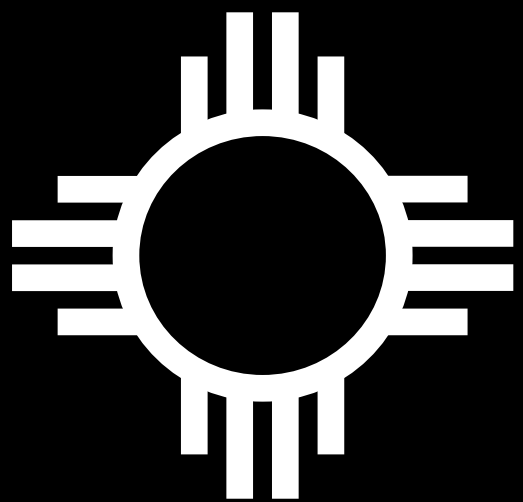


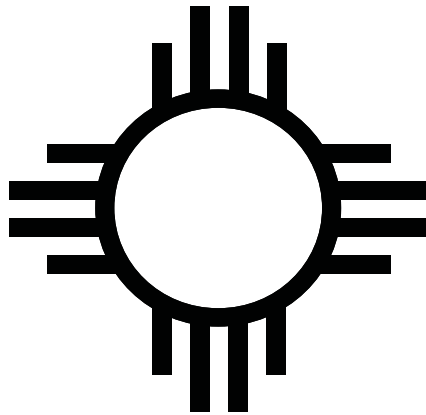
**NEW
MEXICO
REGISTER**



Volume XXIII
Issue Number 17
September 14, 2012

New Mexico Register

Volume XXIII, Issue Number 17
September 14, 2012



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

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2012

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New Mexico Register

Volume XXIII, Number 17

September 14, 2012

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Notices of Rulemaking and Proposed Rules

NEW MEXICO GENERAL SERVICES DEPARTMENT

Notice of Proposed Rulemaking

The General Services Department (“GSD or Department”) hereby gives notice that the Department will conduct a public hearing as indicated to obtain input on amending the following rules:

1.5.3 Administration and Use of State Vehicles

A public hearing regarding the rules will be held on October 31, 2012 in the TSD Conference Room located at 2542 Cerrillos Rd., Building T-187, Santa Fe, New Mexico. The time for the hearing on the proposed rules is 9:00 AM MDT.

Interested individuals may testify at the public hearing or submit written comments regarding the proposed rulemaking relating to the Administration and Use of State Vehicles to Annette Roybal, State Central Fleet Authority, Bureau Chief, New Mexico General Services Department, 2542 Cerrillos Rd., Santa Fe, New Mexico 87505 or Annette.roybal@state.nm.us, (505)231-6299, fax (505)827-1967. Written comments must be received no later than 5:00 PM on October 24, 2012. The proposed rulemaking actions specific to the Transportation Services Division it may be accessed on the Department’s website (<http://www.generalservices.state.nm.us/>) or obtained from Annette Roybal at the contact above.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact Annette Roybal as soon as possible. The Department requests at least ten days advanced notice to provide requested special accommodations.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) is scheduling a public hearing on October 17, 2012 at 9:00 a.m. in the ASD conference room, Plaza San Miguel, 729 St. Michael’s Drive, Santa Fe.

The subject of the hearing is: Behavioral Health Collaborative. The New Mexico Human Services Department (HSD)

and the Behavioral Health Collaborative (BHC) are proposing to amend existing Behavioral Health Collaborative rules, 7.21.1 NMAC and 7.21.3 NMAC in order to streamline elements of the collaborative’s contracting process. Most of the changes relate to aligning the Behavioral Health Collaborative rules with the health services delivery model of New Mexico Centennial Care; specifically, allowing for multiple providers of behavioral health services, instead of a single “state-wide” behavioral health provider. There is no financial impact to providers.

Interested persons may submit written comments no later than 5:00 p.m., October 17, 2012, to Sidonie Squier, Secretary, Human Services Department, PO Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

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

Copies of the Human Services Register and their proposed rules are available for review on our Website at <http://www.hsd.state.nm.us/mad/OtherSites.html> and clicking on *New Mexico Behavioral Health Collaborative* or by sending a self-addressed stamped envelope to Medical Assistance Division, Benefits Services Bureau, PO Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO BOARD OF NURSING

Public Rules Hearing

The New Mexico Board of Nursing will hold a Rules Hearing on Friday, October 19, 2012. The Rules Hearing will begin at 9:00 a.m. The rules hearing will be held at the New Mexico Board of Nursing, 6301 Indian School RD NE, Suite 710, Albuquerque NM

87110.

The purpose of the rules hearing is to hear public testimony and comments regarding the proposed amendments to the Board’s rules and regulations: 16.12 NMAC: Part 2 Nurse Licensure and 16.12.NMAC: Part 9 Management of Chronic Pain with Controlled Substances.

Persons desiring to preview the proposed amendments to the rules may call (505) 841-8340 or download them from www.bon.state.nm.us.

In order for the Board members to review the comments prior to the hearing, persons wishing to submit written comments regarding the proposed rules should submit them to the Board office in writing no later than October 1, 2012. Persons wishing to present written comments at the hearing are asked to provide (10) copies of any comments or proposed changes for distribution to the Board and staff. In addition, persons may present their comments orally at the hearing.

Notice: Any person presenting testimony, who is representing a client, employer or group, must be registered as a lobbyist through the Secretary of State’s Office (9505) 827-3600 or do so within 10 days of the Public Hearing.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, please call the Board office at (505) 841-8340 at least two weeks prior to the hearing or as soon as possible.

NEW MEXICO BOARD OF PHARMACY

NEW MEXICO BOARD OF PHARMACY

REGULAR BOARD MEETING

NOTICE TO THE PUBLIC

The New Mexico Board of Pharmacy will convene on **October 18th, 2012 at 8:00 a.m.** and continue until finished in the **Board of Pharmacy Conference Room located at 5200 Oakland Ave., NE, Albuquerque, NM** for the purpose of conducting a regular Board meeting.

On October 19th, 2012 the New Mexico Board of Pharmacy Board members will participate in a “Community Outreach Program”.

Interested persons wishing to comment and or present proposed language regarding rule hearings must submit documentation via fax (505)222-9845, mail or email to Larry Loring, Larry.Loring@state.nm.us or Debra Wilhite, debra.wilhite@state.nm.us no later than August 24, 2012, if in attendance please provide 15 copies for distribution to board members.

Interested persons may contact Debra Wilhite, Administrative Secretary, 5200 Oakland Ave., NE, Suite A, Albuquerque, NM 87113, (505) 222-9835 or fax (505) 222-9845, e-mail debra.wilhite@state.nm.us to receive copies of the agenda and any proposed rule, or you may access the links on the agenda for printing via our website listed below. The Board may go into executive session at any time to discuss licensee and/or personnel matters. Anyone who needs special accommodations for the meeting should contact the Board office at (505) 222-9830 as soon as possible.

The agenda (tentative) will be available starting October 8, 2012 through the Board's website: www.rld.state.nm.us

The Board will address:

Rule Hearings:

16.19.10.11 NMAC Limited Drug Clinics:
Section 11: Public Health Clinics

16.19.6 NMAC Pharmacies
Section 11: Minimum Equipment and Accessory Standards

Hearings, Board Orders and Surrenders:

Approval of Applications:

Other Board Matters:

Committee Reports:

Public Requests:

*Executive Director's Report:
Case presentations*

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

Case No. 12-00237-UT

IN THE MATTER OF THE PETITION FOR RULEMAKING OF DEX MEDIA EAST, INC. PURSUANT TO NMPRC RULE 120 [17.1.120 NMAC] TO REPEAL OR MODIFY 17.11.18.13(E) NMAC DEX MEDIA EAST, INC., PETITIONER

NOTICE OF PROPOSED RULEMAKING

NOTICE is hereby given that the New Mexico Public Regulation Commission ("NMPRC" or the "Commission") is commencing a rulemaking proceeding to amend 17.11.18.13 NMAC. This matter comes before the Commission upon the filing of a Petition to Initiate Rulemaking ("Petition") filed by Dex Media East, Inc. ("Petitioner"). A copy of the proposed rule, Rule 17.11.18.13 NMAC, is attached hereto as Attachment A (the "Proposed Rule"). The Proposed Rule is intended to amend existing Rule 17.11.18.13 NMAC.

THE COMMISSION FINDS AND CONCLUDES:

1. The Commission has the authority to promulgate the Proposed Rule under the N.M. Const. art. XI, Section 2, and under NMSA 1978, Sections 8-8-4(B)(10) (1998) and 8-8-15 (amended 2001) and 17.1.120.9 NMAC.

2. The Proposed Rule should be promulgated to minimize the publication and distribution of printed white page directories and to maintain parity between end users of incumbent local exchange carriers and competitive local exchange carriers.

3. Interested persons may comment on any portion of the Proposed Rule, but the Commission would especially like to receive comments on the following provisions:

a. Do all telephone company customers need printed white pages directories? If not, which types of customers continue to need such directories?

b. If all customers do not need printed white pages directories, should the Commission continue to require telephone companies to provide them?

c. Should telephone companies give their customers the option to receive a printed white pages directory?

i. If so, should customers be given the option not to receive a printed directory (opt out) or should customers be required to affirmatively request a directory (opt in)?

ii. What costs would a telephone company incur to implement optional distribution of printed directories?

iii. If any such costs would be significant, how should the company recover those costs?

d. Should the rule explicitly allow a telephone company to seek an exemption from the rule to relieve it of the obligation to print and/or deliver printed directories to customers? If so, what standard should the Commission consider?

e. Should the Commission give telephone companies the option to provide online directories of telephone numbers instead of printed white pages directories?

4. This *Notice of Proposed Rulemaking* should constitute due and lawful notice to all potentially interested persons.

5. Commission Rule 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 ensure compliance with Rule 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds that date shall be the earlier of thirty (30) days following the **October 23, 2012, Public Hearing**, that is, **November 20, 2012**, or the date a Final Order is issued in this case. The setting of that record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission's Proposed Rule 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.

IT IS THEREFORE ORDERED:

A. The Petitioners' Petition for a rulemaking to promulgate an amended rule, **Rule 17.11.18.13 NMAC, is GRANTED.**

B. The rulemaking proceeding shall be, and hereby is, instituted in this

Docket to minimize the publication and distribution of printed white page directories and maintain parity between end users of incumbent local exchange carriers and competitive local exchange carriers.

C. This Notice of Proposed Rulemaking constitutes due and lawful notice to all potentially interested persons.

D. Any person wishing to comment on the Proposed Rule may do so by submitting written comments no later than September 18, 2012. Any person wishing to respond to comments may do so by submitting written response comments no later than October 9, 2012. Comments suggesting changes to the Proposed Rule shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the Proposed Rule shall be provided in a form consistent with that of the Proposed Rule. Commenters' deletions shall be indicated by striking through the language to be deleted, and commenters' additions shall be underlined.

E. All pleadings, including comments, shall bear the above caption and case number 12-00237-UT and shall be filed with the Commission's Records Division, at either of the addresses set forth below:

NMPRC Records Management Bureau
1120 Paseo de Peralta
Santa Fe, New Mexico 87501

or

NMPRC Records Management Bureau
PO Box 1269
Santa Fe, New Mexico 87504-1269

F. A public hearing on the Proposed Rule, to be presided over by the Commission or its designee, shall be held beginning at 1:30 p.m. on October 23, 2012, at the offices of the Commission, at the following location:

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

The hearing will be held in order to receive oral comments and to clarify or supplement the written comments. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.

G. All persons providing public comment and/or participating in

the public hearing are encouraged to provide specific comments on the Proposed Rule. Commenters are also encouraged to address any other topic that may be relevant to this rulemaking.

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

I. Pursuant to NMSA 1978, Section 8-8-15(B) (amended 2001), at least thirty days prior to the hearing date, this Notice of Proposed Rulemaking, including Attachment A, shall be mailed to all persons who have made a written request for advance notice and shall be published without Attachment A in at least two newspapers of general circulation in New Mexico and in the NEW MEXICO REGISTER. Affidavits attesting to the publication of this Notice of Proposed Rulemaking as described above shall be filed in this Docket.

J. Copies of this Notice of Proposed Rulemaking, including Attachment A, shall be e-mailed to all persons listed on the attached Certificate of Service if their e-mail addresses are known, and if not known, mailed to such persons via regular mail.

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

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

M. This Notice of Proposed Rulemaking is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 28th day of August, 2012.

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

NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE ADOPTION OF)
PROPOSED AMENDMENTS TO THE WORKERS')
COMPENSATION APPEALS BOARD RULES) 12-00253-IN
CODIFIED AT 13.17.2 NMAC)

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 amendments to the Workers' Compensation Appeals Board rules codified in the New Mexico Administrative Code (NMAC) at 13.17.2. 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 §59A-1-1 et seq. (Insurance Code).

2. The amendments to 13.17.2 NMAC are proposed to revise the voting provisions for the Workers' Compensation Appeals Board, established pursuant to 13.17.2 NMAC, to revise the terms of each member's term on the Appeals Board and to revise the scope of matters to be heard by the Appeals Board.

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

4. The Superintendent will accept written comments on the Proposed Rule 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 Rule no later than **October 9, 2012**. Any response comments shall be filed no later than **October 15, 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 Rule, shall bear the caption and docket number contained at the top of this NOPR.

5. Written comments or written response comments shall be filed by sending original copies to:

Mr. Nick Guillen
NMPRC Records Management
Bureau
1120 Paseo de Peralta
P.O. Box 1269
Santa Fe, NM 87504
ATTN: Case No. 12-00253-IN

6. Copies of the Proposed Rule may be downloaded from the New Mexico Public Regulation's web site, www.nmprc.state.nm.us.

7. The Superintendent will review all timely submitted written comments and will hold a public comment hearing beginning at **1:30 p.m. on October 31, 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.

8. 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.

9. 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 30, 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 Proposed Rule 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.

10. Copies of this NOPR 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 **October 9, 2012** and written response comments must be filed by **October 15, 2012**.

D. A public hearing on the Proposed Rule shall be held beginning at **1:30 p.m. on October 31, 2012** at the offices of the Superintendent, at the following location:

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

E. Pursuant to 1.2.3.7(B) NMAC, the record in this case will be closed on the earlier of thirty (30) days following the public hearing; that is, November 30, 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, to preside over this matter and to take all action necessary and convenient thereto within the limits of the hearing officer's authority and consistent with applicable procedural rules.

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

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

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

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

M. This NOPR is effective immediately.

DONE AND ORDERED this ____
day of August, 2012

JOHN G. FRANCHINI
Superintendent of Insurance

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

Notice

**NEW MEXICO DEPARTMENT OF
PUBLIC SAFETY
NM LAW ENFORCEMENT ACADEMY
BOARD MEETING AND A PUBLIC
HEARING**

The New Mexico Law Enforcement Academy Board, as part of its regular board meeting to occur on Tuesday, October 23, 2012, 9:00 a.m. at the Chaves County Administration Complex, # 1 St. Mary's Place, Roswell, NM 88203 will hold a public hearing to take public comment on a proposed change to its administrative rules.

