Insurance

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

**STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES
DIVISION**

Regulation and Licensing Department

NOTICE OF PUBLIC HEARINGS

Public hearings on the proposed changes to the following CID Rules: 19.15.40.15G and 19.15.40.12B NMAC New Mexico Liquefied Petroleum Gas Standard:

October 17, 2012, 9:00 a.m. – 12:00 p.m.:
Santa Fe, NM – CID Conference Room, 2550 Cerrillos Road, Santa Fe, NM.

October 17, 2012, 9:00 a.m. – 12:00 p.m.:
Las Cruces, NM – CID Conference Room, 505 South Main Street, Suite 150, Las Cruces, NM.

October 17, 2012, 9:00 a.m. – 12:00 p.m.:
Albuquerque, NM – CID Conference Room, 5200 Oakland Avenue NE, Albuquerque, NM.

Copies of the proposed rules are currently available on the Construction Industries Division's website: www.rld.state.nm.us/construction and at the CID office in Santa Fe, Albuquerque, and Las Cruces. You are invited to attend and express your opinion on these proposed rule changes. If you cannot attend the meeting, you may send your written comments to the Construction Industries Division 5200 Oakland Ave. NE, Albuquerque, NM 87113, Attention: Public Comments – Michael J. Burger, Jr., FAX (505) 765-5670. **All comments must be received no later than 5:00 p.m., on October 15, 2012. If you require special accommodations to attend the hearing, please notify the Division by phone or fax, of such needs no later than October 10, 2012.** Telephone: 505-476-4700. Fax No. 505-765-5670.

**End of Notices and Proposed
Rules Section**

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Adopted Rules

NEW MEXICO OFFICE OF THE ATTORNEY GENERAL

The New Mexico Attorney General repeals its rule entitled "NEGOTIATING A SALE IN A LANGUAGE OTHER THAN ENGLISH" 12.2.9 NMAC (filed 09/01/09). The repeal is immediately effective upon publication on August 30, 2012.

NEW MEXICO CULTURAL PROPERTIES REVIEW COMMITTEE

TITLE 4 C U L T U R A L RESOURCES CHAPTER 10 C U L T U R A L PROPERTIES AND HISTORIC PRESERVATION PART 18 STATE REGISTER OF CULTURAL PROPERTIES

4.10.18.1 ISSUING AGENCY: Cultural Properties Review Committee (CPRC). Contact the State Historic Preservation Division, Department of Cultural Affairs.
[4.10.18.1 NMAC - N, 10/1/12]

4.10.18.2 SCOPE: This rule applies to all public and private entities including but not limited to individuals, corporations, partnerships, trusts, associations, educational institutions, foundations, museums, state agencies, political subdivisions of the state and any agency of the federal government proposing to nominate properties of historical, archaeological, scientific, architectural or other cultural significance for listing in the New Mexico (state) register of cultural properties.
[4.10.18.2 NMAC - N, 10/1/12]

4.10.18.3 STATUTORY AUTHORITY: NMSA 1978, Section 18-6-5 of the Cultural Properties Act.
[4.10.18.3 NMAC - N, 10/1/12]

4.10.18.4 DURATION : Permanent.
[4.10.18.4 NMAC - N, 10/1/12]

4.10.18.5 EFFECTIVE DATE: October 1, 2012, unless a later date is cited at the end of a section.
[4.10.18.5 NMAC - N, 10/1/12]

4.10.18.6 OBJECTIVE: This rule describes procedures and requirements for listing properties of historical, archaeological, scientific, architectural

or other cultural significance in the state register of cultural properties.
[4.10.18.6 NMAC - N, 10/1/12]

4.10.18.7 DEFINITIONS:

A. **"Building"** means a structure created principally to shelter any form of human activity. Buildings include, but are not limited to, houses, barns, stables, sheds, garages, warehouses, courthouses, city halls, social halls, commercial buildings, libraries, factories, mills, train depots, motels, theaters, schools, stores and churches. Buildings may refer to a historically related complex such as a court house and jail or a house and barn.

B. **"Chief elected local official"** means the mayor, county judge, county executive or otherwise titled chief elected administrative official who is the elected head of the local political jurisdiction in which the property is located.

C. **"CPRC"** means the cultural properties review committee, created pursuant to NMSA 1978, Section 18-6-4 and serves as the New Mexico state review board pursuant to 36 CFR 60.3(o).

D. **"Cultural property"** or **"cultural resource"** means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

E. **"District"** means a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

F. **"Historic preservation division"** or **"HPD"** means the division within the department of cultural affairs created pursuant to NMSA 1978, Section 18-6-8A and NMSA 1978, Section 9-4A-4 with offices located at 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501.

G. **"HPD website"** means <http://nmhistoricpreservation.org>.

H. **"Keeper of the national register of historic places"** or **"keeper"** means the individual who has been delegated the authority by the national park service to list properties and determine their eligibility for listing in the national register pursuant to 36 CFR 60.3(f).

I. **"National register"** means the national register of historic places established by the National Historic Preservation Act, 16 U.S.C. 470a(a) and the official national list of historic districts, sites, buildings, structures and objects significant in American history, architecture,

archaeology, engineering or culture.

J. **"New Mexico register nomination form"** means the form prescribed by the CPRC with maps and photographs that is presented to the CPRC for decision on registration.

K. **"Object"** means a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

L. **"Owner"** means those individuals, partnerships, corporations or public agencies holding fee simple title to property as recorded by the county clerk's office. Owner, as used in this rule, does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature.

M. **"Place"** means an identifiable geographic location that possesses cultural or historic significance including districts and sites, as appropriate.

N. **"Registered cultural property"** means a cultural property placed in the state register. A registered cultural property may be listed individually or as significant or contributing within a district.

O. **"Registration order"** means the form prescribed by the CPRC, and completed by the HPD at the direction of the CPRC documenting its decision on registration.

P. **"Site"** means the location of a significant event, or a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical, cultural or archaeological value regardless of the value of any existing structure.

Q. **"State agency"** means a department, agency, institution or political subdivision of the state.

R. **"State historic preservation officer"** or **"SHPO"** means the individual designated by the governor pursuant to the National Historic Preservation Act, 16 U.S.C. 470a(b) and the director of the historic preservation division of the department of cultural affairs, as provided for in NMSA 1978, Section 18-6-8.

S. **"State register"** means the official New Mexico register of cultural properties maintained by the CPRC for the purpose of recording cultural properties worthy of preservation pursuant to NMSA 1978, Section 18-6-3.

T. **"Survey"** means a visual inspection to examine, identify, record, evaluate and interpret cultural properties.

U. **"Structure"** means

an engineered construction made up of interdependent and interrelated parts in a definite pattern of organization. In addition to buildings, structures include bridges, dams, canals, wells and other engineering works.

[4.10.18.7 NMAC - N, 10/1/12]

4.10.18.8 NOMINATION AND LISTING IN THE STATE REGISTER:

In 1969, the Cultural Properties Act, NMSA 1978, Sections 18-6-1 to -17 created an official New Mexico register of cultural properties (official or state register). The state register is made up of structures, buildings, places, sites, districts and objects with historic, archaeological, scientific, architectural or other cultural significance that are examples of the historic and cultural heritage of New Mexico. Registered cultural properties are of national, state or local significance and have an inherent value to the people of New Mexico who have an interest in their preservation, protection and enhancement.

A. The CPRC reviews completed New Mexico register nominations and is the sole entity that determines which properties are worthy of registration and listing in the state register. The CPRC also reviews national register nominations and recommends to the SHPO whether the nomination should be forwarded to the keeper of the national register. When a cultural property is nominated for listing in the state register and also recommended for listing on the national register at the same CPRC meeting, an applicant may submit a single nomination on the national register nomination form for CPRC review.

B. The CPRC's decision to list a cultural property on the state register is made at an open meeting held pursuant to 4.10.3 NMAC and the CPRC's current open meetings resolution.

C. The New Mexico register nomination form approved by the CPRC includes the descriptive and analytical information used by the CPRC to determine whether the cultural property meets the registration criteria. Blank copies of the nomination form are available from the HPD offices and downloadable from the HPD website.

D. Any person or organization may submit a New Mexico register nomination to the SHPO for consideration by the CPRC. The applicant identified thereon shall be responsible for completing the nomination.

(1) The SHPO shall not forward any nomination for review and evaluation by the CPRC if the nomination is incomplete, does not meet technical or professional standards, or if the SHPO determines that the property does not meet the criteria specified in this rule. An incomplete nomination

will be returned with an explanation of the deficiencies that need to be addressed and corrected.

(2) When a New Mexico register nomination is complete, the SHPO shall:

(a) add the nomination to the agenda for the next appropriate CPRC meeting;

(b) notify the applicant, the owner, and chief elected local official, at least 30 days prior to the CPRC meeting, of the date, time and place where the nomination is to be considered; any person will have the opportunity to be heard, present evidence and provide written comments prior to or at the meeting as set forth in 4.10.18.9 NMAC; and

(c) post the nomination to the HPD website and make the nomination available at the HPD offices a minimum of 14 days prior to the CPRC meeting; information in the nomination concerning the location of archaeological sites and similar properties will be redacted from the nomination made available to the public pursuant to Section 18-6-11.1.

(3) The CPRC shall accept, reject or defer the nomination based on criteria defined in 4.10.18.11 NMAC. The SHPO shall notify the applicant, the owner and the chief elected local official of the CPRC's action on the nomination within 14 days of the meeting.

(a) After the CPRC issues the order, accepting or rejecting the nomination, SHPO shall post the order and the nomination to the HPD website and make them available at the HPD offices for a 30-day review period from the date of posting.

(b) The CPRC shall not take any action on the registration order during the 30-day review period, unless the CPRC votes to waive the review period if requested by the nominating property owner, as described in Subparagraph (c) of Paragraph (3) of Subsection D of 4.10.18.8 NMAC or if a petition is filed pursuant to Paragraph (4) of Subsection D of 4.10.18.8 NMAC. Signing of the New Mexico register nomination form by the chair of the CPRC or his designee constitutes formal registration and listing in the state register.

(c) Before the CPRC may vote to waive the 30-day review period, the owner must either file a waiver request and submit an application to the CPRC to participate in the state income tax credit program for the restoration, rehabilitation or preservation of registered cultural properties simultaneously with the nomination and the CPRC approves the tax credit at the same meeting, or submit an application to the SHPO to participate in the historic preservation loan fund at the same time the nomination form is submitted to the CPRC.

(d) Deferred nominations will be forwarded to the applicant with an

explanation of the reasons for deferral and the actions which must be taken before the nomination can be reconsidered.

(e) Rejected nominations will be forwarded to the applicant with an explanation of the reasons for the rejection.

(4) The applicant, owner, chief elected local official or members of the public may petition the CPRC to reconsider the registration order to accept or reject a nomination for registration and listing in the state register. The petitioner shall explain the reason or reasons for the petition and the relief sought from the CPRC.

(a) The petition shall be filed with the SHPO during the registration order 30-day review period.

(b) The SHPO shall provide written acknowledgment to petitioner within five business days of receiving the petition.

(c) The SHPO shall place the petition on the agenda for the next appropriate CPRC meeting and notify the petitioner, the owner and chief elected local official, at least 30 days prior to the CPRC meeting, of the date, time and place of the CPRC meeting where the petition will be heard.

(d) The petitioner, the owner, chief elected local official or the public shall have the right to be heard and present evidence at the CPRC meeting and provide written comments prior to the meeting as set forth in 4.10.18.9 NMAC.

