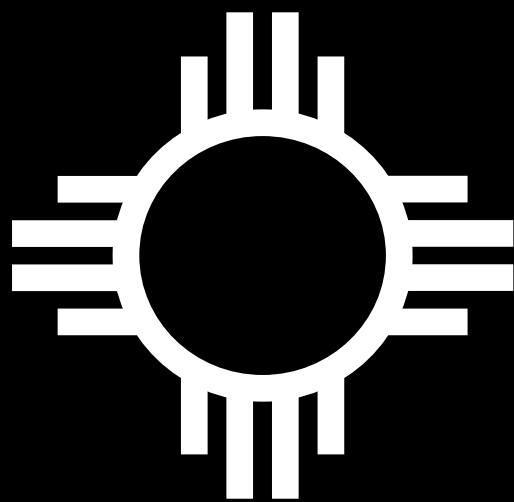


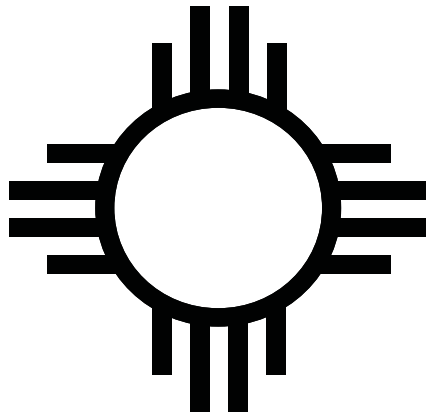
**NEW
MEXICO
REGISTER**



Volume XXIII
Issue Number 24
December 31, 2012

New Mexico Register

**Volume XXIII, Issue Number 24
December 31, 2012**



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

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Administrative Law Division
Santa Fe, New Mexico
2012

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New Mexico Register

Volume XXIII, Number 24

December 31, 2012

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

NEW MEXICO OFFICE OF THE ATTORNEY GENERAL CONSUMER PROTECTION DIVISION

OFFICE OF THE NEW MEXICO
ATTORNEY GENERAL
NOTICE OF PROPOSED NEW RULE
AND PUBLIC HEARING

Office of the Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504-1508
(505) 827-6000
www.nmag.gov

The Attorney General is proposing a new rule regarding the misrepresentation of the age and condition of motor vehicles. The new rule is being promulgated by the authority vested in the Attorney General pursuant to the New Mexico Unfair Practices Act, NMSA 1978, Section 57- 12-13 (1967).

The new proposed rule is available at the Office of the Attorney General located in the Paul Bardacke Attorney General Complex in Santa Fe located at 408 Galisteo Street, Consumer Protection Division, at the Attorney General's Office located in Albuquerque at 111 Lomas Blvd. NW, Suite 120 or in Las Cruces at 201 North Church Street, Suite 315. The new proposed rule is also posted on the Office of the Attorney General's website and may be accessed, free of charge, from the following website:
www.nmag.gov/office/divisions/cp/misrepresentationofageandconditionofmotorvehicles
To request that a copy of the new proposed rule be mailed to you, please submit your request in writing to:

Office of the Attorney General
Consumer Protection Division
Attention: Lori Chavez
P.O. Drawer 1508
Santa Fe, NM 87504-1508

You may also request a copy of the new proposed rule by calling the following telephone number:

1 (800) 678-1508

There is a \$.25 copying charge per page for written and telephone requests for copies of the new proposed rule.

Any person who is or may be affected by this new proposed rule may appear, testify and/or submit written comments.

Written comments concerning the new proposed rule may be submitted by mail to:

Office of the Attorney General
Consumer Protection Division
Attention: Lori Chavez
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Testimony and written comments may also be submitted in person at the hearing set for the new proposed rule. The hearing will be held as follows:

Location:
Harold L. Runnels Building
1190 St. Francis Drive
Suite N4050
Santa Fe, New Mexico 87505
tel. (800) 219-6157
Date and Time:

Monday, February 11, 2013
9:30 a.m. to 11:30 a.m.

The Office of the New Mexico Attorney General will accept written comments for consideration as provided above no later than March 13, 2013.

If you are an individual with a disability in need of a reasonable accommodation in order to participate at the hearing, please contact Lori Chavez at (800) 678-1508. The Office of the Attorney General requests ten (10) business days advanced notice to provide any reasonable accommodations.

TITLE 12 T R A D E , COMMERCE AND BANKING CHAPTER 2 C O N S U M E R PROTECTION PART 14 MISREPRESENTATION OF AGE AND CONDITION OF MOTOR VEHICLES

12.2.14.1 ISSUING AGENCY:
Office of the New Mexico Attorney General.
[12.2.14.1 NMAC - N, x/x/2013]

12.2.14.2 S C O P E :
Misrepresentation of age and condition of motor vehicles.
[12.2.14.2 NMAC - N, x/x/2013]

**12.2.14.3 S T A T U T O R Y
AUTHORITY:** The New Mexico Unfair Practices Act, NMSA 1978, Section 57-12-13.
[12.2.14.3 NMAC - N, x/x/2013]

12.2.14.4 D U R A T I O N :
Permanent.
[12.2.14.4 NMAC - N, x/x/2013]

12.2.14.5 E F F E C T I V E D A T E:
xx, 2013, unless a later date is cited at the end of a section.

[12.2.14.5 NMAC - N, x/x/2013]

12.2.14.6 OBJECTIVE: The purpose of this rule is to protect buyers from unfair and deceptive practices involving the misrepresentation of the age or condition of a motor vehicle in motor vehicle sale transactions.

[12.2.14.6 NMAC - N, x/x/2013]

12.2.14.7 DEFINITIONS:
A. "Alteration" shall mean the act or procedure of changing, modifying or repairing, the condition resulting from changing, modifying or repairing, or the modification to a motor vehicle's cab, chassis, or body. The alteration may be, but is not required to be, the result of wreck damage. Goods are altered if, as measured against the reasonable expectations of the consumer, the characteristics or value of the motor vehicle are affected in a meaningful way by the changes, modifications or repairs. *See Hale v. Basin Motor Co.*, 110 N.M. 314, 317-318 (N.M. 1990).

B. "Body" shall mean the external structure of the motor vehicle exclusive of the cab and chassis.

C. "Cab" shall mean the compartment of a motor vehicle where the driver and passengers sit.

D. "Chassis" means frame and working parts of the motor vehicle, including standard factory equipment, but exclusive of the body and cab.

E. "Costs of alterations or repairs amounting to six percent or greater of the purchase price" means the flat rate manual cost of the alteration or repair, regardless of when in time the alteration or repair took place, in comparison to the purchase price of the vehicle at the time sold to the buyer. Any motor vehicle transaction where the flat rate manual cost of the alteration or repair which exceeds six percent of the cost of the vehicle at the time sold to the buyer is subject to this rule.

F. "Fixed rate manual cost" means the estimated cost of repair as indicated by a nationally recognized manual commonly used in the industry of auto repair.

G. "Knowledge" does not necessarily mean actual knowledge, but means knowledge that a prudent person would have if the person had exercised reasonable care or diligence. One who intentionally remains ignorant is chargeable in law with knowledge. *See Stevenson v. Louis Dreyfus Corp.*, 112 N.M. 97, 100 (N.M. 1991).

H. "Motor vehicle" shall mean every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from batteries or from

overhead trolley wires, but not operated upon rails. This includes but is not limited to automobiles, trucks of all varieties, motor cycles, recreational vehicles, reconstructed motor vehicles, specially constructed motor vehicles, road tractors, all of which may be for personal, household, or commercial use.

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

J. "Qualified person" shall mean a person who is ASE certified in the areas of (1) painting and refinishing, (2) structural and non-structural analysis and repair and (3) mechanical and electrical components analysis and repair of motor vehicle cab, chassis, or body, or a person who possesses comparable or similar knowledge and skills, and who has continuously worked in the industry, for a period of five years or more, making alterations and repairs to the cab, chassis, or body of motor vehicles.

K. "Repair or repairing" shall mean to restore or attempt to restore to sound condition after damage, or the fixing of a motor vehicle's cab, chassis, or body regardless whether or not the damage is from wreck damage.