The proposed change to 10.29.1.11 NMAC is as follows:

**10.29.1.11 G R O U N D S
FOR DENIAL, REVOCATION OR
SUSPENSION OF POLICE OFFICER
OR TELECOMMUNICATOR
CERTIFICATION; REPORTING
REQUIREMENTS**

A. Authority - In

accordance with the provisions of the Law Enforcement Training Act, NMSA 1978, Section 29-7-13 (Repl. Pam. 1994), the director may seek to deny, suspend or revoke a police officer's certification, if after investigation, and consultation with the employing agency, it is determined that a police officer has failed to comply with the provisions of the Law Enforcement Training Act concerning qualifications for certification as a police officer in the state of New Mexico.

B. Arrest or indictment on felony charges.

(1) The director upon being notified that a certified peace officer or telecommunicator has been arrested or indicted on any felony charge(s) shall immediately suspend the certification of the officer or telecommunicator. The procedures set forth in 10.29.1.12 NMAC shall not apply to the immediate suspension. Notice of the immediate suspension shall be served on the officer or telecommunicator. Upon service of the notice, the officer or telecommunicator shall have 15 days to request to be heard at the next regular meeting of the board. At the meeting, the officer or telecommunicator may present evidence, witnesses and argument as to why their license should not be suspended. The board may deliberate and shall issue a decision on the suspension at the meeting.

(2) The director upon being notified that a certified peace officer or telecommunicator has been arrested or indicted on any felony charge(s) shall initiate the revocation process as per 10.29.1.12 NMAC.

[B:] C. Grounds for police officer - The following conduct by a certified police officer may constitute grounds for denial, suspension or revocation of certification under this rule:

(1) subsequent conviction, entry of plea of guilty or entry of plea of nolo contendere to any felony charge;

(2) subsequent conviction, entry of plea of guilty or entry of plea of nolo contendere to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances, or other crime involving moral turpitude;

(3) making false statements or giving any false information to the academy in connection with an application for admission/certification;

(4) committing acts which indicate a lack of good moral character, or which constitute dishonesty or fraud, and which adversely affects an officers ability to exercise the duties of a certified law enforcement officer; and

(5) committing acts of violence or brutality which indicate that the officer has abused the authority granted to him or

her as a commissioned law enforcement officer in the state of New Mexico;

(6) is found to have committed acts which would be grounds for denial of application for admission under 10.29.1.10 NMAC.

[E:] D. Grounds for telecommunicator - The following conduct by a certified telecommunicator may constitute grounds for denial, suspension or revocation of certification under this rule:

(1) subsequent conviction, entry of plea of guilty or entry of plea of nolo contendere to any felony charge;

(2) subsequent conviction, entry of plea of guilty or entry of plea of nolo contendere to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude;

(3) making false statements or giving any false information to the academy in connection with an application for admission/certification;

(4) committing acts which indicate a lack of good moral character, or which constitute dishonesty or fraud, and which adversely affects a telecommunicator's ability to exercise the duties of a certified telecommunicator; and

(5) committing acts which indicate that the telecommunicator has abused the authority granted to a certified telecommunicator in the state of New Mexico;

(6) is found to have committed acts which would be grounds for denial of application for admission under 10.29.1.10 NMAC.

[D:] E. Reports - Any agency employing a certified law enforcement officer or telecommunicator who has committed any act or acts identified in Subsection B or C of 10.29.1.11 NMAC shall report such conduct to the director within thirty (30) days of completing an investigation confirming the alleged misconduct. In every case, alleged misconduct shall be reported to the director if an investigation is ongoing ninety (90) days after the agency receives the initial report of misconduct. An officer or telecommunicator's resignation or termination from employment does not relieve the agency from its duty to file a misconduct report with the academy. All incidents of misconduct shall be reported when a certified officer or telecommunicator is in violation of 10.29.1.11 NMAC. Law enforcement agencies should undertake a timely and thorough investigation to determine whether an allegation of misconduct has been sustained. For the purposes of this section, "misconduct" is defined as any act listed under section 10.29.1.11 NMAC, even if that act results in termination or resignation. The director

will establish a reporting form to be used in reporting misconduct. An agency's delay or failure to report misconduct does not divest the board of jurisdiction to take action under Section 29-7-13 NMSA 1978 and Section 29-7C-9 NMSA 1978.

[4-11-93, 10-1-97, 1-1-99; 10.29.1.11 NMAC - Rn, 10 NMAC 29.1.11, 7/1/01; A, 01/01/04; A, 06/17/10; A, X/X/12]

After public comment, the board may consider and vote on the adoption of the proposed rule change. Written comments can be submitted to the board before the meeting by email [Monique.lopez@state.nm.us] and regular mail [4491 Cerrillos Rd. Santa Fe, NM 87507].

Copies of the regular board meeting agenda and public hearing may be obtained by accessing our website at www.dps.nm.org/training or by calling Monique Lopez at (505) 827-9255.

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO DEPARTMENT OF GAME AND FISH

The State Game Commission repeals its rule entitled Hunting and Fishing License Revocation, 19.31.2 NMAC (filed 12/03/2001) and replaces it with 19.31.2 NMAC Hunting and Fishing License Revocation, effective 09/14/2012.

NEW MEXICO DEPARTMENT OF GAME AND FISH

TITLE 19 N A T U R A L RESOURCES AND WILDLIFE CHAPTER 31 H U N T I N G A N D FISHING REGULATIONS PART 2 H U N T I N G A N D FISHING LICENSE REVOCATION

19.31.2.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.
[19.31.2.1 NMAC - Rp, 19.31.2.1 NMAC,
09-14-2012]

19.31.2.2 SCOPE: Person or persons who violate the provisions of Chapter 17, 30-14-1, and the Parental Responsibility Act (40-5A-1- 40-5A-13) NMSA 1978.
[19.31.2.2 NMAC - Rp, 19.31.2.2 NMAC,
09-14-2012]

**19.31.2.3 S T A T U T O R Y
AUTHORITY:** NMSA 1978 Sections 11-16-5 and 11-16-6; sections 17-1-14(B)(10) and (11); Sections 17-3-34; Section 30-14-1; and Sections 40-5A-3, and 40-5A-6.
[19.31.2.3 NMAC - Rp, 19.31.2.3 NMAC,
09-14-2012]

19.31.2.4 D U R A T I O N :
Permanent.
[19.31.2.4 NMAC - Rp, 19.31.2.4 NMAC,
09-14-2012]

19.31.2.5 E F F E C T I V E D A T E:
September 14, 2012, unless a later date is cited at the end of a section or paragraph.
[19.31.2.5 NMAC - Rp, 19.31.2.5 NMAC,
09-14-2012]

19.31.2.6 O B J E C T I V E: To revoke or suspend the hunting, fishing, trapping, guiding and outfitting privileges of any person who persistently, flagrantly or knowingly violates or countenances the violation of any of the provisions of Chapter 17 NMSA 1978, or any rule adopted by the state game commission, or Section 30-14-1 NMSA 1978; to revoke or suspend the hunting, fishing, trapping, guiding and

outfitting privileges or other privileges or authorities granted by an agreement, license or permit issued by the department of game and fish, of any person whose name appears on a human services department certified list of obligors not in compliance with the Parental Responsibility Act, 40-5A-1 NMSA 1978; or to revoke or suspend the hunting, fishing, trapping, guiding and outfitting privileges pursuant to the wildlife violator compact, 11-16 -1 NMSA 1978, of any person who has been placed on revocation by a wildlife violator compact member state, or temporarily suspend those privileges of any resident that fails to meet the terms of a citation issued from a compact state; or to revoke or deny the private land agreement privileges of any person who does not comply with a department sponsored private lands agreement.

[19.31.2.6 NMAC - Rp, 19.31.2.6 NMAC,
09-14-2012]

19.31.2.7 D E F I N I T I O N S:

A. "Commission" means the New Mexico state game commission.

B. "Department" means New Mexico department of game and fish.

C. "Director" means the director of the department of game and fish.

D. "Obligor" means a person who has been ordered to pay child or spousal support pursuant to a judgment and order for support.

E. "Respondent" means any person holding a license, permit, certificate, landowner agreement, or applicant thereof, who is served a notice of contemplated action.

F. "Revocation" means when a person's hunting, fishing, trapping, guiding and outfitting privileges, or other privileges or authorities granted by an agreement, license or permit issued by the department of game and fish, are taken away by the state game commission after notice and opportunity for a hearing.

G. "Suspension" means when a person's hunting, fishing, trapping, guiding and outfitting privileges, or other privileges or authorities granted by an agreement, license or permit issued by the department, are taken away by the commission, after notice and opportunity for a hearing, until the person comes back into compliance.

[19.31.2.7 NMAC - Rp, 19.31.2.7 NMAC,
09-14-2012]

19.31.2.8 R E V O C A T I O N CATEGORIES AND TIMEFRAME:

A. Points: Any person with 20 or more points accumulated within any consecutive three-year period, shall

have all of his or her hunting, fishing, trapping, guiding and outfitting privileges, or other privileges or authorities (granted by an agreement, license, permit or certificate issued) under Chapter 17 NMSA 1978 and its implementing rules subject to revocation or suspension.

B. Guide and outfitter:

A registered outfitter or guide who violates any provision of Section 17-2A-3, or 17-3-16 and their implementing rules not already addressed in this section shall be assessed points towards the revocation or suspension of their guide and or outfitting registration as follows:

(1) 20 points:

(a) violation of conditions of registration;

(b) misrepresentation or failure to disclose;

(c) aiding, concealing or willfully allowing violations of applicable laws by a hunter-client.

(2) 10 points:

(a) failure to provide sufficient guides or guiding services;

(b) failure to properly supervise guides;

(c) unregistered services;

(d) failure to comply with any local, state, or federal laws;

(e) breach of contract;

(f) failure to provide a signed contract;

(g) failure to report illegal activity.

(3) 5 points: Any outfitter and guide misconduct not otherwise specifically listed herein.

(4) Guides and outfitters shall be notified when points are assessed.

C. Landowner contracts and agreements: A landowner's privilege to participate in a department-sponsored private land program may be revoked for breach or violation of the conditions of a contract or agreement with the department. The landowner shall be afforded with notice and opportunity for a hearing in accordance with the process for revocation as set forth in this rule.

D. Timeframe: Any person found to be in violation of Chapter 17, its implementing rules, or Section 30-14-1 NMSA 1978, after notice and opportunity to be heard by a hearing officer, shall have his or her license, permit or certificate revoked for up to three years, unless otherwise provided for by law. Any person found to not comply with a department sponsored private lands agreement shall have his or her private lands program privileges revoked for up to three years.

[19.31.2.8 NMAC - Rp, 19.31.2.8 NMAC,
09-14-2012]

19.31.2.9 P O I N T

CATEGORIES: The violations listed below are each assigned specific point values which count toward the revocation of a license, permit or certificate and the suspension of associated privileges when 20 or more points are accrued in a period of three consecutive years.

A. 20-point violations:

Any person violating any of the following provisions shall be assessed 20 points:

(1) illegally taking, attempting to take, killing, capturing or possessing any big game species outside of hunting season in violation of Section 17-2-7 or 17-3-33;

(2) except as otherwise provided by Sections 17-2-37 to 17-2-46, taking, possessing, transporting, exporting, processing, selling or offering for sale, or shipping any species or subspecies of wildlife listed on the state list of endangered species or the United States' list of endangered native and foreign fish and wildlife;

(3) any violation of Section 17-3-6;

(4) selling, offering for sale, offering to purchase or purchasing any game animal, game bird or protected species, in violation of Section 17-2-7;

(5) hunting with the aid of an artificial light or spotlight, in violation of Section 17-2-31;

(6) hunting big game outside the ranch boundaries for which a ranch-only license is issued or otherwise hunting big game in the wrong area, in violation of Section 17-2-7;

(7) criminal trespass, in violation of Section 30-14-1, when in connection with hunting, fishing or trapping activity; revocation to be for three years;

(8) for violations of Section 17-2-29, involving hunting or boating while intoxicated (revocation for a period of one year, as prescribed by Section 17-2-30);

(9) buying of licenses, permits certificates or registration without sufficient funds to pay for same;

(10) any violation of Section 17-3-48, provided that any revocation under this section shall commence consecutively to any current revocation;

(11) guiding or outfitting without being registered in violation of Section 17-2A-3;

(12) using an outfitter or guide license issued to another;

(13) hunting big game without a license;

(14) any violation of Section 17-3-49;

(15) any violation of Section 17-2-7.1;

(16) any person submitting, or allowing to be submitted for them, false or fraudulent harvest reporting information as

required by rule;

(17) flagrant violation of the provisions of any special use of wildlife permit issued by the department pursuant to Chapter 17 NMSA 1978 and its implementing rules;

(18) unlawfully taking amphibians and reptiles for commercial purposes, without a permit, in violation of Section 17-2-4.2;

(19) knowingly or willfully introducing an aquatic invasive species, in violation of Section 17-4-35;

(20) accessory to any of the above.

B. 15-point violations:

Any person violating any of the following provisions shall be assessed 15 points:

(1) shooting at any protected species from a vehicle;

(2) shooting at any protected species from a roadway, as provided in rule;

(3) illegally taking, attempting to take, killing, capturing or possessing any turkey outside of hunting season in violation of Section 17-2-7 or 17-3-33;

(4) any violation of Section 17-2-8;

(5) unlawfully using dogs while hunting big game or turkey;

(6) importation of any species in violation of Section 17-3-32 without a permit;

(7) any violation of Section 17-3-45;

(8) accessory to any of the above violations.

C. 10-point violations:

Any person violating any of the following provisions shall be assessed 15 points:

(1) hunting in a closed area;

(2) exceeding the bag limit of game;

(3) illegal possession of fish;

(4) exceeding the bag limit on fish;

(5) fishing by an illegal method;

(6) procurement or possession of additional deer license, except as provided by rule;

(7) illegally taking, attempting to take, killing, or capturing of any big game species or turkey during hunting season;

(8) illegal possession of any big game species or turkey during hunting season;

(9) hunting turkey or small game without a license;

(10) hunting, taking or attempting to take protected game, game fish, or furbearers on private land, without written permission, in violation of Chapter 17 NMSA 1978 and its implementing rules;

(11) accessory to any of the above violations.

D. 7-point violations:

Any person fishing without a license shall be assessed seven points.

E. 5-point violations: Any

person violating any provision of Chapter 17 NMSA 1978 and its implementing rules not specifically listed herein, except for violations of Section 17-2A-3 and its implementing rules shall be assessed five points.