(e) The CPRC shall issue a final registration order to accept or reject the nomination. This registration order constitutes a final decision for purposes of initiating any judicial review. The registration order will be posted to the HPD website and mailed to parties as required. Pursuant to rule 1-075 NMRA, an aggrieved party may file a petition for writ of certiorari in the district court within 30 days following the issuance of the final registration order.

(5) A property in New Mexico listed in the national register that has not undergone CPRC review shall automatically be listed in the state register by the SHPO. No further CPRC review is required.

[4.10.18.8 NMAC - N, 10/1/12]

4.10.18.9 PUBLIC NOTICE FOR CULTURAL PROPERTIES WITH MULTIPLE OWNERS:

A. The SHPO shall provide written notice to the applicant, the chief elected local official, and the owners of the cultural property, including private property owners within the district or site, setting forth the date, time and place of the CPRC meeting at which a nomination will be considered. The written notice will be mailed at least 30 days before the CPRC meeting. The notice will be sent by first class mail to the last known address as recorded by the county clerk's office. Everyone present at

the meeting will have the opportunity to be heard and present evidence. The owners will be invited to provide written comments prior to the meeting and may concur or object in writing to the nomination of the cultural property.

B. The SHPO may provide general notice for a nomination where 50 or more owners' names appear on the county clerk's records. The general notice shall be published twice in one or more newspapers of general circulation in the state and in the area of the nomination. The first publication will occur at least 30 days before the CPRC meeting. The notice will be posted on the HPD website at least 30 days before the CPRC meeting to allow for the submission of written comments. The notice will advise the owners of the date, time and place of the CPRC meeting, the right to submit written comments and concur or object in writing to the nomination, and the right to attend the meeting and present evidence. In addition, the SHPO may hold a public information meeting in the area of the nomination prior to the CPRC meeting. The notice for the information meeting will be published twice, in one or more newspapers of general circulation in the state and in the area of the nomination. The first publication and the posting of the notice on the HPD website will occur at least 14 days before the public information meeting.

C. For multiple resource and thematic submissions, each structure, building, site, place, district or object included in the submission, is treated as a separate nomination to notify and provide owners the opportunity to concur or object in writing to the nomination in accordance with this section.

D. Upon notification, any owner of a private property who wishes to object to the registration and listing shall submit to the SHPO a notarized statement certifying that he is the sole or partial owner of the private property and shall provide the reason for the objection on or before the date specified in the published notice. In nominations with multiple owners, the property will not be listed if a majority of the owners object to the listing. The SHPO will ascertain whether a majority of the private property owners have submitted notarized objections. For purposes of this subsection, any private property owner or part owner in a district or site has one vote whether or not the property contributes to the significance of the district or site.

[4.10.18.9 NMAC - N, 10/1/12]

4.10.18.10 EFFECTS OF LISTING UNDER STATE LAW:

A. The state register is an authoritative guide to be used by state agencies, local governments, private groups and citizens to identify the cultural resources

important to the state's history and culture and to indicate which cultural properties should be considered for protection from destruction or impairment. Listing of private property on the state register does not abrogate the rights of the property owner. The rights and responsibilities of owners of a registered cultural property are the same as those of owners of a nonregistered property. Listing does not prevent the use, sale or transfer of the property.

B. State agencies, with direct or indirect jurisdiction over any land or structure modification which may affect a registered cultural property, shall provide the SHPO a reasonable and timely opportunity to participate in planning to preserve and protect and to avoid or minimize adverse effects to registered cultural properties pursuant to 4.10.7 NMAC.

C. State public funds may not be expended on any program or project that requires the use of any portion of or any land from a property listed in either the national register of historic places or state register unless there is no feasible and prudent alternative to such use and unless the program or project includes all possible planning to preserve and protect and to minimize harm to the registered cultural property resulting from such use pursuant to 4.10.12 NMAC.

D. Owners of registered cultural properties are eligible to participate in the state income tax credit program for the restoration, rehabilitation or preservation expenses spent on registered properties pursuant to 4.10.9 NMAC and in the historic preservation loan program to preserve or rehabilitate the registered cultural property pursuant to 4.10.2 NMAC.

[4.10.18.10 NMAC - N, 10/1/12]

4.10.18.11 STANDARDS, SIGNIFICANCE AND INTEGRITY CRITERIA FOR REGISTRATION:

A. Registration standards.

(1) **National register bulletins.** The CPRC uses the national register bulletin series prepared by the national park service as guidance in applying the criteria for state registration. Contact the HPD for assistance.

(2) **General standards.** Property descriptions and statements of significance on the nomination form must be accurate and prepared in accordance with standards generally accepted by academic historians, architectural historians, archaeologists, ethnologists and others, as appropriate, to the property being nominated.

(3) **Boundaries.** Boundaries for a district, site, structure, building, place or object shall encompass but shall not exceed the full extent of the significant resources or land area making up the property. The area should be large enough to include all

historic features of the property and shall not include buffer zones or acreage not directly contributing to the significance of the property. Districts may include noncontributing resources, such as altered buildings or buildings constructed before or after the period of significance. In situations where historically associated resources were geographically separated from each other during the period of significance or are separated by intervening development and are now separated by large areas lacking eligible resources, a discontinuous district may be defined. The following features may be used to mark the boundaries as they reflect the resources: legally recorded boundary lines; natural topographic features such as ridges, valleys, rivers and forests; man-made features such as fences and stone walls, streets and roads; or areas of new construction or construction outside the period of significance.

B. Significance. The CPRC and SHPO shall use the following criteria when reviewing nominations and making decisions to list a property in the state register or determine the state-register eligibility of a property. To be considered for registration, at least one of the following criteria for evaluation and considerations must be met.

(1) **Criteria for evaluation.** The quality of significance in the history, architecture, archaeology, science, engineering and culture is present in structures, buildings, sites, places, districts or objects that possess integrity of location, design, setting, materials, workmanship, feeling and association; and

(a) that are associated with events that have made a significant contribution to the broad patterns of our history; or

(b) that are associated with the lives of persons significant in our past; or

(c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(d) that have yielded, or may be likely to yield, information important in prehistory or history.

(2) **Criteria considerations.** Ordinarily cemeteries, birthplaces or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the state register. Such properties may qualify if they are integral parts of districts that do meet the criteria or if they fall within

the following categories:

(a) a religious property deriving primary significance from architectural or artistic distinction or historical importance; or

(b) a building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

(c) the birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life; or

(d) a cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

(e) a reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

(f) a property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or

(g) a property achieving significance within the past 50 years if it is of exceptional importance.

(3) **Level of significance.** A property listed in the state register may be of national, state or local significance. The CPRC shall use the following criteria in determining the level of significance appropriate to the property:

(a) a property of national significance offers an understanding of the history of the nation by illustrating the nationwide impact of events or persons associated with the property, its type or style or its information; or

(b) a property of statewide significance offers an important aspect of the history of the state as a whole; or

(c) a property of local significance represents an important aspect of the history of a county, city, town, cultural area or region or any portions thereof.

C. Integrity. In addition to significance, a property must possess integrity. A property has integrity if it retains the identity for which it is significant. To determine whether a property retains integrity, the CPRC shall consider the seven aspects set out below and shall evaluate the property against those aspects that are most critical to a property's significance.

(1) Location is the place where the property was constructed or the place where the event or activity occurred. For the site of historic or cultural events, a property has integrity of location when the location itself,

complemented by the setting, may be used to visualize or recall the event.

(2) Design is the combination of elements that create the form, plan, space, structure and style of the property. Design results from the conscious decisions in the conception and planning of a property and may apply to areas as diverse as community planning, engineering, architecture and landscape architecture. Principal aspects of design include organization of space, proportion, scale, technology and ornament.

(3) Setting is the physical environment of the property as distinct from the specific place where the property was built or the event occurred. The physical features that constitute setting may be natural or cultural and may include topographic features, vegetation and relationships of a building to other features and open space.

(4) Materials include the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form the cultural property. The integrity of materials determines whether or not an authentic property still exists.

(5) Workmanship is the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory. Workmanship may be expressed in vernacular methods of construction and plain finishes or in highly sophisticated configurations and ornamental detailing. It may be based on common traditions or innovative period techniques. Examples of workmanship include tooling, carving, painting, graining, turning or joinery.

(6) Feeling is the property's expression of the aesthetic or historic sense of a particular period of time. Although intangible, feeling depends upon the presence of physical characteristics to convey the historic qualities that evoke feeling. Because it is dependent upon perception of each individual, integrity of feeling alone will never be sufficient to support designation.

(7) Association is the direct link between an important historic event or person and the cultural property. If a property has integrity of association, then the property is the place where the event or activity occurred and is sufficiently intact that it can convey that relationship.

[4.10.18.11 NMAC - N, 10/1/12]

4.10.18.12 EMERGENCY CLASSIFICATION PENDING INVESTIGATION:

A cultural property the CPRC considers worthy of preservation may be included in the state register on a temporary basis not to exceed one year from the date of the emergency classification as provided in Section 18-6-12. If the cultural property is on private land, the temporary classification shall not be considered a taking of private property, but the owner may

receive a fair rental value for the part of the land affected if the temporary classification unduly interferes with the owner's normal use of the land. The CPRC makes all emergency classification decisions at an open meeting following procedures in 4.10.3 NMAC. The CPRC shall issue a registration order to the SHPO and the SHPO shall notify the owner immediately of the CPRC's action. During the one year period, the CPRC shall investigate the property to determine whether the property should be listed permanently in the state register. The CPRC's investigation may be conducted with the assistance of the SHPO and others including but not limited to the owner, interested members of the public and preservation professionals. If the CPRC does not make a decision to list the property within one year from the date of the emergency classification, the property may not be reconsidered by the CPRC for five years.

[4.10.18.12 NMAC - N, 10/1/12]

4.10.18.13 REVISIONS AND AMENDMENTS TO REGISTERED CULTURAL PROPERTY NOMINATIONS:

A. Documentation in a state register form may be revised, expanded or updated at any time after registration. Amendments may be made for many reasons including but not limited to the following: update the condition of the property; clarify, increase or decrease the boundary; expand the significance by identifying new areas of significance, additional criteria and new periods of significance; and reclassify contributing and noncontributing resources.

B. Any person or organization may submit an amendment to a New Mexico register nomination to the SHPO. The SHPO then reviews the amendment for completeness. Once complete, the SHPO shall place the amendment on the agenda for the next appropriate CPRC meeting and notify the applicant, the property owners and chief elected local official of the county and municipality at least 30 days prior to the CPRC meeting of the date, time and place of the CPRC meeting where the amendment is to be considered. The owner and the public shall have the right to be heard and present evidence at the CPRC meeting and provide written comments prior to the meeting as set forth in 4.10.18.9 NMAC.

C. The CPRC shall accept, reject or defer the amendment at the CPRC meeting consistent with the process in 4.10.18.8 NMAC. The SHPO shall send a copy of the amendment to the owner of record of the registered cultural property.

[4.10.18.13 NMAC - N, 10/1/12]

4.10.18.14 REMOVAL OF A PROPERTY FROM THE STATE

REGISTER: The CPRC may remove a registered cultural property from the state register pursuant to Section 18-6-5 when, in the opinion of the CPRC, the property has been altered to such an extent that its integrity has been lost and the values for which it was placed on the register no longer exist.

A. The CPRC shall remove a registered cultural property from the state register if one of the following conditions is met.

(1) The qualities which caused the property to be listed originally have been lost or destroyed.

(2) Renovations, repairs or maintenance to a registered property have resulted in a loss of the historic design characteristics or integrity critical to the property's original registration or are inconsistent with recommendations made by the CPRC pursuant to 4.10.4 NMAC.