L. "Seller" shall mean natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates which include either:

(1) any person who sells or solicits or advertises the sale of new or used motor vehicles and who is licensed pursuant to the Motor Vehicle Code, NMSA 1978, Section 66-4-1(A); or

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

[12.2.14.7 NMAC - N, x/x/2013]

12.2.14.8 UNFAIR AND DECEPTIVE TRADE PRACTICE: It is an unfair or deceptive trade practice for a seller of a motor vehicle to:

A. fail to obtain a reasonable inspection of the motor vehicle performed by a qualified person before the motor vehicle is offered for sale in order to comply with the affidavit requirements of the Unfair Practices Act NMSA, 1978, Section 57-12-6 (B);

B. fail to obtain a written report of the inspection completed by the qualified person performing the inspection; the written report shall contain the name, and address of the qualified person who conducted the reasonable inspection, their specific findings of alteration or repair to the motor vehicle and the estimated fixed rate manual costs for repairs;

C. fail to provide a copy of the inspection report and any other reports obtained by the seller in connection to the inspection of the motor vehicle to the consumer prior to the sale if the seller's inspection confirms that the damage to the vehicle requires an affidavit pursuant to the Unfair Practices Act NMSA, 1978, Section 57-12-6 (B);

D. make any false or misleading representation, prior to the sale of the motor vehicle, concerning any inspection of the motor vehicle or the knowledge of the seller regarding the condition of the vehicle; or

E. fail to retain a copy of all motor vehicle inspection reports and any other vehicle reports obtained by the seller for four years after the sale of the motor vehicle.

[12.2.14.8 NMAC - N, x/x/2013]

12.2.14.9 REASONABLE INSPECTION OF MOTOR VEHICLE:

The following nine point motor vehicle inspection is reasonable for the purposes of this rule, which includes, but is not limited to:

A. publically available reports on the age or condition of the motor vehicle such as the national motor vehicle title information system report, carfax, or auto check;

B. inspection of the motor vehicle for evidence of repainting such as:

(1) differences in paint color or texture;

(2) mismatched sizes of metallic sparkle in the paint

(3) embedded dirt or deep scratches in the top coat of the paint ; and

(4) uneven paint thickness;

C. inspection of the motor vehicle body and cab for evidence of such things as:

(1) uneven gaps between sheet metal panels;

(2) differences between the headlamps;

(3) paint overspray on moldings and trim;

(4) paint tape edges in the jams;

(5) paint chipped off of bolt heads;

(6) paint missing around bolt heads or bolts not centered in the bolt hole;

(7) hammer damage;

(8) holes drilled and plugged in jams or shell of the motor vehicle;

(9) damage inside the trunk or under the spare tire;

D. inspection of the motor vehicle chassis for evidence of such things as:

(1) pinched weld flange underneath the motor vehicle;

(2) weld sites;

E. inspection of the motor

vehicle's caulking and seam sealer for differences and inconsistencies;

F. inspection of the motor vehicle's identification number tags;

G. inspection of the motor vehicle parts for labels that say "R-DOT";

H. inspection of the motor vehicle for any type of repairs not consistent with industry standard repairs;

I. any additional inquiry or inspection into the motor vehicle's age or condition based upon any information the seller knows or should know that would lead a prudent person to inquire further into the motor vehicle's age or condition.

[12.2.14.9 NMAC - N, x/x/2013]

12.2.14.10 AFFIDAVIT REQUIRED:

It is an unfair or deceptive trade practice for a seller of a motor vehicle to fail to provide the purchaser with an affidavit at the time of sale that:

A. describes the vehicle; and

B. states to the best of the seller's knowledge the specific alteration or repair which has been done to the motor vehicle in the following circumstances:

(1) if the motor vehicle has been salvaged;

(2) if the motor vehicle has frame damage; or

(3) if after the reasonable inspection of the motor vehicle has been conducted, it has been determined that the alterations or repairs to any part of the motor vehicle for which the fixed rate manual costs in the aggregate amount to six percent or greater of the purchase price of the vehicle.

[12.2.14.10 NMAC - N, x/x/2013]

12.2.14.11 SEVERABILITY:

If any part of this rule is held invalid, the remainder of the rule and applications thereof shall remain unaffected.

[12.2.14.11 NMAC - N, x/x/2013]

HISTORY OF 12.2.14 NMAC: [RESERVED]

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.1 NMAC Sections 7 and 10, effective 1-17-2013.

16.60.1.7 DEFINITIONS:

A. “Acceptance letter” means a document issued by the administering entity indicating the type of report (unmodified, modified, or adverse) when all review documents and, if applicable, all remedial/corrective actions have been completed and accepted by the peer review committee.

B. “Act” means the New Mexico 1999 Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA1978.

C. “Administering entity” means an entity (any form of organization allowed by state law or professional organization or association of CPA’s) that has met, and at all relevant times continues to meet, the standards specified by the board for administering the review. The board shall periodically publish a list of administering entities that have applied for and received approval.

D. “Agreed upon procedures” are those which are to be performed in accordance with applicable attestation standards. They are also those in which a licensee is engaged to issue a written finding that is based on specific procedures that the specified parties agreed are sufficient for their purpose, is restricted to the specified parties, and does not provide an opinion or negative assurance.

E. “Audit” means the procedures performed in accordance with applicable auditing standards for the purpose of expressing or disclaiming an opinion on the fairness with which the historical financial information is presented in conformity with generally accepted accounting principles, another comprehensive basis of accounting, or a basis of accounting described in the report.

[D:] F. “Client” means the person or entity who retains a licensee for the performance of professional services.

[E:] G. “Enterprise” means any person or entity who retains a licensee for the performance of professional services.

[F:] H. “Financial statements” means statements and footnotes related thereto that purport to show an actual or anticipated financial position or results of operations, cash flow, or changes in financial position based on generally accepted accounting principles or another comprehensive basis of accounting. The term includes specific elements, accounts,

or items of such statements, but it does not include incidental financial data included in management advisory service reports which support recommendations made to clients. In addition, it does not include tax returns and supporting schedules.

[G:] I. “He, his, him” means masculine pronouns when used herein also include the feminine and the neuter.

[H:] J. “Holding out to the public as a permit holder or registered firm” means the phrase “holding himself out to the public as a permit holder or registered firm” as used in the definition of “practice of public accountancy” in Section 3G of the act, and in these rules it means any representation of the fact that a certificate holder holds a permit or is a registered firm in connection with the performance of, or an offer to perform, services for the public. Any such representation is presumed to invite the public to rely upon the professional skills implied by the certificate, registration, or permit in connection with the professional services offered to be performed. For the purpose of this rule, a representation shall be deemed to include any oral or written communication conveying the fact that the person holds a certificate, permit or firm registration, including without limitation the use of titles or legends on letterheads, business cards, office doors, advertisements, internet, email, or other electronic media.

[I:] K. “Manager” has, when used in these rules, the same meaning as the term “manager” in a limited liability company.

[J:] L. “Member” has, when used in these rules, the same meaning as the term “member” in a limited liability company.

[K:] M. “Peer review” means a program to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard setting bodies.

[L:] N. “Peer review committee” means a committee comprised exclusively of CPAs practicing public accountancy and formed by an administering entity for the purpose of accepting peer review reports submitted by firms on peer review engagements.

O. “Professional engagement” means a written or oral agreement between a client and a licensee relative to the performance of professional services and the services performed under this agreement. Oral agreements may only be used when allowed by professional standards.

[M:] P. “Professional services” means any service performed or offered to be performed by a licensee for a client in the course of the practice of public accountancy.

[N:] Q. “Public communication” means a communication made in identical form to multiple persons or to the world at large, including but not limited to television, radio, motion pictures, newspaper, pamphlet, mass mailing, letterhead, business card, the internet, email or directory.

[O:] R. “Quality review” means an interchangeable term for peer review.

[P:] S. “Report” as defined in Section 61-28B3N of the act and in these rules includes forms of language which refers to financial statements, when such forms of language express or deny any assurance as to the reliability of the financial statements to which they refer. Among the possible sources of such forms of language are pronouncements by authoritative bodies describing the work that should be performed and the responsibilities that should be assumed for specified kinds of professional engagements. In addition, these pronouncements prescribe the form of report that should be issued upon completion of such engagements. A form of report prescribed by such a pronouncement will ordinarily constitute a form of language which is conventionally understood as implying assurance and expertise. For this reason, as provided in Section 17B of the act, the term “report” includes the issuance of reports using the forms of language set out in the American institute of certified public accountants (AICPA) statement on standards for accounting and review services (SSARS) No. 1 as amended, modified, or superseded from time to time, for reports with respect to both “reviews” of financial statements, and also compilations of financial statements, as well as the forms of language for “special reports” set out in the AICPA’s statement on auditing standards (SAS) No. 14, No. 35 and No. 62 as amended, modified, or superseded from time to time. These statements on standards are incorporated in the AICPA professional standards: code of professional conduct.