[19.31.2.9 NMAC - Rp, 19.31.2.9 NMAC, 09-14-2012]

19.31.2.10 NOTICE OF

CONTEMPLATED ACTION: The department shall mail out a notice of contemplated action ("NCA") as required by this section when it determines that there is sufficient evidence that a person has accumulated 20 or more points, or when the commission is contemplating revoking a landowner's privileges to participate in any department sponsored private land program. The commission grants approval to the department, through the director, to initiate this process without commission consideration. However, the commission retains all authority for final decisions. The NCA shall clearly describe the action that the commission is contemplating, and shall contain a statement that includes the following.

A. Sufficient evidence:

that the department of game and fish has sufficient evidence which, if not rebutted or explained, will justify the commission taking the contemplated action.

B. Hearing may be

requested: that the respondent may secure a hearing before a hearing officer designated by the commission by depositing in the mail within 20 days after service of the notice, a certified, return receipt requested letter addressed to the department at PO Box 25112, Santa Fe, NM 87504, and containing a request for a hearing.

C. Rights of respondent:

calling the attention of the respondent to his or her rights under Section 17-3-34 NMSA 1978 and this rule.

[19.31.2.10 NMAC - Rp, 19.31.2.10 NMAC, 09-14-2012]

19.31.2.11 NO HEARING

REQUESTED: If a respondent does not mail a request for a hearing within the time frame and in the manner required by this rule, the commission may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

[19.31.2.11 NMAC - Rp, 19.31.2.11 NMAC, 09-14-2012]

19.31.2.12 HEARING

REQUESTED: If a respondent does request a hearing as provided by this rule, the department, within 20 days of receipt of such request, shall notify the respondent of the time and place of the hearing, the name or names of the person or persons who shall

conduct the hearing for the commission, and the statutes and rules authorizing the commission to take the contemplated action. The hearing shall be held not more than 90 nor less than 30 days from the date of service of such notice.

[19.31.2.12 NMAC - Rp, 19.31.2.12 NMAC, 09-14-2012]

19.31.2.13 RIGHTS OF A PERSON REQUESTING A HEARING:

A person entitled to be heard under this rule shall have the right to be represented by counsel or may appear on his or her own behalf; to present all relevant evidence by means of witnesses, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues. All notices issued pursuant to this rule shall contain a statement of these rights.

A. Written request: Upon written request to another party, any party is entitled to:

(1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

B. Response time frame: The party to whom such a request is made shall comply with the request within 10 days after the mailing or delivery of the request. No such request shall be made less than 15 days before the hearing.

C. Stipulated agreements: A person entitled to be heard under this rule may enter into a written stipulated agreement with the department. Signing such an agreement shall waive the person's right to a hearing and the filing of a written exception. The agreement shall be presented to the commission at the department's recommendation and the commission retains authority for the final decision.

[19.31.2.13 NMAC - Rp, 19.31.2.13 NMAC, 09-14-2012]

19.31.2.14 METHOD OF SERVICE:

Any notice or decision required by this rule shall be served by certified mail, return receipt requested, directed to the holder of a license, permit, registration or certificate, landowner agreement or applicant thereof, at his or her last known address as shown by the records of the department of game and fish.

[19.31.2.14 NMAC - Rp, 19.31.2.14 NMAC, 09-14-2012]

19.31.2.15 REVOCATION NOTICE OF SERVICE:

Notice by certified mail shall be deemed to have been served on the date born by the return receipt showing delivery or the last attempted

delivery of the notice or decision to the addressee or refusal of the addressee to accept delivery of the notice or decision.

[19.31.2.15 NMAC - Rp, 19.31.2.15 NMAC, 09-14-2012]

19.31.2.16 VENUE: Hearings held under this rule shall be conducted in Santa Fe county or Bernalillo county, New Mexico. Under exigent circumstances, and at the discretion of the hearing officer, the hearing may be held in another county in New Mexico.

[19.31.2.16 NMAC - Rp, 19.31.2.16 NMAC, 09-14-2012]

19.31.2.17 HEARING OFFICER:

A. Conducts hearing: All hearings under this rule shall be conducted by a hearing officer who is designated by the commission.

B. Disqualification of hearing officer: The hearing officer may be disqualified as provided for under the rules of civil procedure by filing of an affidavit of disqualification.

[19.31.2.17 NMAC - Rp, 19.31.2.17 NMAC, 09-14-2012]

19.31.2.18 HEARING OPEN TO THE PUBLIC:

All hearings conducted under this rule shall be open to the public.

[19.31.2.18 NMAC - Rp, 19.31.2.18 NMAC, 09-14-2012]

19.31.2.19 HEARING INTERPRETER PROVIDED:

The commission shall provide an interpreter for individuals requesting a hearing who provide proof of hearing impairment to the extent that he/she cannot understand voice communications.

[19.31.2.19 NMAC - Rp, 19.31.2.19 NMAC, 09-14-2012]

19.31.2.20 LANGUAGE INTERPRETER PROVIDED:

The commission shall provide an interpreter for individuals requesting a hearing who provide proof of inability to comprehend English well enough to understand the proceedings.

[19.31.2.20 NMAC - Rp, 19.31.2.20 NMAC, 09-14-2012]

19.31.2.21 RULES OF EVIDENCE:

The hearing officer shall consider a copy of a conviction, certified by the clerk of the court entering the conviction, as conclusive evidence of a violation of Chapter 17 NMSA 1978, its implementing rules, or Section 30-14-1 NMSA 1978. In cases where magistrate court records associated with a conviction are not available, the official form of the records maintained by either the magistrate court or the department of game and fish shall be admissible. These records shall also stand as

conclusive evidence of a violation of Chapter 17 NMSA 1978, its implementing rules, or Section 30-14-1 NMSA 1978. In the case of hearings in which a criminal conviction is not germane, the standard of proof shall be a preponderance of the evidence.

A. Admission of evidence:

In proceedings held under this regulation, the hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may, at his discretion, exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Documentary evidence may be received in the form of copies or excerpts.

B. Judicial notice: The hearing officer may take notice of judicially cognizable facts.

C. Rules of privilege: The rules of privilege shall be effective to the extent that they are required to be recognized in civil actions in district courts of the state of New Mexico.

D. Mitigating circumstances: The hearing officer may consider mitigating, extenuating, and aggravating circumstances surrounding the violations of game and fish laws and rules to determine the recommended period of the revocation or suspension.

[19.31.2.21 NMAC - Rp, 19.31.2.21 NMAC, 09-14-2012]

19.31.2.22 HEARING AND POST-HEARING PROCEDURES:

A. Record of hearing: In all hearings conducted under this rule, the hearing officer shall cause a complete record to be made by tape or digital audio recording and shall preserve all evidence received. The hearing officer shall observe any standards pertaining to tape or digital audio recordings established for the district courts of this state.

B. Post-hearing briefs: The hearing officer may require post-hearing briefs and the preparation and submittal to the hearing officer of proposed findings of fact and conclusions of law.

C. Hearing officer's report: Within 30 days of any hearing, the hearing officer shall make and submit to the department a report setting forth his findings of fact, conclusions of law, and recommended decision.

D. Report copies to parties: The department shall serve a copy of the recommended decision on the parties by certified mail with return receipt requested.

E. Filing of exceptions to hearing officer's report: The parties to the proceeding may file exceptions, with supporting briefs, to a hearing officer's recommended decision within a time period

set by the hearing officer or within 30 days of the hearing if not otherwise specified by the hearing officer.

F. Exceptions and briefs served on all parties: Copies of exceptions to the hearing officer's recommended decision and any briefs shall be served simultaneously on all parties, and a statement of such service may be furnished to the hearing officer.

G. Exceptions and briefs-requirements: Any exception not specifically made shall be considered waived. Any exception that fails to comply with the foregoing requirements may be disregarded. Any brief in support of exceptions shall not contain matter not related to and within the scope of the exceptions.

[19.31.2.22 NMAC - Rp, 19.31.2.22 NMAC, 09-14-2012]

19.31.2.23 FINAL DECISION OF THE COMMISSION:

A. Review and consideration of hearing officer's report and filed exceptions: After a hearing has been completed, the commission shall review and consider the hearing officer's report and any filed exceptions to the recommended decision.

B. No oral arguments; no new evidence: The commission shall not permit any oral arguments. The commission shall not consider any evidence outside of the hearing officer's report and filed exceptions.

C. Final decision: The commission's final decision shall be made by a quorum of the commission at a regularly scheduled commission meeting.

D. Written decision served: Within 15 days after the commission's decision is rendered and signed by the chairman of the commission, the department shall serve upon the respondent a copy of the written decision.

E. Default orders for failure to request a hearing: The commission shall consider the department's submission of names of respondents who have not requested a hearing and whose license(s), permit(s), certificate(s), landowner agreement(s), or application(s) shall be automatically revoked and associated privileges suspended pursuant to Section 8 of this rule.

[19.31.2.23 NMAC - Rp, 19.31.2.23 NMAC, 09-14-2012]

19.31.2.24 JUDICIAL REVIEW:

In accordance with Section 17-3-34 NMSA 1978, any person whose license, permit, certificate or landowner agreement has been revoked by the commission may appeal to the district court for further relief. Upon appeal, the district court shall set aside the decision only if it is found to be:

A. arbitrary, capricious, or

an abuse of discretion;

B. not supported by substantial evidence in the record; or

C. otherwise not in accordance with law.

[19.31.2.24 NMAC - Rp, 19.31.2.24 NMAC, 09-14-2012]

19.31.2.25 W I L D L I F E VIOLATOR COMPACT SUSPENSION AND REVOCATION:

Any person whose name appears on the wildlife violator compact list or who has been revoked by another wildlife violator compact member state and is in accordance with Section 17-2-10.3.B NMSA 1978 shall have his or her license, permit, certificate or registration immediately and temporarily withheld or suspended, if any such license, permit, certificate or registration has been issued by the department. Any resident who fails to comply with the terms of a citation including failure to appear, from a member state shall have his or her license, permit, certificate or registration immediately and temporarily withheld or suspended, if any such license, permit, certificate or registration has been issued by the department. The information provided by the board of wildlife violator compact administrators or their designee shall be deemed sufficient to allow the department by and through its director to send the same violator a notice of commission contemplated action. Revocation proceedings and hearings shall be in accordance with this rule.

[19.31.2.25 NMAC - Rp, 19.31.2.25 NMAC, 09-14-2012]

19.31.2.26 SUSPENSION: The Parental Responsibility Act ("PRA"), 40-5A-1 NMSA 1978, provides that the commission shall suspend the license, permit, certificate or registration, and the associated privileges of any person not in compliance with the PRA, and allows the reinstatement if such privileges at any time that the obligor comes into compliance. Chapter 17 NMSA 1978 provides that the commission shall suspend the license, permit, or certificate, and the associated privileges of any person who fails to pay a penalty assessment or a civil judgment, until the assessment or judgment is paid in full.

[19.31.2.26 NMAC - N, 09-14-2012]

19.31.2.27 P A R E N T A L RESPONSIBILITY ACT:

Any person found to be in violation of the PRA, after notice and an opportunity for review by a hearing officer, shall have his or her license, permit, certificate, registration and associated privileges suspended until he or she provides a certificate of compliance from the human services department.

A. Notice Procedures:

When the department receives a human

services department certified list of obligors not in compliance with the PRA, the department will present the list to the commission for the approval of the issuance and service of a NCA to the listed obligors. The department shall send a NCA as required by this section to any named obligor who holds a license, permit, certificate, or registration. The NCA, sent by certified mail with return receipt requested, shall consist of a written notice advising the obligor that the department has grounds to take action, and that on behalf of the commission, it shall suspend the obligors license(s), permit(s), certificate(s) or registration(s), and the privileges thereof, unless the obligor:

(1) files a timely written request for a hearing protesting the proposed suspension within 30 days from the date that the notice is mailed; or

(2) provides the department, within 30 days from the date the notice is mailed, with a valid certificate of compliance from the human services department.

B. Hearing procedures:

The obligor may request a hearing by filing a written request for hearing protesting the proposed suspension of the license, permit, certificate or registration, and the privileges thereof.

(1) The request for hearing must be filed within 30 days from the date the notice is mailed. The request shall be mailed to Law Enforcement Division, New Mexico Department of Game and Fish, PO Box 25112, Santa Fe, NM 87504.

(2) The commission, through the department, shall appoint a hearing officer.

(3) The department, within 20 days of receipt of such request, shall notify respondent, of the time and place of the hearing, the name or names of the person or persons who shall conduct the hearing for the commission, and the statutes and rules authorizing the commission to take the contemplated action. The hearing shall be held not more than 90 nor less than 30 days from the date of mailing of such notice.

(4) The hearing officer shall make and preserve a record of the proceedings as prescribed in Section 22 of this rule.

(5) An obligor may appear at a hearing on their own behalf or be represented by an attorney.

(6) Hearings may be conducted in person or telephonically. Witnesses may appear in person or telephonically.

(7) Hearings may be postponed or continued at the discretion of the hearing officer.

(8) In proceedings held under this rule, the hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may, at his discretion, exclude incompetent,

irrelevant, immaterial and unduly repetitious evidence. Documentary evidence may be received in the form of copies or excerpts. The hearing officer may take notice of judicially cognizable facts.

(9) The issues to be decided at the hearing are limited to whether the respondent is:

(a) in compliance with a judgment and order for support;

(b) in compliance with a subpoena or warrants relating to paternity or child support proceedings;

(c) the person whose name appears on the certified list sent to the department from human services department.

(10) In any hearing under this section, relevant evidence shall be limited to the following:

(a) a valid certificate of compliance, if one has been issued between the date of the notice and the hearing date;

(b) evidence of compliance with a judgment or order of support, subpoena or warrant relating to paternity or child support proceedings to rebut the absence of a certificate of compliance in cases in which the licensee, permittee, or certificate holder, has cured any non-compliance with a judgment or order of support, subpoena or warrant after the notice date but before the date of hearing;

(c) evidence that the respondent is not the same person as the person whose name appears on the certified list of obligors sent to the department by human services department;

(d) in lieu of a hearing, a respondent may present a valid certificate of compliance to the department and the suspension proceedings will cease.

(11) Within 30 days of any hearing, the hearing officer shall make and submit to the department a report setting forth his findings of fact, conclusions of law and recommended decision.

(12) The department shall serve copies of the recommended decision to the parties by certified mail with return receipt requested.

(13) In accordance with the PRA, the commission shall suspend the license, permit, or certificate, registration, and associated privileges of any obligor determined not to be in compliance, until such time as the obligor becomes in compliance.

C. Default orders for failure to request a hearing: In the event an obligor does not request a hearing, or provide proof of compliance within 30 days of the date the notice was mailed, the commission grants approval to the department through the director to administer these suspensions without further commission consideration or additional notice.

D. Reinstatement fee:

Any person whose license, permit, certificate, or registration, has been suspended in accordance with the PRA shall be reinstated after demonstrating proof of compliance from the human services department, and having paid the department of game and fish a reinstatement fee of \$25.00 and all costs associated with his or her revocation hearing. The director has the authority to waive this fee in the case of unusual circumstances or clerical errors.