(3) Additional information shows that the property does not meet the state register criteria for registration and integrity.

(4) There is an error in professional judgment as to whether the property meets the criteria for registration and integrity.

(5) There is a prejudicial procedural error in the designation process.

B. Any person or organization may submit a request to remove a property from the state register. Documentation supporting a proposal for removal shall be provided to the SHPO. The SHPO shall review the proposal for conformance with this section and shall place the removal proposal on the agenda for the next appropriate CPRC meeting and notify the applicant, the property owners and chief elected local official of the county and municipality at least 30 days prior to the CPRC meeting of the date, time and place of the CPRC meeting where the request is to be considered. The owner and the public will have the right to be heard and present evidence at the CPRC meeting and provide written comments prior to the meeting as set forth in 4.10.18.9 NMAC.

C. The CPRC shall accept, reject or defer the proposal to remove the property from the state register at a CPRC meeting consistent with the process in 4.10.18.8 NMAC. The SHPO will notify the owner of record of the registered cultural property of the CPRC's decision.

[4.10.18.14 NMAC - N, 10/1/12]

4.10.18.15 IDENTIFICATION OF CULTURAL PROPERTIES: The CPRC is charged with the responsibility to identify and prepare a list of cultural properties worthy of protection pursuant to Section 18-6-5.

A. **Surveys.** Surveys are the first step to be taken in the registration process to identify cultural properties and

gather sufficient information about them to determine whether the property may be eligible for registration and listing. Consult the SHPO prior to conducting any field studies or survey to gather information on the property and the appropriate boundary for area making up the property. Complete historic cultural property inventory (HCPI) forms for historic structures and buildings or laboratory of anthropology (LA) site records for archaeological sites to supplement the nomination for each contributing property. The applicant is encouraged to prepare forms for noncontributing properties. Other standard forms may be substituted for the HCPI forms with prior approval by the SHPO.

B. To assist the CPRC in fulfilling its responsibilities and the SHPO's own responsibilities to survey and inventory historic properties under Section 16 U.S.C. 470a(b) of the National Historic Preservation Act, the SHPO establishes priorities for surveys to identify and document cultural properties in New Mexico, to determine which properties are eligible for listing in the state or national registers, and to prepare nominations for listing in the state or national registers. The SHPO establishes a system of professional surveys on state land in cooperation with the heads of state agencies pursuant to Section 18-6A-5 and may fund surveys under Section 18-6-8. Standards for survey are described in 4.10.15 NMAC.

C. The SHPO reviews the information gathered during these and other surveys and inventories to make a determination of state and national register eligibility and maintains a record of these determinations. A determination of eligibility is a decision by the SHPO or CPRC that a structure, site, place, or object meets the state register significance criteria for registration although the property is not formally listed in the state register. A determination of eligibility does not make the property eligible for such benefits as grants, loans or tax incentives that have listing in the state register as a prerequisite.

D. State agencies, political subdivisions of the state or the public may ask the SHPO to apply the criteria in 4.10.18.11 NMAC and make a determination of state register eligibility.

[4.10.18.15 NMAC - N, 10/1/12]

**HISTORY OF 4.10.18 NMAC:
[RESERVED]**

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.9 NMAC, Section 8, effective 09-14-12.

16.5.9.8 RESPONSIBILITY OF NON-DENTIST OWNER: To employ and contract for dental services, a non-dentist owner shall apply to the board for the proper license and adhere to the re-licensure criteria and fees as established by the rules of the board.

A. Unless licensed as a dentist or non-dentist owner an individual or corporate entity shall not:

(1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or

(2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico;

B. the non-dentist owner licensee shall follow the provisions of 16.5.16 NMAC; failure of the licensee or an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

C. if an employee dentist or dental hygienist leaves the non-dentist owner practice, the non-dentist owner is responsible for the continued uninterrupted care of the patient by another licensed dentist or dental hygienist;

D. non-dentist owner shall notify the board in writing within 30 days of any changes in ownership;

E. non-dentist owner shall notify the board in writing within 30 days of any employment changes of board licensed employees;

F. non-dentist owner shall notify the board within 30 days of any disciplinary actions against the non-dentist owner(s);

G. non-dentist owner employees shall follow provision of 16.5.16 NMAC; failure of an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

~~[H. non-dentist owners licensed after the effective date of these rules shall be limited to two New Mexico practices;]~~

~~[I.]~~ H. non-dentist owners licensed prior to the effective date of these rules shall be allowed to maintain their existing license(s);

~~[J.]~~ L. the name and contact information of the non-dentist owner(s) shall be prominently displayed in a public area of the practice location(s) and on all advertisements of the practice;

[K.] J. the non-dentist owner(s) shall prominently display in a public area of the practice location(s) and on all advertisements the practice names of employee(s) licensed by the board;

[L.] K. no person other than another New Mexico licensed dentist shall have direct control or interfere with the dentist's or dental hygienist's clinical judgment; and

[M.] L. non-dentist owners shall maintain patient records for a minimum of six years.

[16.5.9.8 NMAC - N, 03-06-05; A, 07-16-07; A, 01-09-12; A, 09-14-12]

NEW MEXICO DEPARTMENT OF GAME AND FISH

TITLE 19 N A T U R A L RESOURCES AND WILDLIFE CHAPTER 31 HUNTING AND FISHING PART 6 MIGRATORY GAME BIRD

19.31.6.1 ISSUING AGENCY: New Mexico Department of Game and Fish. [19.31.6.1 NMAC - Rp, 19.31.6.1 NMAC, 8-30-12]

19.31.6.2 SCOPE: Hunters of migratory game birds. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 and 32 through 36 of Title 19. [19.31.6.2 NMAC - Rp, 19.31.6.2 NMAC, 8-30-12]

19.31.6.3 S T A T U T O R Y AUTHORITY: 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish. [19.31.6.3 NMAC - Rp, 19.31.6.3 NMAC, 8-30-12]

19.31.6.4 DURATION: August 30, 2012 - March 31, 2013. [19.31.6.4 NMAC - Rp, 19.31.6.4 NMAC, 8-30-12]

19.31.6.5 EFFECTIVE DATE: August 30, 2012 unless a later date is cited at end of individual sections. [19.31.6.5 NMAC - Rp, 19.31.6.5 NMAC, 8-30-12]

19.31.6.6 O B J E C T I V E : Establishing seasons on dove, band-tailed pigeon, sandhill crane, American coot,

common moorhen, common snipe, ducks, geese, sora, Virginia rail, and setting falconry seasons for migratory game birds.

[19.31.6.6 NMAC - Rp, 19.31.6.6 NMAC, 8-30-12]

19.31.6.7 DEFINITIONS: Areas, species, non-toxic shot, and possession limit defined.

A. "Adult/youth" (A/Y) as used herein, shall mean that hunt designation where the adult and youth are permitted to hunt together.

B. "Arrows" shall mean only those arrows or bolts having broadheads with steel cutting edges.

C. "Baiting" shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take migratory game birds.

D. "Bernardo north duck hunt area" (BND) shall mean that area north of U.S. 60 on Bernardo waterfowl management area (WMA).

E. "Bow" shall mean compound, recurve, or long bow. Sights on bows shall not project light nor magnify.

F. "Central flyway" shall mean that portion of New Mexico east of the continental divide, with the exception of the Jicarilla Apache Indian reservation.

G. "Crossbows" shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light nor magnify.

H. "Dark goose" shall mean Canada goose or greater white-fronted goose.

I. "Department" shall mean the New Mexico department of game and fish.

J. "Department offices" shall mean department offices in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell.

K. "Director" shall mean the director of the New Mexico department of game and fish.

L. "Dove north zone" (north zone) shall mean that portion of New Mexico north of I-40 from the Arizona-New Mexico border to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

M. "Dove south zone" (south zone) shall mean that portion of New Mexico south of I-40 from the Arizona-New Mexico border to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

N. "Eastern New Mexico sandhill crane hunt area" (eastern) shall

mean that area in the following counties: Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt.

O. "Electronic motion decoys" shall mean decoys such as spinning wing decoys that operate by electric motors or electronic controls.

P. "Established road" is defined as follows:

(1) a road, built or maintained by equipment, which shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures;

(2) a two-track road completely void of vegetation in the tracks which shows use prior to hunting seasons for other purposes such as recreation, mining, logging, and ranching and shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures.

Q. "Estancia valley sandhill crane hunt area" (EV) shall mean that area beginning at Mountainair bounded on the west by N.M. highway 55 north to N.M. 337, north to N.M. 14, and north to Interstate 25; on the north by Interstate 25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to N.M. 55 in Mountainair.

R. "Falconry" shall mean hunting migratory game birds using raptors.

S. "License year" shall mean the period from April 1 through March 31.

T. "Light geese" shall mean snow geese, blue phase snow geese, and Ross's geese.

U. "Light goose conservation order" shall mean those methods, bag and possession limits, and dates approved by the U. S. fish and wildlife service (USFWS) towards reducing over-abundant light goose populations.

V. "Middle Rio Grande valley dark goose hunt area" shall mean Sierra, Socorro and Valencia counties.

W. "Middle Rio Grande valley sandhill crane hunt area" (MRGV) shall mean Valencia and Socorro counties.

X. "Migratory game bird" shall mean band-tailed pigeon, Eurasian-collared dove, mourning dove, white-winged dove, sandhill crane, American coot, common moorhen, common snipe, ducks, geese, sora, and Virginia rail.

Y. "Modern firearms" shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

Z. "Muzzle-loader or muzzle-loading firearms" shall mean those

rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only blackpowder, pyrodex or equivalent blackpowder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

AA. "Non-toxic shot" shall mean that non-toxic shot approved for use by the USFWS.

BB. "North zone" shall mean that portion of the Pacific flyway north of I-40 from the Arizona-New Mexico border to the continental divide; and that portion of the central flyway north of I-40 from the continental divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

CC. "Pacific flyway" shall mean that portion of New Mexico west of the continental divide including the Jicarilla Apache Indian reservation.

DD. "Permanent mobility limitation" shall mean an individual that permanently has restricted movement in both arms, or is restricted to the use of a walker, wheelchair, or two crutches to walk, or has a combination of disabilities that cause comparable substantial functional limitations. **EXCEPTION:** For the purposes of hunting migratory game birds from a vehicle, mobility limitation individuals are those that have permanently lost one or both legs.

EE. "Possession limit" shall mean twice the daily bag limit one can have in their ownership, except where otherwise defined.

FF. "Protected species" shall mean any of the following animals:

(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 New Mexico Statutes Annotated 1978 Compilation;

(2) all animals listed as endangered species or subspecies as stated in regulation(s) set by the state game commission.

GG. "Regular band-tailed pigeon hunting area" (regular BPHA) shall mean that portion of New Mexico not included in the southwest band-tailed pigeon hunt area.

HH. "Retention" or "retain" shall mean the holding of in captivity.

II. "South zone" shall mean that portion of the Pacific flyway south of I-40 from the Arizona-New Mexico border to the continental divide; and that portion of the central flyway south of I-40 from the continental divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

JJ. "Southwest band-tailed pigeon hunting area" (southwest

BPHA) shall mean that portion of New Mexico both south of U.S. 60 and west of I-25.

KK. "Southwest New Mexico sandhill crane hunt area" (SW) shall mean that area bounded on the south by the New Mexico/Mexico border; on the west by the New Mexico/Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico/Mexico border.

LL. "State game commission owned properties" shall mean all department owned or managed waterfowl management areas, wildlife management areas, Sandhills prairie conservation area and lesser prairie-chicken areas.

MM. "Unlimited" shall mean there is no set limit on the number of permits or licenses established for the described hunt areas.