[Q:] T. “Services involving accounting or auditing skills” means “services involving accounting or auditing skills” as used in the definition of “practice of public accountancy” in Sections 3K and L of the act. It includes the provision of advice or recommendations in connection with the sale or offer for sale of products, when the advice or recommendations require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting.

[R:] U. “Statement of compliance” means a certified statement from the human services department (HSD) stating that an applicant or licensee is in

compliance with a judgment and order for support.

[S.] V. “Statement of non-compliance” means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support.

[16.60.1.7 NMAC - Rp 16 NMAC 60.1.7 and 16 NMAC 60.11.7, 02-14-2002; A, 11-30-2007; A, 4-15-2008; A, 06-30-2008; A, 01-17-2013]

16.60.1.10 FEES AND OBLIGATIONS: Fees charged by the board shall be as follows.

A. Fees set by the board for CPA examination applicants shall not unreasonably exceed the amount required for the board to operate CPA examination administration on a break even basis, but in no case shall the fee be less than the state’s cost of procuring and administering the exam.

B. Initial examination qualification review under Section 27F of the act shall be \$75.

C. Delinquency fee for incomplete or delinquent continuing education reports, certificate/license or firm permit renewals under Section 27D of the act shall be \$50.

D. Certificate application under Section 27B of the act shall be: initial certificate, \$175; certificate renewal, \$130.

E. No annual renewal fee shall be assessed for an individual who holds an inactive certificate and who has reached the age of 70.

F. Firm permit application or renewal fee under Section 27C of the act shall be \$75 for each firm, regardless of form of entity.

G. Firm permit renewal delinquency fee under Section 27C of the act shall be \$50 and includes all practitioners whose renewal applications are delinquent.

H. Certificate/license reinstatement fee under Section 27G of the act shall be \$175 plus the current year’s renewal fee. No delinquency fee shall be assessed.

I. No fee shall be charged for firm permit reinstatement, and no delinquency fee shall be assessed; only the current year’s renewal fee shall be assessed.

J. Continuing professional education waiver and reentry into active certificate status and to comply with continuing professional education under Sections 27H and 27I of the act shall not exceed \$75 each occurrence.

K. Administrative fees for services under Section 27F shall be:

(1) list of certificate or permit holders, \$250;

(2) duplicate or replacement certificate card or permit card, \$10 each;

(3) duplicate or replacement wall certificate, \$25 each;

(4) board evaluation of coursework for continuing professional education credit, \$50 per hour of board staff research and study;

(5) certificate application package for reciprocity and grade transfer candidates and replacement packages for by-examination candidates, \$20 each;

(6) copies of combined Accountancy Act and board rules, \$10 each;

(7) copies of records and documents, \$.25 per page;

(8) the board may, at its discretion, charge for other administrative costs as it deems appropriate.

L. Fee for the transfer of licensure or examination information to a third party under Section 27E of the act shall be \$20.

M. Fee for criminal history background check under Section 8.1 of the act shall be the amount established by the department of public safety for the processing of criminal history background checks.

N. The board may waive charges as it deems appropriate.

O. All fees are non-refundable.

[16.60.1.10 NMAC - Rp 16 NMAC 60.2.8, 02-14-2002; A, 01-15-2004; A, 04-29-2005; A, 11-30-2007; A, 06-30-2008; A, 05-29-2009; A, 11-13-2009; A, 09-15-2010; A, 01-17-2013]

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.2 NMAC Sections 9 and 13, effective 1-17-2013.

16.60.2.9 EDUCATION REQUIREMENTS:

A. After July 1, 2008, Section 8C of the act requires an applicant for the uniform CPA examination to hold a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, with 30 semester hours in accounting or the equivalent as determined by the board.

B. After July 1, 2008, Section 8C of the act requires an applicant for a certificate to have at least 150 semester hours of college education or its equivalent earned at a college or university acceptable to the board. Any course for which credit has been awarded by the institution will be accepted toward meeting the 150-semester hour requirement.

C. The board will accept not fewer than 30 semester hours of accounting or audit related courses (3 semester hours may be in business law), without repeat,

from a board-recognized educational institution. The recognized educational institution must have accepted them for the purposes of obtaining a baccalaureate degree or equivalent, and they must be shown on an official transcript.

D. A prospective CPA examination or CPA certificate candidate is considered as graduating from an accredited college or university acceptable to the board if, at the time the educational institution grants the applicant’s degree, it is accredited at the appropriate level as outlined in these rules. As used in these rules, “accreditation” refers to the process of quality control of the education process. There are 3 different levels of accreditation referred to in these rules, and the degree to which the board relies on accreditation differs according to the level at which the degree granting institution is accredited. In reviewing and evaluating a candidate’s educational credentials, the board may rely on accreditation by an accrediting agency at 3 different levels.

E. Level 1 accreditation is associated with the four-year, degree-granting college or university itself. The institution must be accredited by 1 or more of the following board-recognized regional accrediting agencies (or successor agencies):

(1) middle states association of colleges and secondary schools;

(2) New England association of schools and colleges;

(3) north central association of colleges and secondary schools;

(4) northwest association of schools and colleges;

(5) southern association of colleges and schools;

(6) western states association of schools and colleges; and

(7) accrediting council for independent colleges and schools.

F. Level 2 accreditation is associated with a business school or college of business. The unit must be accredited by a national accreditation agency recognized by the board, such as the American assembly of collegiate schools of business (AACSB), following a specific and comprehensive review of its faculty, resources, and curricula. In evaluating a candidate’s credentials, the board may choose to rely on this accreditation as evidence that the institution’s business school has met minimum overall standards of quality for such schools.

G. Level 3 accreditation is associated with an accounting program or department. The program or department must be accredited by a national accreditation agency recognized by the board such as the AACSB. Accounting programs or departments accredited in this manner have met standards substantially higher and much more specific than those required for level 1 or level 2 accreditation. For level

3 accreditation, the accounting program or department must meet a stringent set of standards that addresses faculty credentials, student quality, physical facilities, and curricula. Graduates who submit transcripts from accredited accounting programs may be deemed to have met the board's specific accounting and business course requirements.

H. If an educational institution was not accredited at the time an applicant's degree was received but is so accredited at the time the application is filed with the board, the institution will be deemed to be accredited for the purposes of this rule provided that it:

(1) certifies that the applicant's total educational program would qualify the applicant for graduation with a baccalaureate degree during the time the institution has been accredited; and

(2) furnishes the board satisfactory proof, including college catalogue course numbers and descriptions, that the pre-accrediting courses used to qualify the applicant as an accounting major are substantially equivalent to post-accrediting courses.

I. If an applicant's degree was received at an accredited educational institution as defined in this rule, but the educational program which was used to qualify the applicant as an accounting major included courses taken at non-accredited institutions, either before or after graduation, such courses will be deemed to have been taken at the accredited institution from which applicant's degree was received, provided the accredited institution either:

(1) has accepted such courses by including them in its official transcript; or

(2) certifies to the board that it will accept such courses for credit toward graduation.

J. A graduate of a four-year, degree-granting institution not accredited at the time the applicant's degree was received or at the time the application was filed will be deemed to be a graduate of a four-year accredited educational institution if:

(1) ~~[a credentials evaluation service approved by the board]~~ either the NASBA international evaluation service or a credentials evaluation service that is a member of the national association of credential evaluation services certifies that the applicant's degree is equivalent to a degree from an accredited educational institution defined in this rule; or if

(2) an accredited educational institution as defined in this rule accepts the applicant's non-accredited baccalaureate degree for admission to a graduate business degree program; the applicant satisfactorily completes at least 15 semester hours or the equivalent in post-baccalaureate education

at the accredited educational institution, of which at least 9 semester hours, or the equivalent, shall be in accounting; and the accredited educational institution certifies that the applicant is in good standing for continuation in the graduate program or has maintained a grade point average in these courses that is necessary for graduation.

K. Advanced subjects completed to qualify under the above section may not be used to satisfy education requirements.

L. The board may provide a mechanism to recognize educational institutions that are not accredited at the institutional, business school, accounting program, or department level.

M. The accounting education concentration or equivalent contemplated by the act shall consist of semester hours of credit earned as in a conventional college semester. Quarter hours will be converted by multiplying the quarter hours earned by two-thirds to determine semester hours earned. No more than 30 semester hours will be recognized for internships or life experience.