[19.31.2.27 NMAC - N, 09-14-2012]

19.31.2.28 FAILURE TO PAY PENALTY ASSESSMENT OR CIVIL DAMAGE: In accordance with Section 17-2-10.3 the hunting and or fishing license and associated privileges of a person who fails to pay a penalty assessment levied under Section 17-2-10.1 shall be suspended for three years, or until the penalty assessment is paid in full. Any person that has had a civil judgment assessed against them pursuant to Section 17-2-26 shall have their license, permit, or certificate, and the associated privileges suspended until those damages have been paid in full.

A. Notice procedures:

When the department determines that a person has failed to pay a penalty assessment pursuant to Section 17-2-10.2, or that a person has failed to pay damages pursuant to a civil judgment in accordance with Section 17-2-26, the department will present to the commission, at a regularly scheduled commission meeting, a list of such persons for the commission to approve the serving of a NCA to the listed persons. The department shall send a NCA as required by this section to any named person who holds a license, permit, or certificate. The NCA, sent by certified mail with return receipt requested, shall consist of a written notice advising the respondent that the department has grounds to take action, and that on behalf of the commission it shall suspend the license, permit, certificate or registration and any privileges thereof unless the person:

(1) files a timely written request for a hearing protesting the proposed suspension within 30 days from the date that the notice is mailed; or

(2) pays the penalty assessment or civil damages within 30 days from the date the notice is mailed.

B. Hearing procedures:

The person may request a hearing by filing a written request for hearing protesting the proposed suspension of the license, permit, or certificate, and the privileges thereof.

(1) The request for hearing must be filed within 30 days from the date the notice is mailed. The request shall be mailed to Law Enforcement Division, New Mexico Department of Game and Fish, PO Box 25112, Santa Fe, NM 87504.

(2) The commission, through the

department, shall appoint a hearing officer.

(3) The department, within 20 days of receipt of such request, shall notify the respondent of the time and place of the hearing, the name or names of the person or persons who shall conduct the hearing for the commission, and the statutes and rules authorizing the commission to take the contemplated action. The hearing shall be held not more than 90 nor less than 30 days from the date of mailing of such notice.

(4) The hearing officer shall make and preserve a record of the proceedings as prescribed in Section 22 of this rule.

(5) A person may appear at a hearing on their own behalf or be represented by an attorney.

(6) Hearings may be conducted in person or telephonically. Witnesses may appear in person or telephonically.

(7) Hearings may be postponed or continued at the discretion of the hearing officer.

(8) In proceedings held under this rule, the hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may, at his discretion, exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Documentary evidence may be received in the form of copies or excerpts. The hearing officer may take notice of judicially cognizable facts.

(9) The issues to be decided at the hearing are limited to whether the respondent:

(a) owes an outstanding penalty assessment or civil damages;

(b) is the person whose name appears on the list presented to the commission by the department.

(10) In any hearing under this section, relevant evidence shall be limited to the following:

(a) documentary evidence that the respondent owes an outstanding penalty assessment or civil damages;

(b) documentary evidence that the respondent has paid such penalty assessment or civil damages;

(c) evidence that the respondent is not the same person as the person whose name appears on the list presented to the commission;

(d) in lieu of a hearing, a respondent may pay the outstanding assessment or damages to the department and the suspension proceedings will cease.

(11) Within 30 days of any hearing, the hearing officer shall make and submit to the department a report setting forth his findings of fact, conclusions of law, and recommended decision.

(12) The department shall serve copies of the recommended decision to the

parties by certified mail with return receipt requested.

(13) The commission shall consider the recommendation of the hearing officer, and determine if the respondent shall have their license, permit, or certificate, and the privileges thereof suspended until such time as the outstanding assessment or damages are paid.

C. **Default orders for failure to request a hearing:** In the event a respondent does not request a hearing, or pay their outstanding assessment or damages within 30 days of the date that notice was mailed, the commission grants approval to the department through the director to administer these suspensions without further commission consideration or notice.

D. **Reinstatement:** Any person whose license, certificate, or permit, has been suspended in accordance with this section shall be reinstated after paying their outstanding assessments or damages. [19.31.2.28 NMAC - N, 09-14-2012]

HISTORY OF 19.31.2 NMAC:

NMAC History:
19.31.2 NMAC Hunting and Fishing License Revocation, filed 04/01/1995; amended 10/31/1998, 11/14/1998, 01/29/1999, 12/14/2001, 12/28/2001, 05/15/2002, 09/30/2002, 06/15/2006, 12/14/2006.

History of Repealed Material:
19.31.2 NMAC, Hunting and Fishing License Revocation, filed 12/03/2001 - Repealed effective 09-14-2012.

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

This is an amendment to 19.31.6 NMAC, Section 11 effective 9-14-2012.

19.31.6.11 F A L C O N R Y 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] October 6-7, 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; A, 9-14-12]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

This is an emergency amendment to 19.31.10 NMAC, Sections 7 and 19, effective 09/01/2012.

**TITLE 19 N A T U R A L RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND FISHING
PART 10 HUNTING AND FISHING-MANNER AND METHOD OF TAKING**

**19.31.10.7 DEFINITIONS:
A. "Big game species"**

shall mean deer, bear, cougar, elk, pronghorn antelope (American pronghorn), Barbary sheep, bighorn sheep, javelina, oryx, and Persian ibex.

B. **"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.

C. **"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.

D. **"Restricted muzzle-loading rifle"** shall mean any muzzle-loading rifle using open sights, black powder or equivalent and firing a traditional lead bullet. The use of in-line ignition, scopes, pelleted powder, smokeless powder and sabots, including powerbelt-type projectiles, are prohibited.

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

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

G. **"Trotline"** shall be synonymous with "set line" or "throw line" or "jug", and shall mean a fishing line that is used without rod or reel and that need not be held in the hand or closely attended.

H. **"Angling"** shall mean taking or attempting to take fish by angling hook and line, with the line held in the hand or attached to a pole or rod or other device that is held in the hand or closely attended.

I. **"Spear fishing"** shall mean taking or attempting to take game fish with spears, jigs, and arrows with barbs that are discharged under the surface of the water.

J. **"Bait fish"** is defined as those nongame fish which are not otherwise protected by statute or regulation.

K. **"Chumming"** is defined as a means of attracting fish by placing organic materials, non-injurious to aquatic life, into the water.

L. **"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 defined as furbearing animals under Section 17-5-2 New Mexico Statutes Annotated 1978 Compilation;

(3) all animals listed as endangered species or subspecies as stated

in regulation(s) set by the state game commission.

M. “Retention” or “retain” shall mean the holding of in captivity.

N. “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 which shows use prior to hunting seasons for other purposes such as recreation, mining, logging, and ranching and 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.

O. “Non-toxic shot” shall mean shot approved for use by the U. S. fish and wildlife service.

P. “Director” shall mean the director of the New Mexico department of game and fish.

Q. “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 protected game mammals or game birds.

R. “Nets” shall mean cast nets, dip nets, and seines which shall not be longer than 20 feet and shall not have a mesh larger than three-eighths of an inch.

S. “Barbless lure or fly” shall mean an artificial lure made of wood, metal, or hard plastic or an artificial fly made from fur, feathers, other animal or man-made materials tied onto an angling hook to resemble or simulate insects, bait fish, or other foods. A barbless fly or lure may only bear a single hook, from which any or all barbs must be removed or bent completely closed, or which are manufactured without barbs. Living or dead arthropods and annelids, or rubber or plastic moldings of these or other foods are not included.

T. “Crossbow” 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 or lights on crossbows shall not project light [nor magnify]. This definition shall apply to hunting for all species and be effective 9-1-2012.

U. “Angling hook” shall mean a single, double, or treble (triple) point attached to a single shank.

V. “Sporting arms or weapon types” shall be designated as follows:

(1) all hunt codes denoted with -1- shall authorize use of any legal weapon;

(2) all hunt codes denoted with -2- shall authorize use of bows only;

(3) all hunt codes denoted with -3- shall authorize use of bows, crossbows and muzzle-loading firearms, except that bows and crossbows shall not be allowed during restricted muzzle-loading hunts.

W. “Bag limit” shall mean the protected animal, qualified by species, sex, age, antler requirement, or size allowed by rule that a legally licensed hunter may attempt to take or harvest.

X. “Written permission” shall mean a document (which may include a valid hunting, trapper, or fishing license) that asserts the holder has permission from the private land owner or his designee to hunt, fish, or trap on the landowner’s property. The information on the document must be verifiable and include the name, date, and phone number of the person granting the permission.

[19.31.10.7 NMAC - Rp, 19.31.10.7 NMAC, 4-1-2007; A, 6-30-2008; A, 4-1-2009; A/E, 9-1-2012]

19.31.10.19 TAKING GAME ANIMALS, FURBEARERS, GAME BIRDS BY CROSSBOW:

A. Crossbows may be used to take or kill any game animal, furbearer or game bird by a licensed hunter in possession of a valid department mobility impaired (MI) card or in possession of a reasonable accommodation issued by the director, or as otherwise allowed by rule.

B. It shall be unlawful to hunt with a crossbow without a hunter possessing a MI card or reasonable accommodation from the director, or contrary to rule or hunt code.

C. It shall be unlawful to hunt with a crossbow that has a scope, telescopic sight or magnification device during any bow only hunt for big game.

[19.31.10.19 NMAC - A/E, 9-1-2012]

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

This is an emergency amendment to 8.102.500 NMAC, Section 8, effective October 1, 2012.

8.102.500.8 GENERAL REQUIREMENTS:

A. Need determination process: Eligibility for NMW, state funded qualified aliens and EWP cash assistance based on need requires a finding that:

(1) the benefit group’s countable gross monthly income does not exceed the gross income limit for the size of the benefit group;

(2) the benefit group’s countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;

(3) the countable resources owned by and available to the benefit group do not exceed the \$1,500 liquid and \$2,000 non-liquid resource limits;

(4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group’s countable income, and any payment sanctions or recoupments.

B. Gross income limits: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

(a) one person	[\$ 772]	\$791
(b) two persons	[\$1,042]	\$1,072
(c) three persons	[\$1,313]	\$1,352
(d) four persons	[\$1,584]	\$1,633
(e) five persons	[\$1,854]	\$1,913
(f) six persons	[\$2,125]	\$2,194
(g) seven persons	[\$2,395]	\$2,474
(h) eight persons	[\$2,666]	\$2,755

(i) add [\$270] \$281 for each additional person.

C. Eligibility for support services only: Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than 100% of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

(1) one person	[\$908]	\$931
(2) two persons	[\$1,226]	\$1,261

<u>\$1,591</u>	(3) three persons	[\$1,545]
<u>\$1,921</u>	(4) four persons	[\$1,863]
<u>\$2,251</u>	(5) five persons	[\$2,181]
<u>\$2,581</u>	(6) six persons	[\$2,500]
<u>\$2,911</u>	(7) seven persons	[\$2,818]
<u>\$3,241</u>	(8) eight persons	[\$3,136]
	(9) add	[\$319] <u>\$330</u> for each additional person.

D. Standard of need:

(1) The standard of need is based on the number of participants included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the participant's share of benefit group supplies.

(3) The financial standard includes approximately [\$79] \$91 per month for each participant in the benefit group.

(4) The standard of need for the NMW, state funded qualified aliens, and EWP cash assistance benefit group is:

(a) one person	\$ 266
(b) two persons	\$ 357
(c) three persons	\$ 447
(d) four persons	\$ 539
(e) five persons	\$ 630
(f) six persons	\$ 721
(g) seven persons	\$ 812
(h) eight persons	\$ 922
(i) add	\$91 for each additional person.

E. Special needs:

(1) **Special clothing allowance:** A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b) The clothing allowance shall be allowed for each school-age child who is included in the NMW, TBP, state funded qualified aliens, or EWP cash assistance benefit group, subject to the availability of state or federal funds.

(c) The clothing allowance is not allowed in determining eligibility for NMW, TBP, state funded qualified aliens, or EWP cash assistance.

(2) **Layette:** A one-time layette allowance of \$25 is allowed upon the birth of a child who is included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

(3) **Special circumstance:** Dependent upon the availability of funds and in accordance with the federal act, the HSD secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation. This cash assistance program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.

F. Non-inclusion of legal guardian in benefit group: Based on the availability of state and federal funds, the department may limit the eligibility of a benefit group due to the fact that a legal guardian is not included in the benefit group.

[8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 11/15/2007; A, 01/01/2008; A/E, 10/01/2008; A, 08/01/2009; A, 08/14/2009; A/E, 10/01/2009; A, 10/30/2009; A, 01/01/2011; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an emergency amendment to 8.106.500 NMAC, Section 8, effective October 1, 2012.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. Limited state funds may result in a suspension or reduction in general assistance benefits without eligibility and need considered.

B. Need determination process: Eligibility for the GA program based on need requires a finding that the:

(1) countable resources owned by and available to the benefit group do not exceed either the \$1500 liquid or \$2000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent (85%) of the federal poverty guideline for the size of the benefit group; and

(3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

C. GA payment determination: The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

D. Gross income test: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent (85%) of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

(a) one person	[\$772]	<u>\$791</u>
(b) two persons	[\$1,042]	<u>\$1,072</u>
(c) three persons	[\$1,313]	<u>\$1,352</u>
(d) four persons	[\$1,584]	<u>\$1,633</u>
(e) five persons	[\$1,854]	<u>\$1,913</u>
(f) six persons	[\$2,125]	<u>\$2,194</u>
(g) seven persons	[\$2,395]	<u>\$2,474</u>
(h) eight persons	[\$2,666]	<u>\$2,755</u>
(i) add	[\$270] <u>\$281</u>	for each additional person.

E. Standard of need:

(1) As published monthly by the department, the standard of need is an amount provided to each GA cash assistance benefit group on a monthly basis and is based on availability of state funds, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR caseload number and expenditures, and number of pending applications.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.

(3) **Notice:** The department shall issue prior public notice identifying any change(s) to the standard of need amounts for the next quarter, as discussed at 8.106.630.11 NMAC.

F. Net income test: The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group.

G. Special clothing allowance for school-age dependent children: A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this

allowance.

(1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age nineteen (19) by the end of August.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group, subject to the availability of state or federal funds.

(3) The clothing allowance is not counted in determining eligibility for GA cash assistance.

H. Supplemental issuance: A one time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion of the secretary of the human services department and the availability of state funds.

(1) The one time supplemental issuance may be no more than the standard GA payment made during the month the GA payment was issued.

(2) To be eligible to receive the one time supplement, a GA application must be active and determined eligible no later than the last day of the month in the month the one time supplement is issued.

[8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008; A, 07/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 12/01/2009; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012]

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

This is an emergency amendment to 8.139.500 NMAC, Section 8, effective October 1, 2012.