NN. "Waterfowl management area" (WMA) shall mean Bernardo, Brantley, Casa Colorada, Charette lake, Jackson lake, La Joya, McAllister lake, Salt lake, Tucumcari, and W.S. Huey state game commission owned or managed waterfowl management areas.

OO. "Wildlife management area" shall mean Big Hatchet, Colin Neblett, E.S. Barker, Humphries, Marquez, Rio Chama, Sargent, Socorro-Escondida, and Water canyon wildlife management areas, the Sandhills prairie conservation area, and state game commission owned lesser prairie-chicken areas.

PP. "Youth" shall mean those less than 18 years of age except where otherwise defined.

QQ. "Youth waterfowl hunting days" shall mean the special seasons where only those under 16 years of age may hunt ducks and geese. A supervising adult must accompany the youth hunter. [19.31.6.7 NMAC - Rp, 19.31.6.7 NMAC, 8-30-12]

19.31.6.8 LICENSE AND APPLICATION REQUIREMENTS:

A. License: It shall be unlawful to hunt migratory game birds without having purchased a valid license for the current license year. A migratory bird permit number shall be required. Waterfowl hunters 16 years of age and older are required to have in their possession a federal migratory bird hunting and conservation stamp (duck stamp).

(1) For eastern sandhill crane hunting and falconry: in addition to a valid license, a free federal sandhill crane hunting permit obtained from department offices or website shall be required.

(2) For Estancia valley sandhill crane, middle Rio Grande valley sandhill crane, middle Rio Grande youth-only sandhill crane, southwest sandhill crane hunting, Bernardo WMA light goose, and Bernardo WMA youth-only waterfowl hunting: in addition to a valid license, a special permit obtained by drawing shall be required.

(3) For the light goose conservation order: in addition to a valid license, a free light goose conservation order permit obtained from department offices or website shall be required.

B. Valid dates of license or permit: All permits or licenses shall be valid only for the dates, legal sporting arms, bag limit and area specified by the hunt code printed on the permit or license.

C. Applications: Applications for Bernardo WMA light goose, Bernardo WMA youth-only light goose, Bernardo WMA youth-only waterfowl, EV sandhill crane, MRGV sandhill crane, SW sandhill crane, and MRGV youth-only sandhill crane hunt permits shall be submitted via the department website.

(1) For permits issued by drawing, the appropriate application fee as defined by 19.30.9 NMAC shall be required by each applicant per application submitted.

(2) No more than four persons may apply per application. For the MRGV youth-only sandhill crane hunt, no more than two persons may apply per application.

(3) It shall be unlawful to submit more than one application per species per year, unless otherwise specifically allowed by rule. Those submitting more than one application per species will result in the rejection of all applications for that species.

(4) Applications may be rejected if such applications do not supply adequate information.

(5) Applicants may apply for a first, second and third choice of seasons if applicable. A maximum of one permit per species hunt code will be awarded to successful applicants unless otherwise specifically allowed by rule.

(6) All applications must be submitted via the department website unless otherwise specifically allowed by rule.

(7) The application deadline date for the Bernardo WMA youth-only waterfowl; and EV, MRGV, MRGV youth-only, and SW sandhill crane hunt permits shall be on date(s) set by the state game commission.

(a) For the Bernardo WMA youth-only waterfowl hunt permits, no more than three persons may apply per application.

(b) Up to two hunt choices may be awarded by drawing for the Bernardo youth-only waterfowl permits.

(c) If any permits are available after the drawing, a person may submit a

new application; up to two hunt choices may be awarded.

(d) Hunters may have a maximum of four Bernardo WMA youth-only waterfowl permits per license year.

(e) Only two applications per hunt code will be drawn, or issued after the drawing for Bernardo youth only waterfowl permits.

(8) The deadline date for application for the Bernardo WMA light goose hunt permits shall be on date(s) set by the state game commission.

(9) If applications for permits exceed the number of available permits, as herein established, the available permits shall be allotted by means of a random public drawing in the Santa Fe office of the department of game and fish.

(10) If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

D. Youth hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth-only hunt. **EXCEPTION:** During the youth waterfowl hunt days only those who have not reached their 16th birthday may hunt waterfowl.

[19.31.6.8 NMAC - Rp, 19.31.6.8 NMAC, 8-30-12]

19.31.6.9 MANNER AND METHODS FOR MIGRATORY GAME BIRDS:

A. Season and hours: Migratory game birds may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to sunset, unless otherwise specifically allowed by rule.

(1) On wildlife management areas, the lesser prairie-chicken areas, and the Sandhills prairie conservation area, hunting hours shall be from one-half hour before sunrise to sunset.

(2) On waterfowl management areas (WMAs) and the Bottomless lakes overflow, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m. For hunting September teal on Bernardo and La Joya WMAs, hunting hours are from one-half hour before sunrise to sunset.

(3) During the light goose conservation order hunt dates, hunting hours shall mean from one-half hour before sunrise to one-half hour after sunset.

B. Bag limit: It is unlawful for any person to hunt for or take more than one daily bag limit allowed by regulation, unless otherwise specifically allowed by rule.

(1) There shall be no daily bag or

possession limit for Eurasian-collared dove.

(2) There shall be no daily bag or possession limit for light geese during the light goose conservation order hunt dates.

C. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of any migratory game birds that are illegally obtained.

D. Use of bait: It shall be unlawful for anyone to take or attempt to take any migratory game bird by use of bait such as grain, salt or other feed.

E. Live animals: It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any migratory game bird.

F. Use of calling devices: It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any migratory game bird, unless otherwise specifically allowed by rule. During the light goose conservation order hunt dates, electronic calling devices are allowed.

G. Killing out-of-season: It shall be unlawful to kill any migratory game bird out-of-season.

H. Legal sporting arms and ammunition:

(1) The following are legal sporting arms for migratory game birds:

(a) shotguns no larger than 10 gauge firing shot, shotguns shall not be capable of holding more than three shells;

(b) muzzle-loading shotguns firing shot;

(c) bows and arrows;

(d) crossbows; and

(e) during the light goose conservation order hunt dates, as listed herein, shotguns capable of holding more than three shells are lawful.

(2) Non-toxic shot use is required for hunting:

(a) all migratory game bird species, excluding dove, band-tailed pigeons, and eastern sandhill cranes; and

(b) on all state game commission owned lands.

(3) Use of lead shot: It shall be unlawful for any person hunting migratory game birds, other than dove, band-tailed pigeon and eastern sandhill crane, to hunt with or be in possession of any shotgun shells loaded with toxic shot or for any person using a muzzleloader to be in possession of lead shot.

I. Drugs and explosives: It shall be unlawful to use any form of drug on an arrow or use arrows driven by explosives.

J. Proof of species or sex:

(1) One fully feathered wing must remain attached to all migratory game birds, except dove and band-tailed pigeon, until the

bird has arrived at the personal abode of the possessor or storage facility.

(2) All Eurasian-collared dove in possession must have an identifiable feathered wing attached until the bird has arrived at the personal abode of the possessor or storage facility. Any harvested dove without an identifiable wing attached, will count towards the daily dove bag and possession limits.

K. Possession or sale of migratory game bird: It shall be unlawful to possess, sell, or offer for sale all or part of any migratory game bird except as provided below.

(1) License or permit: A person may possess migratory game bird or parts thereof they have lawfully taken (killed) under license or permit.

(2) Game taken by another: Any person may have in their possession or under their control any migratory game bird or parts thereof that have been lawfully taken by another person if they possess a written statement which shall be provided by the donor of the migratory game bird, or parts thereof, and which shall contain the following:

(a) the kind and number of game parts donated;

(b) the date and county where the game was lawfully taken;

(c) the donor's name, address, and the number of the hunting license under which the game was lawfully taken; and

(d) the date and place of the donation.

(3) Retention of live animals: It shall be unlawful to retain migratory game birds in a live condition except under permit or license issued by the director for the following purposes:

(a) zoos open for public display;

(b) in class A parks;

(c) in projects for scientific research and propagation;

(d) a rehabilitation permit;

(e) under a falconry permit, only those birds listed on the permit;

(f) under a scientific collection permit, one may collect and possess only those migratory game bird species listed on the permit; and

(g) in transit through New Mexico when the transporter can demonstrate proof of legal possession of the migratory game bird being transported.

(4) Sale of game animal parts: It shall be unlawful to sell or barter any parts or feathers from migratory game birds.

(5) Falconry provisions for possession: The falconry hunter shall not retain nor possess any migratory game bird of bird taken by a raptor except those species of protected birds taken during open falconry season.

L. Release of wildlife: It

shall be unlawful for any person or persons to release, intentionally or otherwise, or cause to be released in this state any migratory game bird, without first obtaining a permit from the department of game and fish.

M. Use of vehicles and roads in hunting migratory game birds:

(1) Roads: It shall be unlawful to shoot at, wound, take, attempt to take, or kill any migratory game bird on, from, or across any graded paved, or maintained public road and including the areas lying within right-of-way fences or 40 feet from the edge of the pavement or maintained surface, in absence of right-of-way fences.

(2) Vehicles, boats, aircraft: It shall be unlawful to shoot at any migratory game bird from within a motor vehicle, power boat, sailboat, or aircraft. EXCEPTION: Migratory game birds may be taken from a motor-driven boat (or other craft with attached motor) or sailboat when resting at anchor or fastened within or immediately alongside a fixed hunting blind or is used solely as a means of picking up dead birds.

(3) Harassing migratory game birds: It shall be unlawful, at any time, to pursue, harass, harry, drive, or rally any migratory game bird by use of or from a motor-driven vehicle, powerboat, sailboat, or aircraft.

(4) Vehicle off of established road: During the seasons established for any migratory game bird, it shall be unlawful to drive or ride in a motor vehicle which is driven off an established road when the vehicle bears a licensed hunter, fisherman or trapper. EXCEPTION: 1) snowmobiles; and 2) all landowners, lessees or their employees, while on their owned or leased lands in connection with legitimate agricultural activities.

(5) Closed roads: During the seasons established for any migratory game bird, it shall be unlawful to knowingly occupy, drive, or cause to be driven any motor vehicle on a closed road when the vehicle bears a licensed hunter, angler or trapper.

(6) Mobility impaired:

(a) Shooting from a vehicle: The holder of a mobility impaired card is authorized to shoot at and kill migratory game birds during their respective open seasons from a stationary motor-driven vehicle that is not on a public road or highway. The director may issue permits to shoot from a stationary vehicle to applicants who provide certification that the applicant is disabled in accordance with the American Disability Act. Such certification shall be signed by an M.D. or O.D. licensed to practice in the applicant's state of residence.

(b) Driving off established roads: Holders of a mobility impaired card may, with permission of the landowner, lessee, or land management agency, drive

off established roads to hunt for or take migratory game birds, during open seasons.

(c) Assistance for mobility impaired hunter: The holder of a mobility impaired card may be accompanied by another person to assist in reducing to possession any migratory game bird which has clearly been wounded by the licensed mobility impaired hunter. Persons assisting in reducing to possession any wounded migratory game birds shall be fully licensed.

N. Lands and waters owned, administered, controlled, or managed by the state game commission:

(1) Posting of signs: The state game commission may prohibit, modify, condition, or otherwise control the use of areas under its control by posting of signs as may be required in any particular area.

(2) Violating provisions of posted signs: It shall be unlawful to violate the provisions of posted signs on areas under the control of the state game commission.

(3) Trespass on state game commission owned lands: It shall be unlawful to hunt migratory game birds, camp, or trespass upon state game commission owned lands unless otherwise specifically allowed by rule.