[16.60.2.9 NMAC - Rp 16 NMAC 60.3.8, 02-14-2002; A, 06-15-2004; A, 06-30-2008; A, 01-17-2013]

16.60.2.13 TRANSITIONING POLICY FOR CONDITIONAL CREDIT

A. Applicants who have earned conditional credit on the paper and pencil examination, as of the launch date of the computer-based examination, will retain conditional credits for the corresponding test sections of the computer-based examination as follows:

(1) auditing and attestation on the computer-based examination will replace auditing on the paper and pencil examination;

(2) financial accounting and reporting on the computer-based examination will replace financial accounting and reporting on the paper and pencil examination;

(3) regulation on the computer-based examination will replace accounting and reporting on the paper and pencil examination; and

(4) business environment and concepts on the computer-based examination will replace business law and professional responsibilities on the paper and pencil examination.

B. Applicants who have attained conditional status as of the launch date of the computer-based examination will be allowed a transition period to complete any remaining test sections of the examination. The transition is whichever of the following is first exhausted:

(1) the maximum number of opportunities that an applicant who has received conditional credit under the paper

and pencil examination has remaining, at the launch of the computer-based examination, to complete all remaining test sections; or

(2) the number of remaining opportunities under the paper and pencil examination, multiplied by six months.

C. Transition candidates will be allowed the same number of opportunities to pass the computer-based examination within the same amount of time that they would have been allowed under the paper-and-pencil examination.

D. Credit earned under the computer-based examination will be extended to the expiration of the credit earned under the paper-and-pencil examination, even if the latter credit extends beyond 18 months.

E. If an applicant who received conditional credit under the paper and pencil examination does not pass all remaining test sections during the transition period, conditional credits earned under the paper and pencil examination will expire, and the applicant will lose credit for the test sections earned under the paper and pencil examination.

F. Any test section(s) passed during the transition period is subject to the conditioning provision of the computer-based examination as indicated in the act, except that an applicant who received conditional credit under the paper and pencil examination will not lose conditional credit for a test section of the computer-based examination that is passed during the transition period, even though more than eighteen months may have elapsed from the date the test section is passed, until the end of the transition period.

G. During the first two testing windows in 2004, credit from the paper-and-pencil examination due to expire in May will not expire until May 31, and credit from the paper-and-pencil examination due to expire in November will not expire until November 30. This will ensure that transition candidates have a minimum of two full testing windows in which to pass sections.

H. The board will accept examination results for grade transfer or reciprocity candidates from other jurisdictions regardless of whether the transition rules of the other jurisdiction may have differed from those of New Mexico. These candidates must meet all other requirements for licensure pursuant to 16.60.3.10 NMAC or 16.60.3.13 NMAC, respectively.

I. Provisional scores shall be released to the candidate following each testing window in 2004 and within three weeks following the administration of each examination section thereafter. All examination scores shall be considered provisional until approved by the board at a

regularly scheduled meeting. Scores must be approved by the board prior to the issuance of certificates requiring such scores.

J. Pursuant to Paragraph (1) of Subsection D of 1.18.420.431 NMAC, once provisional scores have been approved by the board, they shall remain on file for 10 years beyond the date on which the final section of the examination was passed. If the candidate does not apply for an initial license within 10 years of passing the final section of the examination, his scores will no longer be valid, and he will be required to register for and pass the examination again as a first-time candidate.

[16.60.2.13 NMAC - N, 01-15-2004; A, 07-30-2004; A, 01-17-2013]

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.3 NMAC Sections 9, 12, 13, 14 and 15, effective 1-17-2013.

16.60.3.9 INITIAL CERTIFICATE / LICENSE REQUIREMENTS:

A. An applicant for initial certification/licensure shall demonstrate to the board's satisfaction that he:

(1) is of good moral character and lacks a history of dishonest or felonious acts;

(2) meets the education, experience and examination requirements of the board; and

(3) passes the American institute of certified public accountants ethics examination with a score of 90 percent or higher.

B. Moral character requirements: The board may assess moral character requirements based upon applicant-provided character references and background checks to determine an applicant's history of dishonest or felonious acts. The board may request the presence at a board meeting of an applicant for whom it has unanswered questions.

C. Criminal history background check: Pursuant to Section 61-28B-8.1 of the act, all applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) An applicant shall submit two completed fingerprint cards to the board office with the initial application for licensure or the application for licensure reinstatement.

(2) Blank fingerprint cards shall be obtained from the board office.

(3) Fingerprints shall be taken:

(a) under the supervision of and

certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police;

(b) by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

(c) at the discretion of the board, by a private agency qualified to take and certify fingerprints.

(4) Completed fingerprint cards shall be submitted to the board office with the prescribed fee.

(5) The board shall not issue a certificate or license until an applicant's background check has been successfully completed.

D. Education and examination requirements: Education and examination requirements are specified in Section 8 of the act and are further delineated in Part 2 of board rules. An applicant who has passed the uniform CPA examination prior to July 1, 2004, is exempt from the 150-semester-hour requirement.

E. Experience required: Applicants documenting their required experience for issuance of an initial certificate pursuant to Section 7H of the act, and after July 1, 2004 Section 8H of the act shall:

(1) provide documentation of experience in providing any type of services or advice using accounting, attest, management advisory, financial advisory, tax or consulting skills; acceptable experience shall include experience gained through employment in industry, government, academia or public practice;

(2) have their experience verified by an active, licensed CPA as defined in the act or by an active, licensed CPA from another state; the board shall consider and evaluate factors such as complexity and diversity of the work in determining acceptability of experience submitted:

(a) one year of experience shall consist of full or part-time employment that extends over a period of no less than 1 year and no more than 3 years and includes no fewer than 2,000 hours of performance of services described above;

(b) the CPA verifying an applicant's experience must be employed by, or a consultant to, or provide professional services to, the same organization as the applicant;

(c) experience documented in support of an initial application must be obtained within the 7 years immediately preceding passing of the examination or within 7 years of having passed the examination upon which the application is based; this does not apply to applicants who qualified and sat for the examination during or prior to the November 2001 administration;

(d) any licensee requested

by an applicant to submit evidence of the applicant's experience and who has refused to do so shall, upon request of the board, explain in writing or in person the basis for such refusal; the board may require any licensee who has furnished evidence of an applicant's experience to substantiate the information;

(e) the board may inspect documentation relating to an applicant's claimed experience; any applicant may be required to appear before the board or its representative to supplement or verify evidence of experience.

F. Certificate and license issuance: upon receipt of a complete application packet and successful completion of a fingerprint background check that revealed no arrests, board staff are authorized to approve and issue a certificate and license to an applicant for whom no licensing issues are present. Pursuant to Subsection I of 16.60.2.13 NMAC, uniform CPA examination scores must be approved by the board at a regularly scheduled board meeting prior to the issuance of a certificate and license to an applicant who sat for the uniform CPA examination as a New Mexico candidate.

G. Swearing in ceremony: Every new licensee must participate in a swearing in ceremony before the board within one year from the date of the issuance of the initial license. Swearing in ceremonies shall be held two times per year in locations to be determined by the board. Upon good cause presented in writing prior to the expiration of the one-year period of initial licensure, the board may extend the period for being sworn in or arrange an alternate method for the licensee to be sworn in. If an extension for good cause is granted, the licensee shall arrange with the board director to present him or herself for swearing in before the board within the time prescribed by the board. Failure to appear at a swearing in ceremony before the board may result in the imposition of a fine or other disciplinary action, as deemed appropriate by the board.

H. Replacement wall certificates and licenses to practice: Replacement wall certificates and licenses to practice may be issued by the board in appropriate cases and upon payment by the CPA or RPA of the fee as set by the board. A certificate/license holder is specifically prohibited from possessing more than one wall certificate and more than one license to practice as a CPA or RPA. When a replacement wall certificate or license to practice is requested, the certificate/license holder must return the original certificate/license or submit a notarized affidavit describing the occurrence that necessitated the replacement certificate or license.

I. Renewal requirements: Certificates/licenses for individuals will

have staggered expiration dates based on the individual's birth month. Deadline for receipt of certificate/license renewal applications and supporting continuing professional education affidavits or reports is no later than the last day of the CPA or RPA certificate/license holder's birth month or the next business day if the deadline date falls on a weekend or holiday.

(1) The board may accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications.

(2) Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

(3) Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the continuing professional education requirements of Sections 9E and 12A of the act and of these rules.

(4) The board shall mail renewal application notices no less than 30 days prior to the renewal deadline.