8.139.500.8 BASIS OF ISSUANCE

A. Income standards: Determination of need in the food stamp program is based on federal guidelines. Participation in the program is limited to households whose income is determined to be a substantial limiting factor in permitting them to obtain a nutritious diet. The net and gross income eligibility standards are based on the federal income poverty levels established in the Community Services Block Grant Act [42 USC 9902(2)].

B. Gross income standards: The gross income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin Islands is 130 percent (130%) of the federal income poverty levels for the 48 states and the District of Columbia. One hundred thirty percent (130%) of the annual income poverty guidelines is divided by 12 to determine monthly gross income standards, rounding the results upward as necessary. For households larger than eight, the increment in the federal income poverty guidelines is multiplied by 130%, divided by 12, and the results rounded upward if necessary.

C. Net income standards: The net income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin Islands are the federal income poverty levels for the 48 contiguous states and the District of Columbia. The annual income poverty guidelines are divided by 12 to determine monthly net income eligibility standards, (results rounded upward if necessary). For households larger than eight, the increment in the federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

D. Yearly adjustment: Income eligibility limits are revised each October 1st to reflect the annual adjustment to the federal income poverty guidelines for the 48 contiguous states and the District of Columbia.

E. Issuance table: The issuance table lists applicable income guidelines used to determine food stamp (FS) eligibility based on household size. Some amounts are increased to meet the needs of certain categorically eligible households. Some of the net income amounts listed are higher than the income limits for some household sizes. Households not categorically eligible for FS benefits must have income below the appropriate gross income limit for household size.

Household Size	Maximum Gross Monthly Income Categorical Eligibility at 165% of Poverty	Maximum Gross Monthly Income At 130% of Poverty	Maximum Net Monthly Income At 100% of Poverty	Maximum Allotment (benefit amount)
1	[\$1,498] <u>\$1,536</u>	[\$1,180] <u>\$1,211</u>	[\$908] <u>\$ 931</u>	\$200
2	[\$2,023] <u>\$2,081</u>	[\$1,594] <u>\$1,640</u>	[\$1,226] <u>\$1,261</u>	\$367
3	[\$2,548] <u>\$2,625</u>	[\$2,008] <u>\$2,069</u>	[\$1,545] <u>\$1,591</u>	\$526
4	[\$3,074] <u>\$3,170</u>	[\$2,422] <u>\$2,498</u>	[\$1,863] <u>\$1,921</u>	\$668
5	[\$3,599] <u>\$3,714</u>	[\$2,836] <u>\$2,927</u>	[\$2,181] <u>\$2,251</u>	\$793
6	[\$4,124] <u>\$4,259</u>	[\$3,249] <u>\$3,356</u>	[\$2,500] <u>\$2,581</u>	\$952
7	[\$4,649] <u>\$4,803</u>	[\$3,663] <u>\$3,785</u>	[\$2,818] <u>\$2,911</u>	\$1,052
8	[\$5,175] <u>\$5,348</u>	[\$4,077] <u>\$4,214</u>	[\$3,136] <u>\$3,241</u>	\$1,202
\$Each Additional Member	[+\$526] <u>+\$545</u>	[+\$414] <u>+\$429</u>	[+\$319] <u>+\$330</u>	+\$150

F. Deductions and standards:

(1) **Determination:** Expense and standard deduction amounts are determined by federal guidelines and may be adjusted each year. Households eligible based on income and resource guidelines, and other relevant eligibility factors, are allowed certain deductions to determine countable income.

(2) **Yearly adjustment:** The expense and standard deductions may change each year. If federal guidelines mandate a change, it is effective each October 1st.

(3) **Expense deductions and standards table:**

Standard Deduction for Household Size of 1 through 3	[\$147.00] \$149.00
Standard Deduction for Household of 4	[\$155.00] \$160.00
Standard Deduction for Household Size of 5	[\$181.00] \$187.00
Standard Deduction for Household Size of 6 or more	[\$208.00] \$214.00
Earned Income Deduction (EID)	20%
Dependent Care Deduction	Actual Amount
Heating/Cooling Standard Utility Allowance (HCSUA)	[\$275.00] \$286.00
Limited Utility Allowance (LUA)	[\$100.00] \$106.00
Telephone Standard (TS)	[\$ 35.00] \$34.00
Excess Shelter Cost Deduction Limit for Non-Elderly/Disabled Households	[\$459.00] \$469.00
Homeless Household Shelter Standard	\$143.00
Minimum Allotment for Eligible One-and Two-Person Households	\$16.00

[02/1/95, 10/01/95, 02/29/96, 10/01/96, 3/15/97, 01/15/98, 11/15/98, 12/15/99, 01/01/01, 03/01/01; 8.139.500.8 NMAC - Rn, 8 NMAC 3.FSP.501, 05/15/2001; A, 10/01/2001; A, 10/01/2002, A, 09/01/2003; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A/E, 10/01/2006; A/E, 10/01/2007; A/E, 10/01/2008; A/E, 04/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 04/01/2010; A/E, 10/01/2010; A/E, 10/01/2011; A/E, 10/01/2012]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.14 NMAC, Sections 2, 3, 7, 8, 9, 10, 11 and 12, effective September 28, 2012. This also amends the part name.

PART 14 MANAGEMENT OF ~~[CHRONIC]~~ PAIN WITH CONTROLLED SUBSTANCES

16.10.14.2 SCOPE: This part applies to all ~~[physicians and physician assistants licensed by the board]~~ New Mexico medical board licensees who hold a federal drug enforcement administration registration.

[16.10.14.2 NMAC - N, 1/20/03; A, 9/28/12]

16.10.14.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to and in accordance with the Medical Practice Act, sections 61-6-1 through 61-6-35 NMSA 1978 and the Pain Relief Act, sections 24-2D-1 NMSA through 24-2D-6.

[16.10.14.3 NMAC - N, 1/20/03; A, 9/28/12]

16.10.14.7 DEFINITIONS:

A. "Addiction" is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and, craving. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.

B. "Acute pain" means the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus, typically associated with invasive procedures, trauma or disease and is generally time-limited.

~~[B-]~~ **C.** "Chronic pain" means [a pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated] pain that persists after reasonable medical efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. "Chronic pain" does not, for purpose of the Pain Relief Act requirements, include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

D. "Clinical expert" means a person who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

~~[C-]~~ **E.** "Drug abuser" means a person who takes a drug or drugs for other than legitimate medical purposes.

~~[D-]~~ **F.** "Pain" means [an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage, or described in terms of such inflammation and damage] acute or chronic pain or both.

~~[E-]~~ **G.** "Physical dependence" means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

H. "Prescription

monitoring program" means a centralized system to collect, monitor, and analyze electronically, for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data are used to support efforts in education, research, enforcement and abuse prevention.

~~[H-]~~ **I.** "Therapeutic purpose" means the use of pharmaceutical and non-pharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management.

~~[F-]~~ **J.** "Tolerance" means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

[16.10.14.7 NMAC - N, 1/20/03; A, 9/28/12]

16.10.14.8 [GUIDELINES:] The following ~~[guidelines with]~~ regulations shall be used by the board to determine whether a ~~[physician's or physician assistant's]~~ health care practitioner's prescriptive practices are consistent with the appropriate treatment of pain.

A. The treatment of pain with various medicines ~~[and/or] or~~ controlled substances is a legitimate medical practice when accomplished in the usual course of professional practice. It does not preclude treatment of patients with addiction, physical dependence ~~[and/or] or~~ tolerance who have legitimate pain. However, such patients do require very close monitoring and precise documentation.

B. The prescribing, ordering, administering or dispensing of controlled substances to meet the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in

compliance with the following.

(1) A practitioner shall complete a physical examination and include an evaluation of the patient's psychological and pain status. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of a medical indication or contra-indication against the use of controlled substances.

(2) A practitioner shall be familiar with and employ screening tools as appropriate, as well as the spectrum of available modalities, in the evaluation and management of pain. The practitioner shall consider an integrative approach to pain management.

(3) A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture, and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan shall include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

(4) The practitioner shall discuss the risks and benefits of using controlled substances with the patient or surrogate or guardian, and shall document this discussion in the record.

(5) Complete and accurate records of care provided and drugs prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, prescribed dosage and number of refills authorized shall be recorded. Prescriptions for opioids shall include indications for use. For chronic pain patients treated with controlled substance analgesic(s), the prescribing practitioner shall use a written agreement for treatment with the patient outlining patient responsibilities. As part of a written agreement, chronic pain patients shall receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible.

(6) The management of patients needing chronic pain control requires monitoring by the attending or consulting practitioner. The practitioner shall periodically review the course of treatment for chronic pain, the patient's state of health, and any new information about the etiology of the chronic pain at least

every six months. In addition, a practitioner shall consult, when indicated by the patient's condition, with health care professionals who are experienced (by the length and type of their practice) in the area of chronic pain control; such professionals need not be those who specialize in pain control. Consultation should occur early in the course of long-term treatment, and at reasonable intervals during continued long-term treatment for assessment of benefit and need. It is especially important, when treating addicts for legitimate pain apart from their addiction, to obtain a contractual agreement with the patient, appropriate consultation, and to set a schedule for re-evaluation at appropriate time intervals.]

(7) If, in a practitioner's medical opinion, a patient is seeking pain medication for reasons that are not medically justified, the practitioner is not required to prescribe controlled substances for the patient.

C. Pain management for patients with substance use disorders shall include:

- (1) a contractual agreement;
- (2) appropriate consultation;
- (3) drug screening when other factors suggest an elevated risk of misuse or diversion; and
- (4) a schedule for re-evaluation at appropriate time intervals at least every six months.

D. The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate medical indication for the treatment prescribed; documented change or persistence of the recognized medical indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the practitioner's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

E. The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection [as a guiding principle].

F. A practitioner who appropriately prescribes controlled substances and who follows this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Medical Practice Act or board rules. [16.10.14.8 NMAC - N, 1/20/03; A, 4/3/05; A, 9/28/12]

16.10.14.9

PHYSICIAN,

PHYSICIAN ASSISTANTS AND ANESTHESIOLOGIST ASSISTANTS TREATED WITH OPIATES: Physicians, physician assistants or anesthesiologist assistants who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by an M.D. or D.O. pain specialist, and must have a complete, independent neuropsychological evaluation, as well as clearance from their physician, before returning to or continuing in practice. In addition, they must remain under the care of a physician for as long as they remain on opiates while continuing [in] to practice. [16.10.14.9 NMAC - N, 4/3/05; A, 9/28/12]

16.10.14.10 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS: The intent of the New Mexico medical board in requiring participation in the PMP is to assist practitioners in balancing the promotion of the safe use of controlled substances for the provision of medical care and services with the need to impede illegal and harmful activities involving these pharmaceuticals.

A. A health care practitioner who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

B. A health care practitioner shall, before prescribing, ordering, administering or dispensing a controlled substance listed in Schedule II, III or IV, obtain a patient PMP report for the preceding 12 months when one of the following situations exists:

(1) the patient is a new patient of the practitioner, except in the setting of urgent or emergent care, in which situation a patient PMP report for the previous 12 months shall only be required when Schedules II, III, and IV drugs are prescribed for a period greater than 10 days; and

(2) during the continuous use of opioids by established patients a PMP shall be requested and reviewed a minimum of once every six months.

[16.10.14.10 NMAC - N, 9/28/12]

16.10.14.11 PAIN MANAGEMENT CONTINUING EDUCATION: This section applies to all New Mexico medical board licensees who hold a federal drug enforcement administration registration and licensure to prescribe opioids. Pursuant to the Pain Relief Act, in order to ensure that all such health care practitioners safely prescribe for pain management and harm reduction, the following rules shall apply.

A. Immediate requirements effective November 1, 2012. Between November 1, 2012 and

no later than June 30, 2014, all New Mexico medical board licensees who hold a federal drug enforcement administration registration and licensure to prescribe opioids, shall complete no less than five continuing medical education hours in appropriate courses that may include a review of this rule (16.10.14 NMAC) for treatment of pain. Courses shall include an understanding of the pharmacology and risks of controlled substances, a basic awareness of the problems of abuse, addiction and diversion, and awareness of state and federal regulations for the prescription of controlled substances. The applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval. Practitioners who have taken continuing medical education hours in these educational elements between July 1, 2011 and November 1, 2012, may apply those hours toward the required five continuing medical education hours described in this subsection.

B. Triennial requirements for physicians. Beginning with the July 1, 2014 triennial renewal date, as part of the 75 continuing medical education hours required during each triennial renewal cycle, all New Mexico medical board physician licensees who hold a federal drug enforcement administration registration and license to prescribe opioids, shall be required to complete and submit five continuing medical education hours. Appropriate courses shall include all of the educational elements described in Subsection A of this section. The applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval. These hours may be earned at any time during the three-year period immediately preceding the triennial renewal date. The five continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A above, may be included as part of the required continuing medical education hours in pain management in either the triennial cycle in which these hours are completed, or the triennial cycle immediately thereafter.

C. Biennial requirements for physician assistants. Beginning with the July 1, 2014 biennial renewal date, in addition to the NCCPA certification required during each biennial renewal cycle pursuant to 16.10.15.16 NMAC, all New Mexico medical board physician assistant licensees who hold a federal drug enforcement administration registration and license to prescribe opioids, shall be required to complete and submit three continuing medical education hours. Appropriate courses shall include all of the educational elements described in Subsection A of this section. The applicability of such courses toward fulfillment of the continuing

medical education requirement is subject to medical board approval. These hours may be earned at any time during the two-year period immediately preceding the renewal date. Three of the five continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A above, may be included as part of these required three continuing medical education hours in pain management in either the biennial cycle in which these hours are completed, or the biennial cycle immediately thereafter. These three hours may also be applied to satisfy NCCPA requirements for certification.

D. Biennial requirements for anesthesiologist assistants. Beginning with the July 1, 2014 biennial renewal date, all New Mexico medical board anesthesiologist assistant licensees who hold a federal drug enforcement administration registration and license to prescribe opioids, shall be required to complete and submit three continuing medical education hours. Appropriate courses shall include all of the educational elements described in Subsection A of this section. The applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval. These hours may be earned at any time during the two-year period immediately preceding the renewal date. Three of the five continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A above, may be included as part of these required three continuing medical education hours in pain management in either the biennial cycle in which these hours are completed, or the biennial cycle immediately thereafter.

E. Requirements for new licensees. All New Mexico medical board licensees, whether or not the New Mexico license is their first license, who hold a federal drug enforcement administration registration and license to prescribe opioids, shall complete five continuing medical education hours in pain management during the first year of licensure. These five continuing medical education hours completed prior to the first renewal may be included as part of the hours required in Subsections B, C or D, above.