(4) State waterfowl management areas and wildlife management areas open, species that can be hunted, and days open for hunting: Use of vehicles will be restricted to designated areas.

(a) The Brantley WMA (excluding the Seven Rivers portion, as posted) shall be open for all migratory game bird hunting during established statewide seasons, except the old McMillan lake spillway arm of Brantley lake extending from the mouth of South Seven Rivers draw north to the railroad trestle shall be closed to all hunting from January 1 through February 28.

(b) Bernardo WMA:

(i) That portion of the Bernardo WMA south of U.S. 60 is open to teal hunting each day of the September teal season and the youth waterfowl days. That portion of the Bernardo WMA north of U.S. 60 is open to only youth hunters during each day of the September teal season and the youth waterfowl days.

(ii) That portion of Bernardo WMA east of the unit 7 drain, 600 feet south of U.S. 60 and portions north of U.S. 60, shall be open only on Monday, Wednesday, and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iii) That portion of Bernardo WMA west of the unit 7 drain, 600 feet south of U.S. 60 and portions north of U.S. 60, shall be open only on Sunday, Tuesday and Thursday to hunt ducks, geese, Virginia rail, sora, common moorhen,

American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iv) Designated posted areas of Bernardo WMA north of U.S. 60 are open during the light goose conservation order. Areas east of the unit 7 drain shall be open on Monday, Wednesday, and Saturday; areas west of the unit 7 drain shall be open on Sunday, Tuesday and Thursday.

(v) Designated areas open for Bernardo youth waterfowl hunts are: north of U.S. 60, between U.S. 60 and the posted closure areas. Areas east of the unit 7 drain shall be open on Monday, Wednesday, and Saturday; areas west of the unit 7 drain shall be open on Sunday, Tuesday and Thursday.

(c) The Big Hatchet mountain wildlife management area shall be open for dove hunting during established seasons.

(d) The Charette lake WMA shall be open each day of the youth waterfowl days and on Monday, Wednesday, and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons. Charette lake WMA is closed during the September teal season.

(e) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez, and Elliot S. Barker wildlife management areas shall be open for hunting dove and band-tailed pigeon during established seasons.

(f) The portion of Jackson lake WMA west of N.M. 170 shall be open on Mondays, Wednesdays, and Saturdays to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe. The portion of Jackson lake WMA east of N.M. 170 shall be open to falconry only migratory game bird hunting during established seasons.

(g) The lesser prairie-chicken management areas and Sandhills prairie conservation area shall be open to hunt dove during established seasons.

(h) La Joya WMA:

(i) The entire La Joya WMA shall be open to teal hunting each day of the September teal season and each day of the youth waterfowl days.

(ii) That portion of La Joya WMA north of the main east/west entrance road and west of the railroad tracks shall be open on Saturdays, Mondays, and Wednesdays to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iii) That portion of La Joya WMA south of the main east/west entrance road and west of the railroad tracks shall be open on Sunday, Tuesday and Thursday to hunt ducks, geese, Virginia rail,

Sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iv) That portion of La Joya WMA east of the railroad tracks shall be open to hunt dove, ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(i) The McAllister lake WMA shall be open each day of the youth waterfowl days and on Monday, Wednesday, and Saturday to hunt ducks, light geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(j) The Salt lake WMA shall be open to teal hunting each day of the September teal season and youth waterfowl days and open on Monday, Wednesday, and Saturday for ducks, geese, Virginia rail, sora, common moorhen, American coot and common Snipe during established seasons.

(k) Seven Rivers shall be open each day of the youth waterfowl days and for migratory game bird hunting in designated areas as posted only on Monday, Wednesday, and Saturday during established statewide seasons.

(l) The Socorro-Escondida wildlife management area shall be open for migratory game bird hunting.

(m) The Tucumcari WMA shall be open each day of the September teal and youth waterfowl days and on Saturday, Sunday, and Wednesday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(n) The William S. Huey WMA shall be open for dove hunting only on Monday, Wednesday, and Saturday during established statewide seasons.

(5) The Sandia ranger district of the Cibola national forest shall be open to archery only migratory game bird hunting during established seasons.

(6) All waterfowl management areas shall be open to falconry waterfowl hunting each day of the established falconry season.

O. Areas closed to migratory game bird hunting: The following areas shall remain closed to hunting, except as permitted by regulation.

(1) All wildlife management areas.

(2) Rio Grande wild and scenic river area.

(3) Sub-unit 6B (Valles Caldera national preserve).

(4) Sugarite canyon state park.

(5) Valle Vidal area.

(6) The old McMillan lake spillway arm of Brantley lake extending from the mouth of South Seven Rivers draw north to the railroad trestle shall be closed to all hunting from January 1 through February 28.

(7) That portion of the stilling basin below Navajo dam lying within a line starting from N.M. 511 at the crest of the bluff west of the Navajo dam spillway and running west along the fence approximately 1/4 mile downstream, southwest along the fence to N.M. 511 to the Navajo dam spillway, across the spillway, and to the crest of the bluff.

(8) Areas within Valencia county may be closed to migratory game bird hunting that meets the following criteria:

(a) The discharge of a shotgun in the area has been identified by department personnel as a public safety risk because of its proximity to an inhabited area. For the purpose of this section, "public safety risk" shall be defined as a reasonable potential risk of injury at an occupied place of residence.

(b) The discharge of a shotgun in the area is not prohibited by any other statute, rule, regulation or ordinance.

(c) These areas shall be designated by posting of signs and identified on the department website.

P. Regulations pertaining to boats, other floating devices, and motors:

(1) On Bernardo, La Joya, Salt lake and Jackson lake WMAs, only boats and other floating devices using no motors shall be permitted during waterfowl season.

(2) On Tucumcari WMA, only boats and other floating devices using electric motors or with motors that are not in use shall be permitted.

(3) On Charette and McAllister lakes boats and other floating devices with or without motors shall be permitted; provided, however, that boats or floating devices shall not be operated at greater than normal trolling speed.

(4) Department of game and fish personnel or persons authorized by the director may use gasoline powered outboard motors on all lakes mentioned in this chapter while performing official duties.

Q. Electronic motion decoys: It shall be unlawful to use electronic motion decoys while hunting waterfowl on those portions of Bernardo WMA, north of U.S. 60.

[19.31.6.9 NMAC - Rp, 19.31.6.9 NMAC, 8-30-12]

19.31.6.10 SPECIES, OPEN AREAS, SEASON DATES, AND DAILY BAG LIMITS:

A. 2012-2013 season; all dates are 2012 unless otherwise specified:

species	open areas	season dates	daily bag limit
dove: mourning and white-winged dove	north zone	Sept. 1-Nov. 9	15 (singly or in aggregate)
	south zone	Sept. 1- Oct. 9 and Dec. 1-31	15 (singly or in aggregate)
Eurasian-collared dove	statewide	Sept. 1 - Dec. 31	no bag or possession limit
band-tailed pigeon	southwest BPHA	Oct. 1-20	5
	regular BPHA	Sept. 1-20	5
sandhill crane (free permit required)	Eastern	Oct. 31- Jan. 31, 2013	3

sandhill crane (special draw permit required)	MRGV	Oct. 27- Oct. 28	3 (6 per season)
	EV	Oct. 27 - Nov. 4	3
	southwest	Oct. 27 - Nov. 4	3
	MRGV	Nov. 17-18	3 (6 per season)
	MRGV	Dec. 1-2	3 (6 per season)
	MRGV	Jan. 5-6, 2013	3 (6 per season)
	southwest	Jan. 12-13, 2013	3 (6 per season)
	MRGV		
	youth-only	Nov. 10	3 (possession-6; regular and special seasons combined)

CENTRAL FLYWAY

species	season dates	daily bag limit (possession limits are double the daily bag limit after opening day)
September teal: blue-winged teal, green-winged teal, and cinnamon teal	Sept. 15-23	4 (singly or in the aggregate)
youth waterfowl days; north zone	Sept. 29-30	same as north zone
youth waterfowl days; south zone	Oct. 13-14	same as north zone
ducks: north zone	Oct. 6 - Jan. 9, 2013	6 (singly or in the aggregate); that consists of no more than 5 mallard (of which only 2 may be female mallard, [Mexican-like ducks are included towards the mallard bag limit]); 3 wood duck; 2 redhead; 2 hooded mergansers; 2 pintail, and 1 canvasback
south zone	Oct. 24 - Jan. 27, 2013	same as north zone
American coot	same as above zone dates	15
common moorhen	Sept. 29 - Dec. 7	1
common snipe	Oct. 13 - Jan. 27, 2013	8
Virginia rail & sora	Sept. 15 - Nov. 23	10 (singly or in the aggregate)
dark goose: Canada & white-fronted geese (regular season closed in Bernalillo, Sandoval, Sierra, Socorro, and Valencia counties)	Oct. 13 - Jan. 27, 2013	4
special MRGV season	Dec. 29 – Jan. 20, 2013	2 (2 per season)
light goose: Ross's & snow geese	Oct. 13 - Jan. 27, 2013	20 (no possession limit)
light goose conservation order	Feb. 1, 2013 - Mar. 10, 2013	no bag or possession limit

PACIFIC FLYWAY

species	season dates	daily bag limit (possession limits are double the daily bag limit after opening day; with the exception of American coot and common moorhen where possession limits are 25, singly or in the aggregate)
youth waterfowl days	Oct. 6-7	same as regular season below
ducks:	Oct. 15 - Jan. 27, 2013	7 (singly or in the aggregate); that consists of no more than 2 female mallard, 2 redhead, 2 pintail, 1 canvasback
American coot and common moorhen	Oct. 15 - Jan. 27, 2013	25 daily (singly or in the aggregate)
common snipe	Oct. 13 – Jan. 27, 2013	8
Virginia rail & sora	Sept. 15 - Nov. 23	10 daily (singly or in the aggregate)
goose: north zone	Sept. 22 - Oct. 7 and Oct. 29 - Jan. 27, 2013	3 dark geese, 10 light geese

south zone

Oct. 13 - Jan. 27, 2013

2 dark geese, 10 light geese

B. Light goose conservation measures: Under the director's discretion with the verbal concurrence of the state game commission chairman or his designee, the department may implement the light goose conservation measures approved by the USFWS. Methods, bag and possession limits, and dates allowed shall be those as approved by the USFWS. A free permit is required. [19.31.6.10 NMAC - Rp, 19.31.6.10 NMAC, 8-30-12]

19.31.6.11 FALCONRY SEASONS:

A. Species that can be taken, open areas, and hunting seasons: 2012-2013 season, all dates are 2012 unless otherwise specified:

(1) The season for dove shall be statewide and shall be open September 1 through November 12 and November 28 through December 31.

(2) The season for band-tailed pigeon shall be September 1 through December 16 for the regular hunting area and October 1 through January 15, 2013 for the southwest hunting area.

(3) The season for sandhill crane shall be in the eastern New Mexico sandhill crane hunt area and shall be open from October 17 through January 31, 2013. A free permit is required.

(4) The season for sandhill crane in the Estancia valley shall be October 27 through December 25.

(5) Duck: central flyway seasons shall be open in the north zone - September 15-23, September 29-30, and October 6 through January 9, 2013; south zone - September 15-23, October 13-14, and October 24 through January 27, 2013. Pacific flyway seasons shall be as follows: October 6-7, and October 15 through January 27, 2013.

(6) Light goose: central flyway seasons shall be open October 13 through January 27, 2013. Pacific flyway season shall be north zone - September 22 through October 7, and October 29 through January 27, 2013; south zone - October 13 through January 27, 2013.