[16.60.3.9 NMAC - Rp 16 NMAC 60.4.8.2 & 16 NMAC 60.4.8.3, 02-14-2002; A, 01-15-2004; A, 06-15-2004; A, 12-30-2004; A, 04-29-2005; A, 07-29-2005; A, 11-30-2007; A, 06-30-2008; A, 02-27-2009; A, 01-17-2013]

16.60.3.12 REINSTATEMENT REQUIREMENTS:

A. Requests to reinstate a certificate/license that lapsed or expired as a result of non-renewal shall meet all board prescribed requirements for reinstatement including the current year's renewal fee and continuing professional education. An individual whose certificate/license has been subject to board disciplinary action pursuant to the Uniform Licensing Act, Sections 61-1-1 to 61-1-31 NMSA 1978, may, upon application in writing and for good cause, request reinstatement of the certificate/license after completion of all requirements contained in the board's original order or agreement.

B. A reinstatement application pursuant to Section 21 of the act and this rule will be processed by the board upon the basis of the materials submitted in support thereof and supplemented by such additional inquiries as the board may require. Upon receipt of a complete reinstatement application packet and successful completion of a fingerprint background check that revealed no arrests, board staff are authorized to reinstate a certificate and license to an applicant for whom no licensing issues are present. If the individual has not held an active license in any jurisdiction within the 10 years preceding the date of application for reinstatement, the approval of the board will be required. For reinstatement of a certificate/license, a hearing may be held,

and the board may, at its discretion, impose terms and conditions on an application following procedures the board may find suitable for the particular case.

C. The reinstatement request shall set out in writing the reasons constituting good cause for the relief sought and shall be accompanied by at least 2 supporting recommendations, under oath, from practitioners who have personal knowledge of the activities of the applicant since board disciplinary action was imposed. In considering a reinstatement application, the board may consider all activities of the applicant since the disciplinary action from which relief is sought was imposed; the offense for which the applicant was disciplined; the applicant's activities during the time the certificate/license was in good standing; the applicant's rehabilitative efforts; restitution to damaged parties in the matter for which the penalty was imposed; and the applicant's general reputation for trust and professional probity.

D. No application for reinstatement will be considered while the applicant is under sentence for any criminal offense, including any period during which the applicant is on court-imposed probation or parole.

[16.60.3.12 NMAC - Rp 16 NMAC 60.4.11, 02-14-2002; A, 12-30-2005; A, 01-17-2013]

16.60.3.13 RECIPROCITY REQUIREMENTS:

A. Interstate reciprocity: The board may issue a certificate/license to the holder of a certificate issued by a state other than New Mexico as defined under Sections 30, 11B and D, and 26A of the act provided that the license from the other state is valid and in good standing and that the applicant:

(1) provides proof from a board-approved national qualifications service that their CPA qualifications are substantially equivalent to the CPA requirements of the act; or

(2) successfully completed the CPA examination in accordance with the rules of the other state at the time it granted the applicant's initial certificate; and

(3) meets the experience requirements under the act and these rules for issuance of the initial certificate; and

(4) has met the CPE requirement of the state in which he is currently licensed pursuant to the act and board rules [~~and~~

~~(5) has passed either the American institute of certified public accountants ethics examination with a score of 90 percent or higher or an ethics examination of another state board of accountancy with a score of 90 percent or higher].~~

B. All applicants for licensure by reciprocity shall have passed either the American institute of certified

public accountants ethics examination with a score of 90 percent or higher or an ethics examination of another state board of accountancy with a score of 90 percent or higher.

~~[B:]~~ **C.** An applicant who holds a certificate from another state based upon passage of the examination but who does not hold a license to practice shall not be eligible for licensure by reciprocity.

~~[C:]~~ **D.** The board may rely on the national association of state boards of accountancy (NASBA), the American institute of certified public accountants (AICPA), or other professional bodies deemed acceptable to the board for evaluation of other state's CPA qualification requirements in making substantial equivalency determinations.

~~[D:]~~ **E.** International reciprocity: The board may designate a professional accounting credential issued in a foreign country as substantially equivalent to a New Mexico CPA certificate and may issue a certificate/license to the holder of a professional accounting credential issued in a foreign country.

(1) The board may rely on NASBA, AICPA, or other professional bodies deemed acceptable to the board for evaluation of foreign credentials in making equivalency determinations.

(2) The board may satisfy itself through qualifying examination(s) that the holder of a foreign country credential deemed by the board to be substantially equivalent to a CPA certificate possesses adequate knowledge of U.S. practice standards and the board's rules. The board will specify the qualifying examination(s) and may rely on NASBA, AICPA, or other professional bodies to develop, administer, and grade such qualifying examination(s).

(3) The board recognizes the existence of the international qualifications appraisal board (IQAB), a joint body of NASBA and AICPA, which is charged with:

(a) evaluating the professional credentialing process of certified public accountants, or their equivalents, from countries other than the United States; and

(b) negotiating principles of reciprocity agreements with the appropriate professional and governmental bodies of other countries seeking recognition as having requirements substantially equivalent to the requirements for the certificate of a certified public accountant in the United States.

(4) The board shall honor the terms of all principles of reciprocity agreements issued by IQAB.

(5) The board recognizes the international uniform CPA qualification examination (IQEX), written and graded by AICPA, as a measure of professional competency satisfactory to obtain a New Mexico certificate by reciprocity.

(6) The board may accept a foreign country accounting credential in partial satisfaction of its certificate/license requirements if:

(a) the holder of the foreign country accounting credential meets the issuing body's education requirement and has passed the issuing body's examination used to qualify its own domestic candidates; and

(b) the foreign country credential is valid and in good standing at the time of application for a certificate/license.

(7) The board shall accept the following foreign credentials in partial satisfaction of its certificate/license requirements:

(a) Canadian chartered accountant;

(b) Australian chartered accountant;

(c) ~~Australian certified practising accountant~~ Hong Kong institute of CPAs;

(d) Mexican contador publicos certificado;

(e) chartered accountants in Ireland;

(f) New Zealand chartered accountant.

~~[F.] E.~~ An applicant for renewal of a CPA certificate/license originally issued in reliance on a foreign country accounting credential shall:

(1) meet all board prescribed certificate/license renewal requirements; and

(2) present documentation from the foreign country accounting credential issuing body that the applicant's foreign country credential has not been suspended or revoked and is not the subject of a current investigation; and

(3) report any investigations undertaken or sanctions imposed by a foreign country credential body against the CPA's foreign country credential.

~~[F.] G.~~ If the foreign country credential has lapsed, expired, or been cancelled, the applicant must present proof from the foreign country credentialing body that the certificate holder/licensee was not the subject of any disciplinary proceedings or investigations at the time the foreign country credential lapsed.

~~[G.] H.~~ Suspension or revocation of, or refusal to renew, the CPA's foreign accounting credential by the foreign credentialing body shall be considered evidence of conduct reflecting adversely upon the CPA's fitness to retain the certificate and may be a basis for board action.

~~[H.] I.~~ Conviction of a felony or any crime involving dishonesty or fraud under the laws of a foreign country is evidence of conduct reflecting adversely on the CPA's fitness to retain a certificate/license and is a basis for board action.

~~[I.] J.~~ The board shall notify the appropriate foreign country credentialing

authorities of any sanctions imposed against a CPA. The board may participate in joint investigations with foreign country credentialing bodies and may rely on evidence supplied by such bodies in disciplinary hearings.

[16.60.3.13 NMAC - Rp 16 NMAC 60.4.9, 02-14-2002; A, 09-16-2002; A, 01-15-2004; A, 06-15-2004; A, 12-30-2004; A, 04-29-2005; A, 06-30-2008; A, 11-13-2009; A, 01-17-2013]

16.60.3.14 SUBSTANTIAL EQUIVALENCY/INTENT TO PRACTICE REQUIREMENTS:

A. Effective July 1, 2008, a person whose principal place of business is not New Mexico and who has a valid certificate/license as a certified public accountant from another state shall be presumed to have qualifications substantially equivalent to New Mexico's requirements if the person meets the requirements of Section 26, Subsection A of the act.

B. The board may rely on NASBA, AICPA, or other professional bodies approved as acceptable to the board to provide qualification appraisal in determining whether an applicant's qualifications are substantially equivalent to New Mexico's requirements.

C. A person exercising the practice privilege afforded by Section 26 of the act shall be deemed to have:

(1) submitted to the personal and subject matter jurisdiction and disciplinary authority of the board;

(2) agreed to full compliance with the act and related board rules; and

(3) consented to appointment of the state board that issued the license as agent upon whom process may be served in an action or proceeding by the New Mexico public accountancy board against the licensee.

D. A person exercising the practice privilege afforded by Section 26 of the act shall cease offering or rendering professional attest services in New Mexico in the event the license from the state of the person's principal place of business is no longer valid.

E. An individual who qualifies for practice privileges pursuant to Section 26 of the act may offer or render professional services whether in person or by mail, telephone, or electronic means without the need to notify the board or remit a fee.