F. The continuing medical education requirements of this section are included in the total continuing medical education requirements set forth at 16.10.4.8 NMAC, 16.10.15.16 NMAC and 16.10.19.15 NMAC. [16.10.14.11 NMAC - N, 9/28/12]

16.10.14.12 NOTIFICATION: In addition to the notice of procedures set forth in the State Rules Act, Section 14-4-1 et seq NMSA 1978, the board shall separately notify the following persons of the Pain Relief Act and Part 14 of the New Mexico medical board rule, 16.10.14 NMAC:

A. health care practitioners under its jurisdiction; and

B. a health care practitioner being investigated by the board in relation to the practitioner's pain management services. [16.10.14.12 NMAC - N, 9/28/12]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.15.3 NMAC, GRRDS, General Administrative Records (for use by local government and educational institutions), amending Sections 7, 9 and adding Section 300 effective 9/24/2012.

1.15.3.7 DEFINITIONS:

A. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978).

B. "Agency" [~~means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2 NMSA 1978);~~] means any institution or other organization of local government, the territorial government and the Spanish and Mexican governments in New Mexico.

C. "Archives" means the permanent records of the state of New Mexico, which may include government and private collections of the Spanish, Mexican, territorial and statehood periods, assessed to have significant historical value to warrant their preservation by the state of New Mexico or its political subdivisions.

D. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

E. "Microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission.

F. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency; extra copies of correspondence; preliminary drafts; blank forms, transmittal

letters or forms that do not add information; sample letters; and reading file or informational files.

G. "Public record" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein (Section 14-4-2 NMSA 1978).

H. "Records custodian" means the statutory head of the agency using or maintaining the records or the custodian's designee.

I. "Record destruction" means the process of totally obliterating information on records by any method to make the information unreadable or unusable under any circumstances.

J. "Records management" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

K. "Records retention and disposition schedule" means rules adopted by the commission pursuant to Section 14-3-4 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

L. "Retention" means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

[8/8/96; 5/19/97; 1.15.3.7 NMAC - Rn, 1 NMAC 3.2.90.7, 10/01/2000; A, 1/6/2002; A, 1/5/2004; A, 12/19/2011; A, 9/24/2012]

1.15.3.9 INSTRUCTIONS:

A. Records retention and disposition schedules identify the types of records maintained by state agencies and specify a period of time which records must be retained. A retention period may be stated in terms of months or years and is sometimes expressed as contingent upon the occurrence of an event. There are several types of records retention and disposition schedules created by the SRCA for state agencies. General schedules list records common to all agencies and executive schedules list records specific to an agency. Each record series will be represented in the format listed below.

(1) Program - describes the function of the records

(2) Maintenance system - describes how an agency files (organizes)

records

(3) Description - describes the purpose and content of a record

(4) Retention - defines the length of time records must be kept before they are eligible for destruction or archival preservation.

B. For records of a general administrative nature, refer to the GRRDS, General Administrative, 1.15.3 NMAC.

C. For records of a financial nature, refer to the GRRDS, General Financial, 1.15.5 NMAC.

D. For records of a personnel nature, refer to the GRRDS, General Personnel, 1.15.7 NMAC.

E. For records of a medical nature, refer to the GRRDS, General Medical, 1.15.8 NMAC.

F. Retention periods shall be extended until six months after all current or pending litigation; current claims; audit exceptions or court orders involving a record have been resolved or concluded.

G. The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are included in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.

H. Confidentiality is denoted for files likely to contain confidential materials or information; however files without a confidentiality note may contain confidential or privileged information. Failure to include a confidentiality note in the description of a record series does not waive confidentiality. Refer questions concerning the confidentiality of a file to legal counsel for the agency.

I. Access to confidential documents, information or files shall be only by authorization of the agency records custodian (Section 14-2-8 NMSA 1978), or by the office of the attorney general or by court order, unless otherwise provided by law. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

J. Records may be photographed, microfilmed, digitized or converted to computer output microfilm provided a microphotography plan has been approved by the state records administrator (Section 14-3-17 NMSA 1978). Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction as evidence in all courts or administrative agencies (Section 14-1-6 NMSA 1978).

K. Public records placed on magnetic tapes, disks or other data processing media shall be retained for the length of time specified in records retention and

disposition schedules and are subject to the same confidentiality and access restrictions as paper records. See also 1.13.70 NMAC, Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems.

L. Email is a transmission medium for content that may or may not be a public record. Email messages that contain information sent or received by an agency in connection with the transaction of official state business or in pursuance of law are public records and are subject to retention requirements established in records retention and disposition schedules. Email messages are required to be categorized, filed and retained on the basis of content (1.13.4 NMAC, Records Management Requirements for Electronic Messaging). The content of email messages may vary considerably; therefore, each email shall be evaluated to determine if it meets the definition of a public record as defined in the Public Records Act. Non-records or transitory emails that do not provide evidence of official agency policies or business transactions may be deleted.

M. The term "transfer to archives" for municipalities organizations refers to the organization's institutional archives for records assessed to have significant historical value and warrant their preservation. The term "transfer to archives" for counties, educational institutions and all other political subdivisions refers to the archives and historical services division of the SRCA.]

A. Records retention and disposition schedules identify the types of records maintained by local government and educational institutions and specify a period of time which records must be retained. A retention period may be stated in terms of months or years and is sometimes expressed as contingent upon the occurrence of an event. There are several types of records retention and disposition schedules promulgated by the commission for local government and educational institutions. General schedules list records common to all local government and educational institutions and local government and educational schedules list records specific for that entity. Each record series will be represented in the format listed below.

(1) Program - describes the function of the records

(2) Maintenance system - describes how an agency files (organizes) records

(3) Description - describes the purpose and content of a record

(4) Retention - defines the length of time records must be kept before they are eligible for destruction or archival preservation.

B. For records of a general administrative nature, refer to the GRRDS,

General Administrative, 1.15.3 NMAC.

C. For records of a financial nature, refer to the GRRDS, General Financial, 1.15.5 NMAC.

D. For records of a personnel nature, refer to the GRRDS, General Personnel, 1.15.7 NMAC.

E. For records of a medical nature, refer to the GRRDS, General Medical, 1.15.8 NMAC.

F. Retention periods shall be extended until six months after all current or pending litigation; current claims, audit exceptions or court orders involving a record have been resolved or concluded.

G. The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are included in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.

H. Confidentiality is denoted for files likely to contain confidential materials or information; however files without a confidentiality note may contain confidential or privileged information. Failure to include a confidentiality note in the description of a record series does not waive confidentiality. Refer questions concerning the confidentiality of a file to legal counsel for the agency.

I. Access to confidential documents, information or files shall be only by authorization of the agency records custodian (Section 14-2-8 NMSA 1978), or by the office of the attorney general or by court order, unless otherwise provided by law. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

J. Records may be photographed, microfilmed, digitized or converted to computer output microfilm provided a microphotography plan has been approved by the state records administrator (Section 14-3-17 NMSA 1978). Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction as evidence in all courts or administrative agencies (Section 14-1-6 NMSA 1978).

K. Public records placed on magnetic tapes, disks or other data processing media shall be retained for the length of time specified in records retention and disposition schedules and are subject to the same confidentiality and access restrictions as paper records. See also 1.13.70 NMAC, Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems.

L. Email is a transmission medium for content that may or may not be a public record. Email messages that contain

information sent or received by an agency in connection with the transaction of official state business or in pursuance of law are public records and are subject to retention requirements established in records retention and disposition schedules. Email messages are required to be categorized, filed and retained on the basis of content (1.13.4 NMAC, Records Management Requirements for Electronic Messaging). The content of email messages may vary considerably; therefore, each email shall be evaluated to determine if it meets the definition of a public record as defined in the Public Records Act. Non-records or transitory emails that do not provide evidence of official agency policies or business transactions may be deleted.

[1.15.3.9 NMAC - Rn, 1 NMAC 3.2.90.8 & A, 1/6/2002; A, 1/5/2004; A, 12/19/2011; A, 9/24/2012]

1.15.3.300 ELECTRONIC INFORMATION SECURITY AUDIT FILES:

A. Program: information technology

B. Maintenance system: chronological by date

C. Description: records documenting security audits conducted on electronic information systems. Files may include risk assessment report, business process analysis, final audit report and determinations, correspondence, etc.

D. Retention: five years from date of final report

E. Confidentiality: Portions of this record may contain confidential information pursuant, but not limited to 44 U.S.C. 3544(a)(1)(A). [1.15.3.300 NMAC - N, 9/24/2012]

NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 27 PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL PART 31 SPECIAL PURPOSE SCHOOLS EDUCATIONAL FACILITY ADEQUACY STANDARDS

6.27.31.1 ISSUING AGENCY. Public School Capital Outlay Council [6.27.31.1 NMAC - N, 09/14/12]

6.27.31.2 SCOPE. The purpose of this rule is to provide statewide adequacy standards for special purpose school buildings and grounds. The application of these standards shall be limited to space and attributes needed to support educational and technology programs and curricula, including the expanded core curriculum,

student housing and related services, and that is sustainable within the operational budget for staffing, maintenance, and full utilizations of the facilities. The New Mexico special purpose schools facilities adequacy standards are dynamic and the council plans to review them as necessary, and change them as time and circumstances require. These standards are intended for use in the evaluation of existing special purpose school facilities and are not intended to limit the flexibility of design solutions for new construction and renovation projects. A companion document is the New Mexico special purpose schools adequacy planning guide, provided by the state for use in the programming and design of school projects to meet adequacy. The New Mexico special purpose school adequacy planning guide is incorporated by reference into these standards, and may be amended by the council with adequate notice and input from the public.

[6.27.31.2 NMAC - N, 09/14/12]

6.27.31.3 STATUTORY AUTHORITY. The Public School Capital Outlay Act, Section 22-24-5 NMSA 1978.

[6.27.31.3 NMAC - N, 09/14/12]

6.27.31.4 DURATION. Permanent

[6.27.31.4 NMAC - N, 09/14/12]

6.27.31.5 EFFECTIVE DATE. September 14, 2012

[6.27.31.5 NMAC - N, 09/14/12]

6.27.31.6 OBJECTIVES. The New Mexico special purpose school adequacy standards establish the acceptable levels for the physical condition and capacity of school buildings, the educational suitability of those facilities and the need for technological infrastructure at those facilities. The standards are not intended to restrict a facility's size.

[6.27.31.6 NMAC - N, 09/14/12]

6.27.31.7 DEFINITIONS. Unless otherwise specified, the following definitions apply:

A. "art education program" includes visual and performing arts programs;

B. "combination school" means a school that contains the elementary, middle school/junior high school and high school or any combination thereof;

C. "council" means the public school capital outlay council;

D. "equipment" means a specified item not affixed to the real property of a special purpose school facility;

E. "expanded core curriculum" means a curriculum that

recognizes experiences and concepts students without visual or auditory impairments learn casually and incidentally must be systematically and sequentially taught to students with visual and auditory impairments;

F. "exterior envelope" means the exterior walls, floor and roof of a building;

G. "fixture" means a specified item that is affixed to the real property of a special purpose school facility;

H. "general use classroom" means a classroom space that is or can be appropriately configured for instruction in at least the areas of language arts, mathematics and social studies;

I. "gross sf" means a measurement from exterior wall to exterior wall and calculated to obtain the gross square footage of a space;

J. "infrastructure" means the on-site physical support systems needed for the operation of the school, including internal roads, and utilities, and drainage systems, and building subsystems such as structure, mechanical, electrical, data, and telecommunications;

K. "intensive support space" means a space to accommodate programs serving students with severe or multiple handicaps and primarily in need of habilitation and treatment, while requiring a staff person for small groups of students within the class;

L. "interior finish" means an aesthetic or protective final coating or fabric applied to an exposed surface inside the building;

M. "interior surface" means any exposed area of the interior enclosure for an interior space, finished or unfinished;

N. "net sf" means a measurement from interior face of wall to interior face of wall and calculated to obtain the net square footage of a space;

O. "planned school program capacity" means the planned number of students to be accommodated in the entire facility when all phases of construction are fully completed; these shall include students in regular education classes in combination with special education students requiring special education classrooms in compliance with public education department requirements;

P. "resident" means a student who lives in residential housing while attending a special purpose school;

Q. "residential housing" means the space provided at a special purpose school for students to sleep, perform personal hygiene activities, study, socialize, engage in structured and unstructured recreational activities, prepare meals and dine, and to engage in other activities that a student attending a non-residential school

might otherwise engage in outside of the traditional school day;

R. "space" means the net square footage located within the interior of a building;

S. "special purpose school facility" means a building or group of buildings and outdoor area that are administered together to comprise a special purpose school;

T. "special purpose school site or special purpose school campus" means one or more parcels of land where a special purpose school facility is located; more than one school facility may be located on a school site or school campus;

U. "special purpose schools" means the New Mexico school for the deaf (NMSD) and the New Mexico school for the blind and visually impaired (NMSBVI);

V. "specialty classroom" means a classroom space that is or can be appropriately configured for instruction in a specific subject such as science, physical education, special education or art;

W. "specialty program capacity" means the planned number of students to be accommodated in a specialty program area in compliance with public education department requirements;

X. "students" means the total enrollment of students on the current roll of a class or special purpose school on a specified day; and

Y. "teacherage" means a residence that houses a teacher or administrator on site.

[6.27.31.7 NMAC - N, 09/14/12]

6.27.31.8 GENERAL REQUIREMENTS. These standards are not intended to supersede or omit compliance with applicable building and fire code or any other code, regulation, law or standard that has been adopted by state agencies.

A. Building condition. A special purpose school facility must be safe and capable of being maintained.

(1) Structural. A special purpose school facility must be structurally sound. A special purpose school facility shall be considered structurally sound and safe if the building presents no imminent danger or major visible signs of decay or distress.

(2) Exterior envelope. An exterior envelope is safe and capable of being maintained if:

(a) walls and roof are weather tight under normal conditions with routine upkeep; and

(b) doors and windows are weather tight under normal conditions with routine upkeep, and the building structural systems support the loads imposed on them.

(3) Interior surfaces. An interior surface is safe and capable of being

maintained if it is:

(a) structurally sound;

(b) capable of supporting a finish;

and

(c) capable of continuing in its intended use, with normal maintenance and repair.

(4) Interior finishes. An interior finish is safe and capable of being maintained if it is:

(a) free of exposed lead paint;

(b) free of friable asbestos; and

(c) capable of continuing in its intended use, with normal maintenance and repair.

B. Building systems.

Building systems in a special purpose school facility must be in working order and capable of being properly maintained. Building systems include roof, plumbing, telephone, electrical and heating and cooling systems as well as fire alarm, 2-way internal communication, appropriate technological infrastructure and security systems.

(1) General. A building system shall be considered to be in working order and capable of being maintained if all of the following apply:

(a) The system is capable of being operated as intended and maintained.

(b) Newly manufactured or refurbished replacement parts are available.

(c) The system is capable of supporting the adequacy standards established in this rule.

(d) Components of the system present no imminent danger of personal injury.

(2) Plumbing fixtures. A special purpose school facility shall be equipped with sanitary facilities in accordance with the New Mexico building code. Fixtures shall include, but are not limited to, water closets, urinals, lavatories and drinking fountains. In all new construction, restrooms shall be available so students will not have to exit the building. In existing facilities, restrooms shall be available for classrooms for grades 5 and below, and special needs classrooms, without having to exit the building, wherever possible within reasonable cost constraints.