(7) Dark goose: central flyway seasons shall be open October 13 through January 27, 2013. Pacific flyway season shall be north zone - September 22 through October 7, and October 29 through January 27, 2013; south zone - October 13 through January 27, 2013.

(8) Common snipe: central and Pacific flyways seasons shall be October 13 through January 27, 2013.

(9) Common moorhen: central flyway season shall be September 29 through January 13, 2013. Pacific flyway season shall be September 28-29, and October 15 through January 27, 2013.

(10) Sora and Virginia rails: central and Pacific flyways seasons shall be September 15 through December 30.

B. Daily bag limits: shall be three birds (singly or in the aggregate) and possession limits shall be six birds (singly or in the aggregate) as established herein.

(1) There is no daily bag or possession limit on Eurasian-collared dove.

(2) Season limit for sandhill crane in the Estancia valley shall be 9 birds.

[19.31.6.11 NMAC - Rp, 19.31.6.11 NMAC, 8-30-12]

19.31.6.12 REQUIREMENTS AND PERMITS FOR BERNARDO LIGHT GOOSE HUNT:

A. Up to 24 permits at Bernardo WMA, per hunting day, will be available. Applications submitted for the LTG-0-102 hunt must have a minimum of one youth hunter and one hunter over 18 years of age.

B. Hunt dates for the Bernardo light goose hunts.

(1) LTG-0-101: December 30

(2) LTG-0-102: January 19, 2013

(3) LTG-0-103: February 16, 2013

C. Only 30 rounds per hunter will be allowed at the blinds when participating in the Bernardo WMA light goose special permit hunts LTG-0-101 and LTG-0-102. There is no restriction on the number of rounds allowed for LTG-0-103 during the light goose conservation order.

[19.31.6.12 NMAC - Rp, 19.31.6.12 NMAC, 8-30-12]

19.31.6.13 REQUIREMENTS AND PERMITS FOR BERNARDO YOUTH-ONLY LIGHT GOOSE HUNT:

A. Up to 12 permits will be available for the December 28 (YLG-0-101) youth-only light goose hunt at Bernardo WMA.

B. Only 30 rounds per hunter will be allowed at the blinds when participating in the Bernardo WMA light goose special permit hunts.

[19.31.6.13 NMAC - Rp, 19.31.6.13 NMAC, 8-30-12]

19.31.6.14 YOUTH WATERFOWL HUNTING DAYS: Requirements for youth hunters to participate in this hunt are as follows:

A. Youth hunters must be under 16 years old.

B. An adult, at least 18 years old, must accompany the youth hunter in the field (the adult may not hunt ducks; but may participate in other seasons that are open on the special youth day).

C. Only ducks, coots, and moorhens may be taken by the youth hunter (sandhill cranes, geese or any other migratory game bird species may not be taken unless the season is open).

[19.31.6.14 NMAC - Rp, 19.31.6.14 NMAC, 8-30-12]

19.31.6.15 REQUIREMENTS AND HUNT CODES FOR THE SPECIAL BERNARDO YOUTH WATERFOWL HUNT AREA:

A. The Bernardo WMA ponds north of highway U.S. 60 will be open for waterfowl hunting to groups consisting of a minimum of one youth hunter, under 18 years of age, and a supervising adult.

B. Requirements for blind selection:

(1) Blind selection during the September teal season and federal youth waterfowl days including weekends is on a first come basis. Once all blinds are selected, no other hunters may enter the area.

(2) Blind selection on weekdays October 27 through December 13 and December 31 through January 27, 2013 is on a first come basis. Once all blinds are selected, no other hunters may enter the area.

(3) Blind selection on all weekends and weekdays between December 15 and December 30 will be available by permit only issued by drawing.

(a) Up to two hunt choices may be awarded by drawing.

(b) If any permits are available after the drawing, a person may submit a new application at one of the department offices. Up to two hunt choices may be awarded. Hunters may have a maximum of four Bernardo youth-only permits per license year.

(c) Only two applications per hunt code will be drawn or issued after the drawing.

C. 2012-2013 season, hunt codes and permits available:

hunt date	hunt code	no. of permits	hunt date	hunt code	no. of permits
October 27	BNY-0-101	6	December 19	BNY-0-119	6
October 28	BNY-0-102	6	December 20	BNY-0-120	6
November 3	BNY-0-103	6	December 22	BNY-0-121	6
November 4	BNY-0-104	6	December 23	BNY-0-122	6
November 10	BNY-0-105	6	December 24	BNY-0-123	6
November 11	BNY-0-106	6	December 25	BNY-0-124	6
November 17	BNY-0-107	6	December 26	BNY-0-125	6
November 18	BNY-0-108	6	December 27	BNY-0-126	6
November 24	BNY-0-109	6	December 29	BNY-0-127	6
November 25	BNY-0-110	6	December 30	BNY-0-128	6
December 1	BNY-0-111	6	January 5	BNY-0-129	6
December 2	BNY-0-112	6	January 6	BNY-0-130	6
December 8	BNY-0-113	6	January 12	BNY-0-131	6
December 9	BNY-0-114	6	January 13	BNY-0-132	6
December 15	BNY-0-115	6	January 19	BNY-0-133	6
December 16	BNY-0-116	6	January 20	BNY-0-134	6
December 17	BNY-0-117	6	January 26	BNY-0-135	6
December 18	BNY-0-118	6	January 27	BNY-0-136	6

D. Designated areas open for Bernardo youth waterfowl hunts are: north of highway U.S. 60, between U.S. 60 and the posted closure areas.

(1) That portion of Bernardo WMA east of the unit 7 drain, shall be open only on Monday, Wednesday, and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(2) That portion of Bernardo WMA west of the unit 7 drain, shall be open only on Sunday, Tuesday and Thursday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

E. Use of motorized motion decoys is prohibited.

[19.31.6.15 NMAC - Rp, 19.31.6.15 NMAC, 8-30-12]

19.31.6.16 HUNT CODES AND PERMITS NUMBERS FOR THE SPECIAL ESTANCIA VALLEY, MIDDLE RIO GRANDE VALLEY, AND SOUTHWEST NEW MEXICO SANDHILL CRANE SEASONS:

A. Eight separate sandhill crane seasons are scheduled with up to a total of 414 permits available. The permits will be allocated by season as follows for the 2012-2013 season:

season dates	hunt code	hunt location	no. of permits
October 27-28	SCR-0-101	MRGV	70
October 27- November 4	SCR-0-102	EV	65
November 17-18	SCR-0-103	MRGV	50
December 1-2	SCR-0-104	MRGV	45
October 27- November 4	SCR-0-105	SW	70
January 12-13, 2013	SCR-0-106	MRGV	45
January 5-6 2013	SCR-0-107	SW	45
November 10	SCR-0-109	MRGV youth	24

B. Hunters who participate in the MRGV seasons and the January 5-6, 2013 SW season (SCR-0-107) shall be required to check-out at designated check stations when they harvest any sandhill cranes.

C. All EV, MRGV and SW sandhill crane hunters are required to submit a special permit sandhill crane harvest report to the department within five days after the end of their hunt. Hunters that do not submit a questionnaire within five days of the close of their hunt will be considered ineligible to receive a sandhill crane permit the following year.

[19.31.6.16 NMAC - Rp, 19.31.6.16 NMAC, 8-30-12]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

This is an emergency order to 19.31.4 NMAC, Section 22, effective August 17,

2012

**19.31.4.22 E M E R G E N C Y
ORDER FOR FISH SALVAGE:** Under authority of 19.31.10.14 promulgated by the state game commission on April 1, 2010, I, James S. Lane, Jr., director of the department

of game and fish, hereby declares that an emergency exists at Santa Rosa Lake near Santa Rosa, Guadalupe County, New Mexico. The extent to which, fish life will be destroyed by dewatering of the lake. Bag and length limits on sport fish will be removed. Manner and method regulations

will remain in effect. This relaxation will go into effect at 12:01 a.m., August 17, 2012, and will remain in effect until 11:59 p.m., August 20, 2012. This order does not restrict or limit New Mexico state parks from preventing/limiting access by foot or other means of getting to the water due to safety issues or concerns.

[19.31.4.22 NMAC - N/E, 8-17-2012]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 325 SPECIALTY SERVICES

PART 11 MEDICATION ASSISTED TREATMENT FOR OPIOID ADDICTION

8.325.11.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).

[8.325.11.1 NMAC - N, 9-1-12]

8.325.11.2 SCOPE: The rule applies to the general public.

[8.325.11.2 NMAC - N, 9-1-12]

8.325.11.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.

[8.325.11.3 NMAC - N, 9-1-12]

8.325.11.4 DURATION: Permanent

[8.325.11.4 NMAC - N, 9-1-12]

8.325.11.5 EFFECTIVE DATE: September 1, 2012, unless a later date is cited at the end of a section.

[8.325.11.5 NMAC - N, 9-1-12]

8.325.11.6 OBJECTIVE: The objective of this rule is to provide instructions for the service portion of the New Mexico medical assistance division programs.

[8.325.11.6 NMAC - N, 9-1-12]

8.325.11.7 DEFINITIONS: [RESERVED]

8.325.11.8 MISSION STATEMENT: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

[8.325.11.8 NMAC - N, 9-1-12]

8.325.11.9 MEDICATION ASSISTED TREATMENT FOR OPIOID ADDICTION (MAT): The New Mexico medical assistance division (MAD) provides coverage for medication assisted treatment for opioid addiction to eligible recipients through an opioid treatment center as defined in 42 CFR Part 8, *Certification of Opioid Treatment Programs*.

[8.325.11.9 NMAC - N, 9-1-12]

8.325.11.10 ELIGIBLE PROVIDERS:

A. Health care to New Mexico MAD eligible recipients is furnished by a variety of providers and provider groups. The reimbursement for these services is administered by MAD. Upon approval of a New Mexico MAD provider participation agreement or a MAD EHR incentive payment agreement by MAD or its designee, licensed practitioners, facilities and other providers of services that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be approved before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. When approved, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to obtain answers to questions related to the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD provider participation agreement and all applicable statutes, regulations, and executive orders. MAD or its selected claims processing contractor issues payments to a provider using electronic funds transfer (EFT) only.

B. Opioid treatment centers are public or private facilities operating a federally certified program to dispense methadone, or other narcotic replacement or narcotic agonist drug items, as part of a detoxification treatment or maintenance treatments as defined in 42 CFR part 8, *Certification of Opioid Treatment Programs*.

C. Services must be provided within the scope of the practice and licensure for each provider and must be in compliance with the statutes, rules and regulations of the applicable practice and with the MAD program policy manual.

[8.325.11.10 NMAC - N, 9-1-12]

8.325.11.11 PROVIDER RESPONSIBILITIES:

A. A provider who furnishes services to a medicaid or other health care programs eligible recipient must comply with all federal and state laws, regulations, and executive orders relevant to the provision of services as specified in the MAD provider participation agreement. A provider also must conform to MAD program rules and instructions as specified in the provider rules manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or upcoding services.

B. A provider must verify that an individual is eligible for a specific health care program administered by the HSD and its authorized agents, and must verify the eligible recipient's enrollment status at the time services are furnished. A provider must determine if an eligible recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient.

C. The provider must maintain documentation supporting the medical necessity of MAT services in the eligible recipient's medical record per the requirements in 42 CFR Part 8, *Certification of Opioid Treatment Programs*.