F. Pursuant to the Uniform Accountancy Act, an individual entering into an engagement to provide professional services via a web site pursuant to Section 23 shall disclose, via any such web site, the individual's principal state of licensure, license number, and an address as a means for regulators and the public to contact the

individual regarding complaints, questions, or regulatory compliance.

G. Reporting moral character violations.

(1) Any individual using practice privileges in New Mexico shall notify the board within 30 days of any occurrence described in board rule Subsection B of 16.60.5.11 NMAC.

(2) Any licensee of New Mexico using practice privileges in another state shall notify the New Mexico board and the state board of any other state in which said licensee uses practice privileges within 30 days of any occurrence described in board rule Subsection B of 16.60.5.11 NMAC.

[16.60.3.14 NMAC - N, 02-14-2002; A, 07-30-2004; A, 07-29-2005; A, 06-30-2008; A, 01-17-2013]

16.60.3.15 CONTINUING PROFESSIONAL EDUCATION (CPE) REQUIRED TO OBTAIN OR MAINTAIN AN "ACTIVE" CPA LICENSE:

A. The following requirements of continuing professional education apply to certificate/license renewals and reinstatements pursuant to Sections 9E and 12A of the act. An applicant for certificate/license renewal shall show completion of no less than 120 clock hours of CPE, complying with these rules during the 36-month period ending on the last day of the certificate/license holder's birth month.

(1) Any applicant seeking a license/certificate or renewal of an existing license shall demonstrate participation in a program of learning meeting the standards set forth in the statement on standards for continuing professional education (CPE) programs jointly approved by NASBA and AICPA or standards deemed comparable by the board.

(2) Each person holding an active CPA certificate/license issued by the board shall show completion of no less than 120 hours of continuing professional education complying with these rules during the preceding 36-month period ending on the last day of the certificate/license holder's birth month, with a minimum of 20 hours completed in each year. For any CPE reporting period which begins on or after January 1, 2010, continuing professional education must include a minimum of 4 hours of ethics education during the 36-month period after January 1, 2010. Licensees shall report CPE completion on board prescribed forms including a signed statement indicating they have met the requirements for participation in the CPE program set forth in board rules.

(3) The board may, at its discretion, accept a sworn affidavit as evidence of certificate/license holder

compliance with CPE requirements in support of renewal applications in lieu of documented evidence of such. Reciprocity and reinstatement applications shall require documented evidence of compliance with CPE provisions.

(4) Deadline for receipt of license renewal applications and supporting CPE reports or affidavits is no later than the last day of the certificate/license holder's birth month. Renewal applications and supporting CPE affidavits or reports shall be postmarked or hand-delivered no later than the renewal deadline date or the next business day if the deadline date falls on a weekend or holiday.

(5) In the event that a renewal applicant has not completed the requisite CPE by the renewal deadline, he shall provide a written explanation for failure to complete CPE[; request] and shall also submit a written request for an extension for completion of the required CPE[; and shall provide a written plan of action to remediate the deficiency:

~~(a) The extension request and action plan shall accompany the renewal application.~~

~~(b) The provisions of the action plan shall be executed within 60 days of the expiration date of the license.~~

~~(c) The board reserves the right not to approve a plan of action or grant an extension.]~~

(a) The approval of an extension request is not automatic. The board has the discretion to grant or deny a request.

(b) The request for extension shall include documentation of the extenuating circumstances that prevented him from completing the CPE. A written plan of action to remediate the deficiency must accompany the renewal application and extension request.

(c) If a request for extension is received in the board office after the expiration date of the license, the license shall not be renewed, and the file shall be referred to the board for possible disciplinary action.

(d) An extension up to 60 days beyond the expiration date of the license may be granted by board staff; extenuating circumstances beyond the control of the licensee necessitating an extension beyond 60 days requires the approval of the board. Failure to complete the required CPE within the extension period shall result in disciplinary action against the licensee.

~~(d)~~ (e) Although a plan of action may be approved immediately upon receipt, the board reserves the right to levy a fine at a later date for late CPE of \$10.00 per day not to exceed \$1,000.

(e) (f) The board may waive this fine for good cause.

(f) (g) If all CPE requirements

are not met within 90 days beyond the expiration date of the license, the license shall be subject to cancellation.

(6) Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

(7) Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the CPE requirements of Sections 9E and 12A of the act and of these rules.

(8) Reinstatement applicants whose certificates/licenses have lapsed shall provide documented evidence of completion of 40 hours of CPE for each year the certificate/license was expired, not to exceed 200 hours. If the license was expired for longer than 36 months, at least 120 of the hours must have been earned within the preceding 36 months. For any post-2009 year for which the certificate/license was expired, the continuing professional education must include a minimum of 4 hours of ethics education during the 36 months preceding reinstatement.

(a) The length of expiration shall be calculated from the date the license expired to the date the application for reinstatement was received by the board office.

(b) If the license was expired for less than one year, documented evidence of 40 hours of CPE earned within the 12 months immediately preceding the date of application for reinstatement must be provided.

(c) If the license was expired for longer than one year, for the purpose of determining the number of CPE hours required, the length of expiration shall be rounded down to the last full year if the partial year was less than six months and rounded up to the next full year if the partial year was more than six months.

B. Exemption from CPE requirements through change of certificate/license status between inactive/retired and active status.

(1) Pursuant to Section 9E of the act, the board may grant an exception to CPE requirements for certificate holders who do not provide services to the public. Public means any private or public corporate or governmental entity or individual. An individual who holds an inactive certificate/license is prohibited from practicing public accounting and may only use the CPA-inactive designation if they are not offering accounting, tax, tax consulting, management advisory, or similar services either in New Mexico or in another state or country. Persons desiring exemption from CPE rules requirements may request to change from "active" to "inactive" or "retired" certificate/license status, provided that they:

(a) complete board-prescribed change-of-status forms and remit related

fees;

(b) not practice public accountancy as defined in Section 3M of the act; public accountancy means the performance of one or more kinds of services involving accounting or auditing skills, including the issuance of reports on financial statements, the performance of one or more kinds of management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters; and

(c) place the word "inactive" or "retired" adjacent to their CPA or RPA title on a business card, letterhead or other documents or devices, except for a board-issued certificate.

(2) Persons requesting to change from "inactive" or "retired" to "active" certificate/license status shall:

(a) complete board-prescribed change-of-status forms and remit related fees; and

(b) provide documented evidence of 40 hours of CPE for each year the certificate/license was inactive, not to exceed 200 hours; if the license was inactive for longer than 36 months, at least 120 of the hours must have been earned within the preceding 36 months; for any post-2009 year for which the certificate/license was inactive, the continuing professional education must include a minimum of 4 hours of ethics education during the 36 months preceding application for change of status to "active".

(3) The effective date of this provision shall be January 1, 2007. An individual who holds an inactive certificate/license as of January 1, 2006 and expects to be subject to the provisions of this rule shall be permitted to obtain an active certificate/license between January 1, 2006 and December 31, 2006 provided they:

(a) complete board-prescribed change-of-status forms and remit related fees; and

(b) provide documented evidence of 40 hours of CPE earned between January 1, 2005 and December 31, 2006 or complete 120 hours of CPE within the three-year period immediately prior to the date of application for active status, provided that the application is received by the board no later than December 31, 2006.

(4) An individual who obtains an active certificate/license during this transitional period of January 1, 2006 to December 31, 2006 shall not be subject to the provisions of Subparagraph (b) of Paragraph (2) above.

C. Hardship exceptions: The board may make exceptions to CPE requirements for reason of individual hardship including health, military service, foreign country residence, or other good cause. Requests for such exceptions shall be subject to board approval and presented

in writing to the board. Requests shall include such supporting information and documentation as the board deems necessary to substantiate and evaluate the basis of the exception request.

D. Programs qualifying for CPE credit: A program qualifies as acceptable CPE for purposes of Sections 9E and 12A of the act and these rules if it is a learning program contributing to growth in professional knowledge and competence of a licensee. The program must meet the minimum standards of quality of development, presentation, measurement, and reporting of credits set forth in the statement on standards for continuing professional education programs jointly approved by NASBA and AICPA, by accounting societies recognized by the board, or such other standards deemed acceptable to the board.