(3) Fire alarm and emergency notification system. A special purpose school facility shall have a fire alarm and emergency notification system as required by applicable state fire codes and appropriate emergency procedures.

(4) 2-way communication system. A special purpose school facility shall have a 2-way internal communication system between a central location and each classroom, isolated office space, library, physical education space, cafeteria, and other regularly-used spaces.

[6.27.31.8 NMAC - N, 09/14/12]

OF SPECIAL PURPOSE SCHOOLS.

The classifications for special purpose schools school grade levels under these standards are:

- A. Preschool
 - B. Elementary school: kindergarten - grade 6
 - C. Middle school/junior high school: grades 7 - 8
 - D. High school: grades 9 - 12
 - E. Combination school: includes some or all of the grade levels in A, B, C or D, above.
- [6.27.31.9 NMAC - N, 09/14/12]

6.27.31.10 SPECIAL PURPOSE SCHOOL SITE. A special purpose school site shall be of sufficient size to accommodate safe access, parking, drainage and security. Additionally, the site shall be provided with an adequate source of water and appropriate means of effluent disposal.

A. Safe access. A special purpose school site shall be configured for safe and controlled access that separates pedestrian from vehicular traffic. If buses are used to transport students then separate bus loading/unloading areas shall be provided wherever possible. Dedicated student drop-off and pickup areas shall be provided for safe use by student passengers arriving or departing by automobile.

B. Parking. A special purpose school site shall include a maintainable surfaced area that is stable, firm and slip resistant and is large enough to accommodate 1.5 parking spaces /staff full time equivalent employee and sufficient space to accommodate demonstrated need for student parking. If this standard is not met, alternative parking may be approved after the sufficiency of parking at the site is reviewed by the council using the following criteria:

- (1) availability of street parking around the school;
- (2) availability of any nearby parking lots;
- (3) availability of public transit;
- (4) number of staff who drive to work on a daily basis; and
- (5) average number of visitors on a daily basis.

C. Drainage. A special purpose school site shall be configured such that runoff does not undermine the structural integrity of the school buildings located on the site or create flooding, ponding or erosion resulting in a threat to health, safety or welfare.

D. Security.

(1) All special purpose schools shall have safe and secure site fencing or other barriers with accommodations for safe passage through openings to protect students from the hazards of traffic, railroad

tracks, steep slopes, animal nuisance, and to discourage unauthorized access to the campus. This standard is met if the entire school is fenced or walled. If this standard is not met, alternative security may be approved after the sufficiency of security at the site is reviewed by the council using the following criteria:

- (a) amount of vehicular traffic near the school site;
- (b) existence of hazardous or natural barriers on or near the school site;
- (c) amount of animal nuisance or unique conditions near the school site;
- (d) visibility of the play/physical education area; and
- (e) site lighting, as required to meet safe, normal access conditions.

(2) For special purpose schools which include students below grade 6, a fenced or walled play/physical education area shall be provided.

[6.27.31.10 NMAC - N, 09/14/12]

6.27.31.11 SITE RECREATION AND OUTDOOR PHYSICAL EDUCATION. A special purpose school facility shall have area, space and fixtures, in accordance with the equipment necessary to meet the educational requirements of the public education department, for physical education activity and shall be provided based on the planned school program capacity.

A. Preschool. Safe play area(s) shall be conveniently accessible to students.

B. Elementary school. Safe play area(s) and playground(s) including hard surfaced court(s) or unpaved recreation area(s) shall be conveniently accessible to the students. Play area(s) and appropriate equipment for physical education and school recreational purposes shall be provided based on the planned school program capacity.

C. Middle school/junior high school. Hard surfaced court(s) and playing field(s) for physical education activities shall be provided. Playing field(s) and equipment shall be based on the planned school program capacity.

D. High school. A paved multipurpose play surface and a playing field for physical education activities shall be provided. Playing fields and equipment shall be based on the planned school program capacity.

E. Combination school. A combination school shall provide the elements of the grades served by Subsections A, B, C and D above without duplication, but shall meet the highest standard.

[6.27.31.11 NMAC - N, 09/14/12]

6.27.31.12 A C A D E M I C CLASSROOMS. All classroom space shall meet or exceed the requirements listed

below:

A. Classroom space. Classroom space shall be sufficient for appropriate educational programs for the class level needs.

B. Classroom fixtures and equipment

(1) Each general and specialty classroom shall contain a work surface and seat for each student in the classroom. The work surface and seat shall be appropriate for the normal activity of the class conducted in the room.

(2) Each general and specialty classroom shall have an erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction, and a display surface. A single surface may meet one or more of these purposes.

(3) Each general and specialty classroom shall have storage for classroom materials or access to conveniently located storage.

(4) Each general and specialty classroom shall have a work surface and seat for the teacher and for the aide assigned to the classroom, and it shall have secure storage for student records that is located in the classroom or is convenient to access from the classroom.

C. Classroom lighting

(1) Each general and specialty classroom shall have a light system capable of maintaining at least 50 foot-candles of well-distributed light. Provide appropriate task lighting in specialty classrooms where enhanced visibility is required.

(2) The light level shall be measured at a work surface located in the approximate center of the classroom, between clean light fixtures.

D. Classroom temperature

(1) Each general and specialty classroom shall have a heating, ventilation and air conditioning (HVAC) system capable of maintaining a temperature between 68 and 75 degrees fahrenheit with full occupancy.

(2) The temperature shall be measured at a work surface in the approximate center of the classroom.

E. Classroom acoustics

(1) Each general and specialty classroom shall be maintainable at a sustained background sound level of less than 55 decibels.

(2) The sound level shall be measured at a work surface in the approximate center of the classroom.

F. Classroom air quality

(1) Each general, science and arts classroom shall have an HVAC system that continually moves air and is capable of maintaining a CO₂ level of not more than 1,200 parts per million.

(2) The air quality shall be measured at a work surface in the approximate center of the classroom.

[6.27.31.12 NMAC - N, 09/14/12]

6.27.31.13 GENERAL USE CLASSROOMS (LANGUAGE ARTS, MATHEMATICS AND SOCIAL STUDIES).

A. Cumulative classroom net square foot (sf) requirements, including in-classroom storage space, shall be at least:

(1) NMSD preschool
110 net sf/student, but not less than 450 net sf.

(2) NMSD elementary
80 net sf/student, but not less than 450 net sf.

(3) NMSD middle/high school
75 net sf/student, but not less than 450 net sf.

(4) NMSBVI preschool
110 net sf/student, but not less than 450 net sf.

(5) NMSBVI elementary
90 net sf/student, but not less than 450 net sf.

(6) NMSBVI middle/high school
85 net sf/student, but not less than 450 net sf.

(7) Based on demonstrated need, minimum classroom sizes listed in (1) through (6) shall not preclude individual or small group instruction spaces that are smaller.

B. Sufficient number of classrooms shall be provided to meet the special purpose school's student/staff ratio requirements and to accommodate at least eight students per classroom, unless otherwise stated in this standard.

[6.27.31.13 NMAC - N, 09/14/12]

6.27.31.14 SPECIALTY CLASSROOMS.

A. Science:

(1) For elementary schools, no additional space is required beyond the classroom requirement. This space is included in the academic classroom requirement and may be used for other instruction.

(2) For middle school and high school:

(a) NMSD science classroom. At least 12.5 net sf/student, but not less than 900 net sf. The space shall have science fixtures and equipment necessary to meet the educational requirements of the special purpose school.

(b) NMSBVI science classroom. At least 13 net sf/student, but not less than 900 net sf. The space shall have science fixtures and equipment, necessary to meet the educational requirements of the special purpose school.

(3) If an alternate science learning method is used by a special purpose school, the school shall verify the appropriate alternate fixtures and equipment to the council. Provide at least 80 net sf for securable, well-ventilated storage/prep space for each science room having science fixtures and equipment. Storage/prep room(s) may

be combined and shared between more than one classroom.

B. Intensive support classroom. If an intensive support education space is provided and the space is required to support educational programs, services, and curricula, the space shall be at least 150 net sf/student occupant, but not less than 450 net sf. When the need is demonstrated additional space in the classroom shall be provided with, or students shall have an accessible route to; an accessible unisex restroom with one toilet, sink, washer/dryer and shower stall/tub, and at least 15 net sf of storage. When the need is demonstrated in 7th grade classrooms and above, a kitchenette with at least 15 net sf of storage shall be provided.

C. Art education programs. A special purpose school facility shall have classroom space to deliver art education programs, including dance, music, theatre/drama, and visual arts in accordance with the school's educational program, or have access to an alternate learning method. Classroom space(s) for art education shall not be smaller 650 net sf. Art education classroom space(s) may be included in the academic classroom requirement and may be used for other instruction.

(1) Elementary school. Art education programs may be accommodated within a general use or dedicated art classroom. A special purpose elementary school art program shall not be less than 5 net sf/elementary school student.

(2) NMSD middle school/high school art education program shall not be less than 10 net sf/middle or high school student.

(3) NMSBVI art education program shall not be less than 12.5 net sf/middle or high school student.

D. Expanded core curriculum. Space shall be provided that may include classrooms, industrial, or other types of spaces to support the expanded core curriculum, or access to alternative learning methods shall be provided.

(1) The NMSD expanded core program space shall not be less than 3,000 net sf plus 18 net sf/student in grades 7 through 12.

(2) The NMSBVI expanded core program space shall not be at less than 3,500 net sf plus 22 net sf/student in grades 1 through 12.

(3) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1) and (2) above without duplication, but meeting the higher standards.

E. Technology-aided instruction. A special purpose school facility shall have space to deliver educational technology-aided instructional programs or have access to an alternate learning method.

This requirement may be distributed throughout other program spaces within the facility.

(1) NMSD. Provide space that meets 8 net sf/student of the planned school program capacity, with not less than 650 net sf.

(2) NMSBVI. Provide space that meets 7.5 net sf/student of the planned school program capacity, with not less than 650 net sf.

(3) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1) and (2) above without duplication, but meeting the higher standards.

F. Alternate delivery method. If an alternate delivery method is used by a special purpose school for instruction, the space used for the alternate method may be approved following review by the council.

[6.27.31.14 NMAC - N, 09/14/12]

6.27.31.15 PHYSICAL EDUCATION.

A. General requirements. A special purpose school facility shall have an area, space and fixtures for physical education activity. This space may have more than one function and may fulfill more than one standard requirement.

(1) Elementary school. Provide an indoor physical education teaching facility with at least 2,400 net sf. This space may have multi-purpose use in accommodating other educational program activities such as art program performances.

(2) Middle school/junior high school. For a middle school/junior high school facility, an indoor physical education teaching facility that shall not be less than 5,200 net sf plus bleachers for 1.5 design capacity.

(3) High school. A physical education complex shall not be less than 6,500 net sf plus bleachers for 1.5 design capacity.

(4) Combination school. Provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher net sf standards with bleacher capacity for at least 2.0-planned school program capacity. A single high school gymnasium shall fulfill the minimum requirements of both high school and middle school/junior high school classes. If the special purpose school includes an elementary, then it shall provide in addition the separate space required for an elementary school. This space may have more than one function and may fulfill more than one standard requirement.

B. Additional physical education requirements. In addition to space requirements in Subsection A:

(1) Elementary school. One office

shall be provided, with physical education equipment storage with not less than 200 net sf. This space may have more than one function and may fulfill more than one standard requirement.

(2) Middle school/junior high school. Physical education equipment storage space shall be provided. Two dressing rooms shall be provided, with lockers, showers and restroom fixtures. Two offices shall be provided, each with not less than 150 net sf. Each shall be provided with a telephone.

(3) High school. Physical education equipment storage space shall be provided. Two dressing rooms shall be provided, with lockers, showers and restroom fixtures. Two offices shall be provided, each with not less than 150 net sf. Each shall be provided with a telephone.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards. [6.27.31.15 NMAC - N, 09/14/12]

6.27.31.16 LIBRARIES AND MEDIA CENTERS/RESEARCH AREA - GENERAL REQUIREMENTS.

A. A special purpose school facility shall have space for students to access research materials, literature, non-text reading materials, books and technology. This shall include space for reading, listening and viewing materials.

(1) Elementary school. The area for stacks and seating space shall be at least 3 net sf/student of the planned school program capacity, but shall not be less than 1,000 net sf. In addition, office/workroom space and secure storage shall be provided.

(2) Middle school/junior high school or high school. The area for stacks and seating shall not be less than 3 net sf/student of the planned school program capacity. In addition, office/workroom space and secure storage shall be provided.

(3) Combination school. Provide the elements of the grades set out in Paragraphs (1) and (2) above without duplication, but meeting the higher standards.

(4) Special purpose schools that have residential housing shall provide an additional 1,000 net sf of stacks and seating.

B. A special purpose school facility shall have library fixtures, equipment and resources in accordance with the standard equipment necessary to meet the educational requirements of the public education department. [6.27.31.16 NMAC - N, 09/14/12]

6.27.31.17 FOOD SERVICE.

A. Cafeterias - general requirements

(1) Serving and dining. A special purpose school facility shall have a covered area or space, or combination, to permit students to eat within the school site, outside of general classrooms. This space may have more than one function and may fulfill more than one adequacy standards requirement. Dining area shall be sized for the planned school program capacity to allow for a meal period requiring no more than 3 servings. The dining area shall have no less than 15 net sf/seated student.

(2) Serving area shall be provided in addition to dining area.

(3) Fixtures and equipment. A special purpose school facility shall have space, fixtures and equipment accessible to the serving area, in accordance with the standard equipment required, for the preparation, receipt, storage or service of food to students.

(a) The space, fixtures and equipment shall be appropriate for the food service program of the school facility and shall be provided in consideration of the location of the facility and frequency of food service supply deliveries. Food service facilities and equipment shall comply with the food service and food processing regulations of the New Mexico department of environment.

(b) Fixtures and equipment should include: food prep area items, including sink, oven, range, serving area equipment (or buffet equipment), dishwasher, and cold storage, dry storage and other appropriate fixture and equipment items.

B. Kitchen. Kitchen and equipment shall comply with either the food preparation kitchen or the serving kitchen standards defined as follows:

(1) Food preparation kitchen - 2 net sf/meal served minimum based upon the single largest serving period:

(a) Elementary school: 1,000 net sf minimum

(b) Middle school/junior high school: 1,600 net sf minimum

(c) High school: 1,700 net sf minimum

(d) Combination school: shall provide the elements of the grades served by Subparagraphs (a), (b) and (c) above without duplication, but meeting the higher standards.

(e) Special purpose schools that have residential housing shall provide an additional 400 net sf of storage for residential housing-based nutrition and snack requirements.