[8.325.11.11 NMAC - N, 9-1-12]

8.325.11.12 ELIGIBLE RECIPIENTS:

A. The provider must ensure through its internal policies and procedures that an eligible recipient is treated for opioid dependency treatment only after the provider's physician determines and documents that:

(1) the eligible recipient meets the definition of opioid dependence using generally accepted medical criteria such as those contained in the diagnostic and statistical manual for mental disorders (DSM-IV-TR or subsequent editions);

(2) the eligible recipient has received an initial medical examination as required by 7.32.8.19 NMAC;

(3) if the eligible recipient is requesting maintenance treatment, the eligible recipient must have been addicted for at least 12 months prior to starting MAT services, unless the eligible recipient receives a waiver of this requirement from the provider's physician because the eligible recipient:

(a) was released from a penal institution within the last six months;

(b) is pregnant, as confirmed by the program physician;

(c) was treated for opioid

dependence within the last 24 months; and

(d) meets any other requirements specified in 7.32.8 NMAC regarding waivers, consent, and waiting periods.

B. The provider must ensure that an eligible recipient requesting long-term or short-term opioid withdrawal treatment who has had two or more unsuccessful opioid treatment withdrawal treatment episodes within a 12-month period be assessed by the provider's medical director to determine if other forms of treatment may be more appropriate.

[8.325.11.12 NMAC - N, 9-1-12]

8.325.11.13 COVERED

SERVICES: MAT services use a drug or biological that is recognized in the treatment of substance use disorder and provided as a component of a comprehensive treatment program. MAT is also a benefit as a conjunctive treatment regimen for eligible recipients who are addicted to substances that can be abused and who meet the DSM-IV-TR criteria for a substance use disorder.

[8.325.11.13 NMAC - N, 9-1-12]

8.325.11.14 NON-COVERED

SERVICES: MAT services are subject to the limitations and coverage restrictions that exist for other MAD services. See 8.301.3 NMAC, *General Noncovered Services*.

[8.325.11.14 NMAC - N, 9-1-12]

8.325.11.15 PRIOR

AUTHORIZATION: All MAD services are subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Approval and Utilization Review*. The provider must contact HSD or its authorized agents to request utilization review instructions. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided, to comply with the requirements, and to obtain answers to questions not covered by these materials. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for authorization of services.

A. **Prior authorization:** Certain procedures or services may require prior authorization from MAD or its designee. The methadone or other narcotic replacement or narcotic agonist drug items administration and dispensing do not require prior authorization. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

B. **Eligibility determination:** The prior authorization of a

service does not guarantee that an individual is eligible for medicaid or other health care programs. A provider must verify that an individual is eligible for a specific program at the time the service is furnished and must determine if the eligible recipient has other health insurance.

C. Reconsideration:

A provider who disagrees with a prior authorization denial or another review decision may request a reconsideration of the decision. See 8.350.2 NMAC *Reconsideration of Utilization Review Decisions*.

[8.325.11.15 NMAC - N, 9-1-12]

8.325.11.16 REIMBURSEMENT:

A. A MAT provider, except an IHS or an 638 facility, must submit claims for reimbursement on the CMS 1500 claim form or its successor. See 8.302.2 NMAC, *Billing for Medicaid Services*. Once enrolled, a provider receives directions on how to access instructions on documentation, billing, and claims processing and laboratory or testing performed by the facility and specimen collection. Reimbursement to a provider for covered services is made at the lesser of the following:

(1) the provider's billed charge; or
(2) the MAD fee schedule for the specific service or procedure.

B. The provider's billed charge must be their usual and customary charge for services.

C. "Usual and customary charge" for administration and dispensing refers to the amount the provider charges the public at a daily rate rather than the provider's weekly or monthly rate. The coverage of services provided to an MAD eligible recipient can be greater than the services required under 42 CFR Part 8, *Certification of Opioid Treatment Programs* as MAD recognizes it is beneficial to the eligible recipient to receive necessary comprehensive medical and behavioral health services when they can be rendered by the MAT provider at the same time as MAT services.

(1) The reimbursement rate for administration and dispensing includes the cost of methadone, administering and dispensing methadone or other narcotic replacement or agonist drug items, and substance abuse and HIV counseling required by 42 CFR Part 8.12 (f) performed and other services within the center unless otherwise described as separately reimbursed.

(2) Additional reimbursement will be made for the specific drug item if separately reimbursed services payable to the MAT provider are:

(a) if a narcotic replacement or agonist drug item other than methadone is administered or dispensed;

(b) outpatient therapy (other than

the substance abuse and HIV counseling required by 42 CFR Part 8.12 (f)) is reimbursable when rendered by a MAD approved independently licensed provider that meets 8.310.8 NMAC *Behavioral Health Professional Services*, requirements;

(c) an eligible recipient's initial medical examination when rendered by a MAD approved medical provider that meets 8.310.2 NMAC *Medical Services Providers*, requirements;

(d) laboratory services provided by a certified laboratory facility when billed by the offsite laboratory;

(e) full medical examination, prenatal care and gender specific services for MAD pregnant eligible recipients, if she is referred to a different provider, payment is made to the provider of the service;

(f) medically necessary services provided beyond those required by CFR 42 CFR Part 8.12 (f), as necessary to address the medical issues of the eligible recipient.

(3) The quantity of service billed for administering or dispensing for each day cannot exceed the combined total of the drug items administered that day plus the number of drug items dispensed on that day.

(4) Claims billed for MAT must include the eligible recipient's substance use disorder diagnosis.

[8.325.11.16 NMAC - N, 9-1-12]

HISTORY OF 8.325.11 NMAC:
[RESERVED]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 69 SCHOOL PERSONNEL - PERFORMANCE PART 8 TEACHER AND SCHOOL LEADER EFFECTIVENESS

6.69.8.1 ISSUING AGENCY:
Public Education Department. (PED)
[6.69.8.1 NMAC - N, 08-30-12]

6.69.8.2 SCOPE: Chapter 69, Part 8 governs standards for determining and measuring teacher and school leader effectiveness.
[6.69.8.2 NMAC - N, 08-30-12]

6.69.8.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, 22-10A-18, 22-10A-19 and 22-10A-19.2, NMSA 1978.
[6.69.8.3 NMAC - N, 08-30-12]

6.69.8.4 DURATION:
Permanent.
[6.69.8.4 NMAC - N, 08-30-12]

6.69.8.5 EFFECTIVE DATE:

August 30, 2012, unless a later date is cited at the end of a section.

[6.69.8.5 NMAC - N, 08-30-12]

6.69.8.6 OBJECTIVE: This rule establishes uniform procedures for conducting annual evaluations of licensed school employees, for setting the standards for each effectiveness level, for measuring and implementing student achievement growth, and for monitoring each school district's implementation of its teacher and school leader effectiveness evaluation system. This rule also seeks to change the dynamic of placing emphasis on teacher effectiveness and provide the opportunity to acknowledge excellence, thereby replacing the binary system that emphasizes years of experience and credentials.

[6.69.8.6 NMAC - N, 08-30-12]

6.69.8.7 DEFINITIONS:

A. "Assistant principal" means a properly licensed instructional leader who assists a principal in a public school.

B. "BIE school" means a bureau of Indian education school that is governmentally owned and controlled, located in New Mexico, provides instruction for first through twelfth grades and is not sectarian or denominational.

C. "Department" means the New Mexico public education department or PED.

D. "EES" means effectiveness evaluation systems which are developed by school districts to measure the effectiveness of licensed school employees.

E. "Fidelity observations" means the requirement of school leaders to periodically observe and evaluate assigned teachers in the classroom with observations that have been documented and are verifiable.

F. "Licensed school employee" means teachers and school leaders employed in a public school.

G. "New Mexico standards-based assessment (SBA)" means the collection of instruments that assess student academic performance annually and the students' progress toward meeting the New Mexico content standards with benchmarks and performance standards.

H. "Principal" means the chief instructional leader and administrative head of a public school.

I. "School district" means one of the 89 political subdivisions of the state created for the administration of public schools and includes those state-authorized charter schools that have not requested waiver of evaluation standards for school personnel. District-authorized charter schools are excluded from being considered a school district for purposes of this rule.

J. "School district superintendent" means the chief executive officer of a school district and the head administrator of a charter school.

K. "School leader" means a principal or assistant principal employed in a public school.

L. "State agency" means the New Mexico military institute, the New Mexico school for the blind and visually impaired, the New Mexico school for the deaf, any juvenile detention center or facility served by the juvenile justice service of the children youth and families department, the New Mexico youth diagnostic and development center, the Sequoyah adolescent treatment center of the department of health, Carrie Tingley crippled children's hospital, the New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children.

M. "Teacher" means a person who holds a level one, two or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers. "Teacher" shall not include any person issued a Native American language and culture certificate pursuant to the School Personnel Act [Sections 22-10A-1 to 22-10A-39 NMSA 1978].

[6.69.8.7 NMAC - N, 08-30-12]

6.69.8.8 EFFECTIVENESS EVALUATION SYSTEMS:

A. As soon as possible but not later than the commencement of the 2013-2014 school year, all school districts shall develop and submit to the department for approval and for implementation during the 2013-2014 school year, an effectiveness evaluation system for measuring performance of licensed school employees.

B. School districts may continue to use the highly objective uniform statewide standards of evaluation described in 6.69.4 NMAC for evaluating, promoting, terminating and discharging licensed school employees for performance during the 2012-2013 school year.

C. Each school district shall report annually to the department the results of its effectiveness evaluations of its licensed school employees and the alignment of its effectiveness evaluation system with the three-tiered licensure system.

D. A teacher and school leader EES shall:

(1) be designed to support effective instruction and student achievement, with the results used to inform school district and school level improvement plans;

(2) provide appropriate

instruments, procedures and criteria and continuous quality improvement of professional skills, with results used to support the professional development of licensed school employees;

(3) include a mechanism to examine effectiveness data from multiple sources, which may include giving parents and students opportunities to provide input into effectiveness evaluations when appropriate;

(4) identify those teaching fields for which special evaluation procedures and criteria may be developed in a manner that is consistent and reliable;

(5) include measures of student achievement growth worth 50%, observations worth 25% and other multiple measures worth 25%, unless otherwise provided for;

(6) differentiate among at least five levels of performance, which include the following:

(a) exemplary, meets competency;

(b) highly effective, meets competency;

(c) effective, meets competency;

(d) minimally effective, does not meet competency; and

(e) ineffective, does not meet competency.

E. Teacher and school leader effectiveness evaluation procedures for licensed school employees shall be based on the performance of students assigned to their classrooms or public schools.

F. Every public school classroom teacher who teaches in a grade or subject that has a standards-based assessment that would permit the calculation of student achievement growth, must have an annual effectiveness evaluation, provided that:

(1) each evaluation shall be based on sound educational principles and contemporary research in effective educational practices; and

(2) the student achievement growth component of a teacher's effectiveness evaluation shall be based on:

(a) valid and reliable data and indicators of student achievement growth assessed annually through a combination of 35% standards-based assessment and 15% additional department-approved assessments, for a total of 50%, provided that this calculation shall not be based upon a single test score;

(b) assessments that are selected by a school district from a list of options approved by the department for any subjects and grade levels not measured by state assessments; and

(c) the PED-adopted measure of student achievement growth calculated for all courses associated with state assessments and for which the school district shall select comparable measures of student achievement

growth for other grades and subjects.

G. Every public school classroom teacher who teaches in a grade or subject that does not have a standards-based assessment, also must have an annual effectiveness evaluation, provided that:

(1) each evaluation shall be based on sound educational principles and contemporary research in effective educational practices; and

(2) the student achievement growth component of a teacher's effectiveness evaluation shall be based on:

(a) valid and reliable data and indicators of student achievement growth assessed annually on district-selected and department-approved assessments, for a total of 50%;

(b) assessments that are selected by a school district from a list of options approved by the department for any subjects and grade levels not measured by department-approved assessments; and

(c) the PED-adopted measure of student achievement growth calculated for all courses associated with department-approved assessments and for which the school district shall select comparable measures of student achievement growth, and approved by the PED, for other grades and subjects.