(1) The following standards will be used to measure the hours of credit to be given for acceptable CPE programs completed by individual applicants:

(a) an hour is considered to be a 50-minute period of instruction;

(b) a full 1-day program will be considered to equal 8 hours;

(c) only class hours or the equivalent (and not student hours devoted to preparation) will be counted;

(d) one-half credit increments are permitted after the first credit has been earned in a given learning activity;

(e) for reporting periods on or after January 1, 2010, acceptable ethics topics may include, but are not limited to, instruction focusing on the AICPA code of professional conduct, the New Mexico occupational and professional licensing code of professional conduct applicable to certified public accountants, Treasury Circular 230, malpractice avoidance, organization ethics, moral reasoning, and the duties of the CPA to the public, clients, and colleagues; ethics hours may be earned as part of any professional development program otherwise qualifying under this rule, provided the ethics content and the time devoted to such content are separately identifiable on the program agenda.

(2) Service as a lecturer, discussion leader, or speaker at continuing education programs or as a university professor/instructor (graduate or undergraduate levels) will be counted to the extent that it contributes to the applicant's professional competence.

(3) Credit as a lecturer, discussion leader, speaker, or university professor/instructor may be allowed for any meeting or session provided that the session would meet the continuing education requirements of those attending.

(4) Credit allowed as a lecturer, discussion leader, speaker or university

professor/instructor will be on the basis of 2 hours for subject preparation for each hour of teaching and 1 hour for each hour of presentation. Credit for subject preparation may only be claimed once for the same presentation.

(5) Credit may be allowed for published articles and books provided they contribute to the professional competence of the applicant. The board will determine the amount of credit awarded.

(6) Credit allowed under provisions for a lecturer, discussion leader, speaker at continuing education programs, or university professor/instructor or credit for published articles and books may not exceed one half of an individual's CPE requirement for a 3-year reporting period (shall not exceed 60 hours of CPE credit during a 3-year reporting period).

(7) For a continuing education program to qualify under this rule, the following standards must be met:

(a) an outline of the program is prepared in advance and preserved;

(b) the program is at least 1 hour in length;

(c) a qualified instructor conducts the program; and

(d) a record of registration or attendance is maintained.

(8) The following programs are deemed to qualify, provided the above are met:

(a) professional development programs of recognized national and state accounting organizations;

(b) technical sessions at meetings of recognized national and state accounting organizations and their chapters; and

(c) no more than 4 hours CPE annually may be earned for board meeting attendance.

(9) University or college graduate-level courses taken for academic credit are accepted. Excluded are those courses used to qualify for taking the CPA exam. Each semester hour of credit shall equal 15 hours toward the requirement. A quarter hour credit shall equal 10 hours.

(10) Non-credit short courses - each class hour shall equal 1 hour toward the requirement and may include the following:

(a) formal, organized in-firm educational programs;

(b) programs of other accounting, industrial, and professional organizations recognized by the board in subject areas acceptable to the board;

(c) formal correspondence or other individual study programs which require registration and provide evidence of satisfactory completion will qualify with the amount of credit to be determined by the board.

(11) The board will allow up to a total of 24 hours of CPE credits for firm peer

review program participation. Hours may be earned and allocated in the calendar year of the acceptance letter for the firm's CPAs participating in the peer review.

(a) Firms having an engagement or report peer review will be allowed up to 12 hours of CPE credits.

(b) Firms having a system peer review will be allowed up to 24 hours of CPE credits.

(c) Firms having a system peer review at a location other than the firm's office shall be considered an off-site peer review and will be allowed up to 12 hours of CPE credits.

(d) The firm will report to the board the peer review CPE credit allocation listing individual firm CPAs and the number of credits allotted to each CPA. Individual CPAs receiving credit based upon a firm's report to the board may submit firm-reported hours in their annual CPA report forms to the board. If CPE credits will not be used, no firm report will be necessary.

(12) The board may look to recognized state or national accounting organizations for assistance in interpreting the acceptability of the credit to be allowed for individual courses. The board will accept programs meeting the standards set forth in the NASBA CPE registry, AICPA guidelines, NASBA quality assurance service, or such other programs deemed acceptable to the board.

(13) For each 3-year reporting period, at least 96 of the hours reported shall be courses, programs or seminars whose content is in technical subjects such as audit; attestation; financial reporting; tax, management consulting; financial advisory or consulting; and other areas acceptable to the board as directly related to the professional competence of the individual.

(14) Effective for CPE reporting periods ending on or after July 31, 2007, for each 3-year reporting period, at least 24 of the hours reported shall not include CPE sponsored by the licensee's firm, agency, company, or organization but may include all methods of CPE delivery, provided that each hour meets the standards specified in paragraphs (1) through (10) of this subsection.

(15) For each 3-year reporting period, credit will be allowed once for any single course, program or seminar unless the individual can demonstrate that the content of such course, program or seminar was subject to substantive technical changes during the reporting period.

E. Programs not qualifying for CPE:

(1) CPA examination review or "cram" courses;

(2) industrial development, community enhancement, political study groups or similar courses, programs or

seminars;

(3) courses, programs or seminars that are generally for the purpose of learning a foreign language;

(4) partner, shareholder or member meetings, business meetings, committee service, and social functions unless they are structured as formal programs of learning adhering to the standards prescribed in this rule.

F. Continuing professional education records requirements: When applications to the board require evidence of CPE, the applicants shall maintain such records necessary to demonstrate evidence of compliance with requirements of this rule.

(1) Reinstatement and reciprocity applicants shall file with their applications a signed report form and statement of the CPE credit claimed. For each course claimed, the report shall show the sponsoring organization, location of program, title of program or description of content, the dates attended, and the hours claimed.

(2) Responsibility for documenting program acceptability and validity of credits rests with the licensee and CPE sponsor. Such documentation should be retained for a period of 5 years after program completion and at minimum shall consist of the following:

(a) copy of the outline prepared by the course sponsor along with the information required for a program to qualify as acceptable CPE as specified in this rule; or

(b) for courses taken for scholastic credit in accredited universities and colleges, a transcript reflecting completion of the course; for non-credit courses taken, a statement of the hours of attendance, signed by the instructor, is required.

(3) Institutional documentation of completion is required for formal, individual self-study/correspondence programs.

(4) The board may verify CPE reporting information from applicants at its discretion. Certificate holders/licensees or prospective certificate holders/licensees are required to provide supporting documentation [and/or] or access to such records and documentation as necessary to substantiate validity of CPE hours claimed. Certificate holders/licensees are required to maintain documentation to support CPE hours claimed for a period of 5 years after course completion/CPE reporting. Should the board exercise its discretion to accept an affidavit in lieu of a CPE report, the board shall audit certificate/license holder CPE rules compliance of no less than 10 percent of active CPA/RPA licensees annually.

(5) In cases where the board determines requirements have not been met, the board may grant an additional period of time in which CPE compliance deficiencies may be removed. Fraudulent reporting is a basis for disciplinary action.

(6) An individual who has submitted a sworn affidavit on their renewal application as evidence of compliance with CPE requirements and is found, as the result of a random audit, not to be in compliance will be subject to a minimum \$250.00 fine and any other penalties deemed appropriate by the board as permitted by Section 20B of the act.

(7) The sponsor of a continuing education program is required to maintain an outline of the program and attendance/registration records for a period of 5 years after program completion.

(8) The board may, at its discretion, examine certificate holder/licensee or CPE sponsor documentation to evaluate program compliance with board rules. Non-compliance with established standards may result in denial of CPE credit for non-compliant programs and may be a basis for disciplinary action by the board for fraudulent documentation and representation by a CPE sponsor or certificate holder/licensee of a knowingly non-compliant CPE program.

[16.60.3.15 NMAC - Rp 16 NMAC 60.6.6, 02-14-2002; A, 09-16-2002; A, 06-15-2004; A, 07-30-2004; A, 12-30-2004; A, 04-29-2005; A, 12-30-2005; A, 05-15-2006; A, 07-29-2007; A, 02-27-2009; A, 9-15-2010; A, 01-17-2013]

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.4 NMAC Section 9, effective 1-17-2013.

16.60.4.9 FIRM BUSINESS NAMES PROHIBITIONS:

~~A.~~ Misleading firm names: A firm name is misleading pursuant to Section 19 of the act if, among other things, the firm name:

~~(1) Is not the lawful and registered name of the firm.~~

~~(2) Contains a misrepresentation of the facts.~~

~~(3) Indicates a character, quality or grade of service which is not based upon verifiable facts.~~

~~(4) Indicates a geographic area of service which is not based on verifiable facts.~~

~~(5) Is intended to or likely to create false or unjustified expectations of favorable results.~~

~~(6) Implies special expertise.~~

~~(7) Includes a non-owner firm employee or a non-CPA.~~

~~(8) Implies the existence of a corporation when the firm is not a corporation.~~

~~(9) Implies existence of a partnership when there is not a partnership~~

(as in "Smith & Jones, CPA's").