(2) Serving kitchen. Where food is not prepared, there shall be a minimum of 200 net sf with a hand wash sink and a phone. [6.27.31.17 NMAC - N, 09/14/12]

6.27.31.18 STUDENT LIFE.

A. Dormitory suites. Special purpose schools that provide residential housing shall have space for students to sleep, perform personal hygiene activities, study, socialize, engage in structured and unstructured recreational activities, and to participate in other activities in which a student attending a non-residential school might otherwise engage outside of the traditional school day.

(1) A dormitory suite shall have at least 180 net sf/occupant.

(2) A handicapped-accessible dormitory suite shall have at least 220 net sf/occupant. Handicapped-accessible dormitory rooms shall be provided based on demonstrated need.

B. Student recreation center. A student recreation center shall consist of at least 800 net sf plus 25 net sf/resident. In addition to the student recreation center, students shall have access to indoor physical education space for the purpose of structured and unstructured physical activities.

C. Outdoor recreation. Residents shall have access to safe, secure, outdoor recreation spaces where they can engage in structured and unstructured recreational activities. In addition to outdoor recreational space, residents shall have access to outdoor physical education space for the purpose of structured and unstructured recreational activities. [6.27.31.18 NMAC - N, 09/14/12]

6.27.31.19 OTHER FACILITY AREAS.

A. Parent workspace. A school facility shall include a workspace for use by parents. If this space is provided, it shall consist of at least .5 net sf/student of the planned school program capacity but no less than 150 net sf. The space may consist of more than one room and may have more than one function.

B. Administrative space. A special purpose school facility shall have space to be used for the administration of the school. The space shall consist of a minimum of 150 net sf, plus 5 net sf/student of the planned school program capacity.

C. Student health. A special purpose school facility shall have space to separate a sick student from the other students and may include space for the delivery of other related programs. This space shall be a designated space that is accessible to a restroom, and shall not be less than 805 net sf plus 1 net sf/student of the planned school program capacity. The space may consist of more than one room and may have more than one function. This space shall include a telephone.

D. Counseling. A special purpose school shall have space for counseling of students and related activities.

This space shall consist of 250 net sf plus 2 net sf/student of the planned school program capacity.

E. Therapy. A special purpose school shall have space for occupational, physical and other types of therapy for students. This space shall consist of 225 net sf plus 8 net sf/student of the planned school program capacity.

F. Faculty workspace or teacher lounge. A special purpose school facility shall have workspace available to the faculty. This space is in addition to any workspace available to a teacher, in or near a classroom. The space shall consist of 5 net sf/student of the planned school program capacity with no less than 150 net sf. The space may consist of more than one room and may have more than one function. This space shall include a break area with a sink. [6.27.31.19 NMAC - N, 09/14/12]

6.27.31.20 GENERAL STORAGE (EXCLUDES LOCKERS, JANITORIAL, KITCHEN, GENERAL CLASSROOM, SPECIALTY CLASSROOMS, AND ADMINISTRATIVE STORAGE). For storage, at least 4 net sf/student of the planned school program capacity may be distributed in or throughout any type of room or space, but may not count toward required room square footages. General storage must be securable and include textbook storage. [6.27.31.20 NMAC - N, 09/14/12]

6.27.31.21 MAINTENANCE OR JANITORIAL SPACE. Each special purpose school shall designate 2 net sf/student of the planned school program capacity for maintenance or janitorial space. Janitorial space shall include a janitorial sink. [6.27.31.21 NMAC - N, 09/14/12]

6.27.31.22 STANDARDS VARIANCE.

A. The council may grant a variance from any of the adequacy standards. The council shall grant a variance if it determines that the intent of the standard can be met by the special purpose school in an alternate manner, or if a variance is required for appropriate programmatic needs as demonstrated by the school. If the council grants the variance, the special purpose school shall be deemed to have met the standard.

B. The council may, with adequate justification, also grant a variance from any of the provisions of the special purpose school adequacy planning guide provided by the state for use in the programming and design of school projects to meet adequacy. Such variance shall be considered through an appeal to the council by the school following a final administrative interpretation of the planning guide.

Procedures for achieving final administrative interpretation and filing an appeal to the council for a variance are as provided for in the planning guide document.

[6.27.31.22 NMAC - N, 09/14/12]

HISTORY OF 6.27.31 NMAC: [Reserved]

NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

This is an amendment to 6.27.30 NMAC, Sections 2, 7, 14, 15, and 17, effective September 14, 2012.

6.27.30.2 SCOPE. The purpose of this rule is to provide statewide adequacy standards for public school buildings and grounds [~~including buildings and grounds of charter schools.~~ These standards shall serve to establish the level of standards necessary to provide and sustain the environment to meet the needs of public schools and to assist their staff in developing their buildings and grounds]. The [~~applications~~] application of these standards shall be limited to [educational] space and attributes needed to support educational and technology programs and curricula, defined and justified as required by public education department standards and benchmarks, and that is sustainable within the operational budget for staffing, maintenance, and full utilizations of the facilities. The New Mexico public school statewide adequacy standards are dynamic and the council plans to review them at least annually, and change them as time and circumstances require. These standards are intended for use in the evaluation of existing public school facilities and are not intended to limit the flexibility of design solutions for new construction and renovation projects. A companion document is the New Mexico public school adequacy planning guide, provided by the state for use in the programming and design of school projects to meet adequacy. The New Mexico public school adequacy planning guide is incorporated by reference into these standards, and may be amended by the council with adequate notice and input from the public.

[6.27.30.2 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07; A, 7/15/10; A, 9/14/12]

6.27.30.7 DEFINITIONS. Unless otherwise specified, the following definitions apply:

A. "ancillary space" means any subordinate space necessary to support an activity or function of main programmatic space(s);

B. "art education program" includes visual and performing arts

programs;

C. "combination school" means a school that contains the elementary, middle school/junior high school and high school or any combination thereof;

D. "council" means the public school capital outlay council;

E. "equipment" means a specified item not affixed to the real property of a school facility;

F. "exterior envelope" means the exterior walls, floor and roof of a building;

G. "fixture" means a specified item that is affixed to the real property of a school facility;

H. "general use classroom" means a classroom space that is or can be appropriately configured for instruction in at least the areas of language arts (including bilingual), mathematics and social studies;

I. "gross sf" means a measurement from exterior wall to exterior wall and calculated to obtain the gross square footage of a space;

J. "infrastructure" means the on-site physical support systems needed for the operation of the school, including internal roads, and utilities, and drainage systems, and building subsystems such as structure, mechanical, electrical, data, and telecommunications;

K. "interior finish" means an aesthetic or protective final coating or fabric applied to an exposed surface inside the building;

L. "interior surface" means any exposed area of the interior enclosure for an interior space, finished or unfinished;

M. "net sf" means a measurement from interior face of wall to interior face of wall and calculated to obtain the net square footage of a space;

N. "planned school program capacity" means the planned number of students to be accommodated in the entire facility when all phases of construction are fully completed; these shall include students in regular education classes in combination with special education students requiring special education classrooms in compliance with public education department requirements;

~~[O.] "qualified student or MEM" means those terms as defined in Section 22-8-2 NMSA 1978;~~

[P.] O. "school facility" means a building or group of buildings and outdoor area that are administered together to comprise a school;

[Q.] P. "school site or school campus" means one or more parcels of land where a school facility is located; more than one school facility may be located on a school site or school campus;

[R.] Q. "space" means the net square footage located within the interior of

a building;

[S-] R. "specialty classroom" means a classroom space that is or can be appropriately configured for instruction in a specific subject such as science, physical education, special education or art;

[F-] S. "specialty program capacity" means the planned number of students to be accommodated in a specialty program area in compliance with public education department requirements; [and]

T. "student" means "qualified student or MEM" as defined in Section 22-8-2 NMSA 1987; and

U. "teacherage" means a residence that houses a teacher or administrator on site.

[6.27.30.7 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07; A, 7/15/10; A, 9/14/12]

6.27.30.14 S P E C I A L T Y CLASSROOMS.

A. Science:

(1) For grades K through 6 , no additional space is required beyond the classroom requirement.

(2) For grades 7 through 12, 4 net sf/student of the specialty program capacity for science is required. The space shall not be smaller than the average classroom at the facility. This space is included in the academic classroom requirement and may be used for other instruction. The space shall have science fixtures and equipment, in accordance with the standard equipment necessary to meet the educational requirements of the public education department. If an alternate science learning method is used by a school district, the district shall verify the appropriate alternate fixtures and equipment to the council. Provide at least 80 net sf for securable, well-ventilated storage/prep space for each science room having science fixtures and equipment. Storage/prep room(s) may be combined and shared between more than one classroom.

B. Special education classroom. If a special education space is provided and the space is required to support educational programs, services, and curricula, the space shall not be smaller than 450 net sf. When the need is demonstrated in type II (d-level) classrooms, additional space in the classroom shall be provided with, or students shall have an accessible route to; an accessible unisex restroom with one toilet, sink, washer/dryer and shower stall/tub, and at least 15 net sf of storage. When the need is demonstrated in 7th grade classrooms and above, a kitchenette with at least 15 net sf of storage shall be provided.

C. Art education programs. A school facility shall have classroom space to deliver art education programs, including dance, music, theatre/drama, and visual arts programs, or have access to

an alternate learning method. Classroom space(s) for art education shall not be smaller than the average classroom at the facility. Art education classroom space(s) may be included in the academic classroom requirement and may be used for other instruction.

(1) Elementary school. Art education programs may be accommodated within a general use or dedicated art classroom. Provide additional dedicated art program storage of at least 60 net sf per facility.

(2) Middle school/junior high school. Classroom space(s) for art education programs shall have no less than 4 net sf/student of the specialty program capacity for art. Provide additional ancillary space for group music practice, individual music practice room(s), specialized storage/library rooms, and office(s).

(3) High school. Classroom space(s) for art education programs shall have no less than 5 net sf/student of the specialty program capacity for art. Provide additional ancillary space for group music practice, individual music practice room(s), specialized storage/library rooms, and office(s).

(4) Combination school. A combination school shall provide the elements of the grades served by paragraphs (1), (2) and (3) above without duplication.

D. Career education

(1) Elementary school. No requirement.

(2) Middle school/junior high school. Career education programs shall be provided with no less than 3 net sf/student of the specialty program capacity of the school for career education. Each program lab or classroom space shall not be smaller than 650 net sf.

(3) High school. Career education programs space shall be provided with no less than 4 net sf/student of the specialty program capacity of the school for career education. Each program lab or classroom space shall not be smaller than 650 net sf.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

E. Technology-aided instruction. A school facility shall have space to deliver educational technology-aided instructional programs or have access to an alternate learning method. This requirement may be distributed throughout other program spaces within the facility.

(1) Elementary school. Provide space that meets 3 net sf/student of the planned school program capacity, with no less than 700 net sf.

(2) Middle school/junior high school. Provide space that meets at least 3

net sf/student of the planned school program capacity, with no less than 800 net sf.

(3) High school. Provide space that meets 3 net sf/student of the planned school program capacity, with no less than 900 net sf.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

F. Alternate delivery method. If an alternate delivery method is used by a school district for instruction, the space used for the alternate method may be approved following review by the council.

[6.27.30.14 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07; A, 7/15/10; A, 9/14/12]

6.27.30.15 P H Y S I C A L EDUCATION.

A. General requirements. A school facility shall have an area, space and fixtures for physical education activity. This space may have more than one function and may fulfill more than one standard requirement.

(1) Elementary school. Provide an indoor physical education teaching facility with at least 2,400 net sf. This space may have multi-purpose use in accommodating other educational program activities such as art program performances. [~~In addition, no less than 200 net sf for office/physical education equipment storage space shall be provided.~~]

(2) Middle school/junior high school. For a middle school/junior high school facility, an indoor physical education teaching facility that shall have a minimum of 5,200 net sf plus bleachers for 1.5 design capacity.

(3) High school. A physical education complex shall have a minimum of 6,500 net sf plus bleachers for 1.5 design capacity.

(4) Combination school. Provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher net sf standards with bleacher capacity for at least 2.0-planned school program capacity. A single high school gymnasium shall fulfill the minimum requirements of both high school and middle school/junior high school classes. If the school includes an elementary, then it shall provide in addition the separate space required for an elementary school. This space may have more than one function and may fulfill more than one standard requirement.

B. Additional physical education requirements. In addition to space requirements in Subsection A:

(1) Elementary school. One office shall be provided, with physical education equipment storage with a minimum of [150]

200 net sf. This space may have more than one function and may fulfill more than one standard requirement.

(2) Middle school/junior high school. Two dressing rooms shall be provided, with lockers, showers and restroom fixtures. Two offices shall be provided, each with a minimum of 150 net sf. Each shall be provided with a telephone. [Physical] Separate physical education equipment storage space shall be provided.

(3) High school. Two dressing rooms shall be provided, with lockers, showers and restroom fixtures. Two offices shall be provided, each with a minimum of 150 net sf. Each shall be provided with a telephone. [Physical] Separate physical education equipment storage space shall be provided.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards. [6.27.30.15 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07; A, 7/15/10; A, 9/14/12]

6.27.30.17 FOOD SERVICE STANDARDS.

A. Cafeterias - general requirements

(1) Serving and dining. A school facility shall have a covered area or space, or combination, to permit students to eat within the school site, outside of general classrooms. This space may have more than one function and may fulfill more than one adequacy standards requirement. Dining area shall be sized for the planned school program capacity to allow for a meal period requiring no more than 3 servings [~~in compliance with public education department requirements~~]. The dining area shall have no less than 15 net sf/seated student.

(2) Serving area shall be provided in addition to dining area.

(3) Fixtures and equipment. A school facility shall have space, fixtures and equipment accessible to the serving area, in accordance with the standard equipment required, for the preparation, receipt, storage or service of food to students.

(a) The space, fixtures and equipment shall be appropriate for the food service program of the school facility and shall be provided in consideration of the location of the facility and frequency of food service supply deliveries. Food service facilities and equipment shall comply with the food service and food processing regulations of the New Mexico department of environment.

(b) Fixtures and equipment should include: food prep area items, including sink, oven, range, serving area equipment (or buffet equipment), dishwasher, and cold storage, dry storage and other appropriate

fixture and equipment items.

B. Kitchen. Kitchen and equipment shall comply with either the food preparation kitchen or the serving kitchen standards defined as follows:

(1) Food preparation kitchen - 2 net sf/meal served minimum based upon the single largest serving period:

(a) Elementary school: 1,000 net sf minimum

(b) Middle school/junior high school: 1,600 net sf minimum

(c) High school: 1,700 sf minimum

(d) Combination school: shall provide the elements of the grades served by Subparagraphs (a), (b) and (c) above without duplication, but meeting the higher standards.

(2) Serving kitchen. Where food is not prepared, there shall be a minimum of 200 net sf with a hand wash sink and a phone.

[6.27.30.17 NMAC - N, 9/1/02; A, 8/31/05; A, 12/14/07; A, 7/15/10; A, 9/14/12]

End of Adopted Rules Section

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