H. An EES shall base at least 25% of the results on data and indicators of instructional practice for teachers. School leaders shall observe instructional practice of teachers using common research-based observational protocol approved by the department that correlates observations to improved student achievement.

I. Effectiveness evaluation criteria for evaluating classroom teachers shall include indicators based on research-based instructional practices as determined by the department.

J. School districts that receive funding under the Bilingual Multicultural Education Act [Sections 22-23-1 to 22-23-6 NMSA 1978] or with students possessing limited English proficiency should ensure that they are doing all they can to carry out all state and federal activities and programs to assist those student populations. [6.69.8.8 NMAC - N, 08-30-12]

[The department maintains a list of approved assessment options and effectiveness evaluation measures and criteria for evaluating classroom teachers on its website, which can be accessed at <http://ped.state.nm.us/> and used by school districts for determining the student achievement growth component and evaluation criteria in a teacher's effectiveness evaluation.]

6.69.8.9 STUDENT ACHIEVEMENT GROWTH AND STUDENT ASSESSMENT PROGRAMS:

A. School districts shall use

the department-adopted student achievement growth measure to measure the growth in achievement of each student, provided that a school district may request permission to use a combination of the department-approved achievement growth measure and an alternative student achievement measure for non-tested subjects and grades which is department approved.

B. Whenever possible, an EES rating the performance of a classroom teacher shall include three years or more of student achievement growth data.

C. An EES rating the performance of any teachers who are assigned to courses not associated with state assessments may, upon request by their school district through the EES approval process, be permitted to include achievement growth that is demonstrated on state assessments as a percentage of the overall effectiveness evaluation. If that request is permitted and a percentage applied:

(1) achievement growth on the state assessment shall be based on the students assigned to the teacher; and

(2) the achievement growth of the teacher's assigned content area, as measured by the district-selected assessment, shall be the greater percentage.

D. Beginning with school year 2013-2014, if a school district has not implemented appropriate assessments of courses for classroom teachers nor adopted a comparable measure of student achievement growth, student achievement growth shall be measured by:

(1) the growth in achievement of the classroom teacher's student on state assessments;

(2) the school's A through F letter grade pursuant to 6.19.8 NMAC for courses in which enrolled students do not take the state assessment, provided that a school district may assign instructional team student achievement growth to classroom teachers in lieu of using the school grade growth calculation; or

(3) state-developed end of course examinations or other PED-recommended options.

E. Beginning with the 2013-2014 school year, each school district shall be responsible for measuring the achievement gains of their students in all subjects and grade levels other than subjects and grade levels required for the state student achievement testing programs. To accomplish this, each school district shall administer a student assessment for each course they offer that measures mastery of the content as described in the state-adopted course description at the necessary level of rigor for the course. The student assessments may include:

(1) statewide assessments currently administered in mathematics and

reading;

(2) other standardized assessments approved by the department, including nationally recognized standardized assessments;

(3) industry certification examinations; and

(4) department-approved school district-developed or selected end-of-course assessments.

F. A school district may develop its own assessment that measures student achievement growth for classroom teachers who do not teach in a standards-based assessment grade or subject, provided that, it submits the assessment to the department for approval.

[6.69.8.9 NMAC - N, 08-30-12]

[The department maintains a list of approved student achievement growth measures on its website, which can be accessed at <http://ped.state.nm.us/> and used by school districts for determining the growth in advancement of each student.]

6.69.8.10 EFFECTIVENESS EVALUATIONS OF SCHOOL LEADERS:

A. Every school leader must have an annual effectiveness evaluation, which shall be conducted by a qualified person and approved by PED.

B. All EES ratings for the performance of a school leader shall be based 50% on the change in a school's A through F letter grade that has been assigned pursuant to 6.19.8 NMAC, 25% based on the school's multiple measures and 25% based upon documented fidelity observations of the school leader.

C. The effectiveness evaluation of school leaders shall, whenever possible, include student achievement growth data for students assigned to the public school for at least three consecutive school years, provided that, the student achievement growth component of the effectiveness evaluation shall be based on the change in the school's A through F letter grade pursuant to 6.19.8 NMAC.

[6.69.8.10 NMAC - N, 08-30-12]

[The department maintains a list of leadership standards on its website, which can be accessed at <http://ped.state.nm.us/> and used by school districts in establishing indicators for conducting effectiveness evaluation of school leaders.]

6.69.8.11 EVALUATIONS, REPORTS AND POST-EVALUATION CONFERENCES:

A. A classroom teacher whose previous annual effectiveness evaluation rating was either highly effective or exemplary shall continue to be observed four separate times a year by their school principal or other qualified

external observers. The principal rating this classroom teacher shall have no role in selecting nor be related by blood or marriage to the external observer.

B. All external observers shall receive training provided by either their school district or the PED. School districts may train their own external observers provided they develop mandatory written guidelines and those guidelines at a minimum require:

(1) that the external observers possess current New Mexico educator licensure and that they have at least five years of verifiable consecutive classroom teaching experience;

(2) that the external observers be provided with a district or PED developed form that contains at a minimum their name, the classroom teacher's name, the date, the start and stop time of their observation, the number of students present, space for subjective and objective observation, and a total point score of that teacher;

(3) that the external observers complete one actual training session of a classroom teacher who consents to such an observation solely for training purposes;

(4) that the external observers complete their written evaluation of a classroom teacher before leaving the school on the day of the observation; and

(5) that the external observers maintain confidentiality of their observations and written evaluations and do not discuss with anyone except the principal their observations or evaluations, nor may they retain or remove any copies of their evaluations or field notes from school premises.

C. Written feedback from school leaders and external observers shall be provided to classroom teachers within ten calendar days after observation is completed, which observation can occur over more than one day, provided that a school district's EES permits this.

D. Upon approval by the department, multiple measures adopted by a school district for use in their EES by the school districts shall constitute 25% of their teacher and school leader EES, provided that:

(1) the multiple measures align with improved student achievement; and

(2) each school district adopts at least two multiple measures which shall be used district-wide.

E. The school leader responsible for supervising a licensed school employee shall be the one who evaluates that employee's performance. The school district's EES:

(1) may provide for the supervisor to consider input from other trained evaluators and observers provided that they are not also supervised by the supervisor

nor are related by blood or marriage to the supervisor; and

(2) shall provide for contingencies if a supervisor leaves a school district for any reason prior to completing the required effectiveness evaluations of all teachers within that supervisor's responsibilities.

F. Every person who evaluates a licensed school employee under this rule shall submit an original written report to the school district superintendent and an exact copy to the licensed school employee being evaluated. The effectiveness evaluation shall not be changed once each component is completed and it has been delivered to either the school district superintendent or the licensed school employee being evaluated.

G. A licensed school employee rated minimally effective or ineffective may provide a written statement in response to their effectiveness evaluation and that statement shall become a permanent attachment to that employee's evaluation file.

H. Every person who rates a licensed school employee minimally effective or ineffective shall describe in detail the minimally effective or ineffective performance and inform the licensee in writing:

(1) of a right to a post-evaluation conference which the evaluator must convene and which shall occur no later than ten days after the evaluation is completed unless the employee agrees to an extension;

(2) that during the conference the evaluator will make recommendations to the employee with respect to specific areas of unsatisfactory performance and provide feedback that lays the initial framework for an individual professional growth plan;

(3) that the evaluator will provide assistance in helping the employee correct unsatisfactory performance and that the district will extend strategic support aligned to best practices identified by the department to assist the employee to correct unsatisfactory performance;

(4) that if the employee has an employment contract, the employee shall be placed on a performance growth plan for 90 school days from receipt of the notice of minimally effective or ineffective performance, provided that:

(a) the 90 days shall not include weekends, school holidays or school vacation periods, declared snow days, and approved employee leave days;

(b) during the 90 days the licensed school employee shall be observed and evaluated periodically, that is, more than four times in writing and shall be informed of the results of those observations; and

(c) the evaluator shall maintain documentation of having provided assistance and notification of in-service training

opportunities to help correct the performance deficiencies noted of the licensed school employee; and

(5) that receipt of the notice shall constitute notice of uncorrected unsatisfactory work performance pursuant to Section 22-10A-3 NMSA 1978 and 6.69.2 NMAC.

I. Within five school days after the expiration of the 90-day performance growth plan, the evaluator shall determine whether the performance deficiencies have been corrected and forward a written recommendation to the school district superintendent.

J. Within 10 school days after receipt of that written recommendation, the school district superintendent shall in writing notify the licensed school employee who has an employment contract with the school district whether the performance deficiencies have been satisfactorily corrected. A copy of the evaluator's recommendation shall accompany that notice.

K. If satisfactory progress has not been made, the local superintendent shall determine whether to discharge or terminate the employee pursuant to Sections 22-10A-27 or 22-10A-24, NMSA 1978.

L. An employee who has been placed on a 90-day performance growth plan because of minimally effective or ineffective performance and who has not been employed by a school district for three consecutive years, shall have no reasonable expectation of continued employment beyond the end of the contract year by reason of being on a growth plan.

M. The school district superintendent shall provide written notice to the educator quality division of the department the name and licensure file number of all licensed school employees who have received two consecutive minimally effective or ineffective performance ratings and who have been given a written notice of proposed discharge or of proposed termination, or who have resigned their employment after receiving either of these ratings.

[6.69.8.11 NMAC - N, 08-30-12]

6.69.8.12 APPEAL OF EFFECTIVENESS EVALUATIONS:

A. A school district shall adopt procedures for permitting expedited review for the purpose of a licensed school employee requesting an exemption from being rated during a given school year under the school district's EES based only upon extraordinary circumstances.

B. The procedures shall require a written appeal to be submitted to the appellate reviewer within no more than 15 calendar days of receipt of a written notice that the licensed employee's performances

deficiencies have not been satisfactorily corrected.

C. Appeals shall be received in a manner that permits verification of the date of receipt.

D. The person who evaluated the licensed school employee shall not be same person who receives and determines the appeal.

E. An exemption from the provisions of this rule can only be granted for one school year based upon extraordinary circumstances, which shall consist of:

(1) a licensed school employee's not having performed services during an entire school year, excluding days out for approved leave and school holidays or closure days, for reasons beyond the employee's control;

(2) a licensed school employee's not being able to perform services for extended periods during a school year due to documented medical reasons of the employee or of the employee's spouse, live-in partner or a child;

(3) a licensed school employee's not being able to perform services for extended periods during a school year due to the death of the employee's spouse, live-in partner or a child; or

(4) a licensed school employee's not having been afforded a full 90 days to demonstrate growth in performance for any reason including the employee's own illness, provided that it shall be the employee's burden to provide verification of not being afforded the full 90 days.

F. All decisions on appeals rendered under this section shall be final and not further reviewable by anyone else at the school district or by the PED.

[6.69.8.12 NMAC - N, 08-30-12]

6.69.8.13 TEACHERS AND ADMINISTRATORS IN NON-PUBLIC SCHOOLS:

A. Only licensed teachers and school leaders employed in schools subject to the A-B-C-D-F Schools Rating Act [Sections 22-2E-1 to 22-2E-4 NMSA 1978] shall be governed by any requirement or provision of this rule.

B. Specifically, neither licensed teachers nor administrators employed in private schools, BIE schools or state agencies shall be governed by any requirement or provision of this rule.

[6.69.8.13 NMAC - N, 08-30-12]

HISTORY OF 6.69.8 NMAC: [Reserved]

End of Adopted Rules Section

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