~~(10) Includes the name of a person who is neither a present nor a past partner, member or shareholder of the firm.~~

~~(11) However, names of one or more past partners or shareholders may be included in the firm name of a partnership or corporation or its successor, and a partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to 2 years after becoming a sole practitioner.~~

~~B.~~ Fictitious firm names: A fictitious CPA or RPA firm name (that is, one not consisting of the names of 1 or more present or former partners, members, or shareholders) may not be used by a CPA or RPA firm in the practice of public accountancy unless such name has been registered with and approved by the board as not being false or misleading.]

A. Misleading firm names: A firm name or trade name is misleading pursuant to Section 19 of the act if, among other things, the firm name or trade name:

(1) is not the lawful and registered name of the firm;

(2) implies the existence of a corporation when the firm is not a corporation such as through the use of the words "corporation", "incorporated", "Ltd.", "professional corporation", or an abbreviation thereof as part of the firm name if the firm is not incorporated or is not a professional corporation;

(3) implies the existence of a partnership when there is not a partnership such as by use of the term "partnership", "limited liability partnership", the abbreviation "LLP", "limited liability company", or the abbreviation "LLC" if the firm is not such an entity;

(4) includes the name of an individual who is not a CPA if the title "CPAs" is included in the firm name or trade name, except as provided for in Subsection B of 16.60.4.9 NMAC;

(5) includes information about or indicates an association with persons who are not members of the firm, except as permitted pursuant to Section 14(i) of the Uniform Accountancy Act;

(6) includes the terms "& company", "& associate", or "group", but the firm does not include, in addition to the named partner, shareholder, owner, or member, at least one other licensee;

(7) contains any representation that would be likely to cause a reasonable person to have a false or unjustified expectation of favorable results or capabilities, through the use of a false or unjustified statement of fact as to any material matter;

(8) claims or implies the ability to influence a regulatory body or official;

(9) includes the name of an owner whose certified public accountant

license has been revoked for disciplinary reasons by the board, whereby the licensee has been prohibited from practicing public accountancy or prohibited from using the title CPA or holding himself out as a certified public accountant for more than 90 days after revocation of the license.

B. Permissible firm names:

The following types of CPA firm names are not in and of themselves misleading and are permissible:

(1) a firm name or trade name that includes the names of one or more former or present owners;

(2) a firm name or trade name that excludes the names of one or more former or present owners;

(3) a firm name or trade name that uses the "CPA" title as part of the firm name when all named individuals are owners of the firm who hold such title or are former owners who held such title at the time they ceased to be owners of the firm;

(4) a firm name or trade name that includes the name of a non-CPA owner if the "CPA" title is not a part of the firm name.

C. Name of firm formed as a single member limited liability company (LLC): A firm which is organized as a single member LLC under the Limited Liability Company Act, Sections 53-19-1 to 53-19-74 NMSA 1978, or similar acts of other states may be required by the applicable LLC act to include the word "company" or "Co." in its name. For purposes of compliance with the act, the firm name shall not include more than one person's name and shall not include "and", "&" or a similar term with respect to "company" or "Co." in a manner which would imply that there was more than 1 owner of the firm.

D. Network firms: A network firm as defined in the AICPA code of professional conduct in effect July 1, 2011 may use a common brand name, or share common initials, as part of the firm name. Such a firm may use the network name as the firm's name, provided it also shares one or more of the following characteristics with other firms in the network:

(1) common control, as defined by generally accepted accounting principles in the United States, among the firms through ownership, management, or other means;

(2) profits or costs, excluding costs of operating the association, costs of developing audit methodologies, manuals and training course, and other costs that are immaterial to the firm;

(3) common business strategy that involves ongoing collaboration among the firms whereby the firms are responsible for implementing the association's strategy and are held accountable for performance pursuant to that strategy;

(4) significant part of professional resources;

(5) common quality control policies and procedures that participating firms are required to implement and that are monitored, as defined by peer review standards, by the association.

[16.60.4.9 NMAC - Rp 16 NMAC 60.4.10, 02-14-2002; A, 06-30-2008; A, 01-17-2013]

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.5 NMAC Section 11, effective 1-17-2013.

16.60.5.11 RULES OF CONDUCT: In addition to abiding by the AICPA code of professional conduct, New Mexico CPA/RPA certificate/license holders shall abide by the following board rules:

A. Rule 901 - Responses to board communications. An individual certificate/license or firm permit holder shall, when requested, substantively and honestly respond in writing to [any] all communications from the board requesting a response within 30 days of the mailing of such communications by registered or certified mail to the last address furnished the board by the applicant, certificate or registration holder.

(1) Failure to respond substantively and honestly to written board communications or failure to furnish requested documentation [and/or] or working papers constitutes conduct indicating lack of fitness to serve the public as a professional accountant and shall be grounds for disciplinary action.

(2) Each applicant, certificate or firm permit holder and each person required to be registered with the board under the act shall notify the board, in writing, of any and all changes in such person's mailing address and the effective date thereof within 30 days before or after such effective date.

B. Rule 902 - Reportable events.

[(+)] A licensee shall report in writing to the board the occurrence of any of the following events within 30 days of the date the licensee had knowledge of these events:

[(a) conviction or imposition of deferred adjudication of the licensee of any of the following: felony or any crime of which fraud or dishonesty is an element; and any crime related to the qualifications, functions, or duties of a RPA or CPA or to acts or activities in the course and scope of the practice of public accountancy or as a fiduciary;

(b) the cancellation, revocation, or suspension of a certificate; other authority to practice or refusal to renew a certificate or other authority to practice as a RPA or CPA by any state, foreign country or other

jurisdiction; or

(c) the cancellation, revocation or suspension of the right to practice as a CPA or RPA before any governmental body, agency or other licensing agency.

(2) The required report shall be signed by the licensee and shall set forth the facts which constitute the reportable event. If the reportable event involves the action of an administrative agency or court, then the report shall set forth the title of the matter, court or agency name, docket number, and dates of occurrence of the reportable event. As used in this rule, a conviction includes the initial plea, verdict, or finding of guilt, plea of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence may not actually imposed until all appeals are exhausted. Nothing in this rule imposes a duty upon any licensee to report to the board the occurrence of any events set forth either by or against any other licensee.]

(1) Receipt of a final peer review report indicating "pass with deficiencies" or "fail" or a public company accounting oversight board (PCAOB) firm inspection report containing deficiencies or identifying potential defects in the quality control systems. For the purposes of Subsection B of 16.60.5.11 NMAC, "deficiency reports" are reports indicating either "pass with deficiencies" or "fail" as defined in the AICPA peer review standards.

(2) Receipt of a second consecutive deficiency peer review report.

(3) Imposition upon the license of discipline, including, but not limited to, censure, reprimand, sanction, probation, civil penalty, fine, consent decree or order, suspension, revocation, or modification of a license, certificate, permit, or practice rights by:

(a) the securities and exchange commission (SEC), the PCAOB, or the internal revenue service (IRS); or

(b) another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy; or

(c) any other federal or state agency regarding the licensee's conduct while rendering professional services; or

(d) any foreign authority or credentialing body that regulates the practice of accountancy.

(4) The occurrence of any matter reportable that must be reported by the licensee to the PCAOB pursuant to Sarbanes Oxley Action Section 102(b)(2)(f) and PCAOB Rules and forms adopted pursuant thereto.

(5) Notice of disciplinary charges filed by the SEC, the PCAOB, the IRS, or another state board of accountancy, or a

federal or state taxing, insurance or securities regulatory authority, or a foreign authority or credentialing body that regulates the practice of accountancy.

(6) Unless prohibited by the terms of the agreement, any judgment, award or settlement of a civil action or arbitration proceeding of \$150,000 or more in which the licensee was a party if the matter included allegations of gross negligence, violation of specific standards of practice, fraud, or misappropriation of funds in the practice of accounting; provided, however, licensed firms shall only notify the board regarding civil judgments, settlements, or arbitration awards directly involving the firm's practice of public accounting in this state.

(7) Criminal charges, deferred prosecution or conviction or plea of no contest to which the licensee is a defendant if the crime is:

(a) any felony under the laws of the United States or of any state of the United States or any foreign jurisdiction; or

(b) a misdemeanor if an essential element of the offense is dishonesty, deceit, or fraud.

C. Rule 903 - Frivolous complaints. An individual certificate/license or firm permit holder who, in writing to the board, accuses another certificate/license or firm permit holder of violating the act or board rules shall assist the board in any investigation [and/or] or prosecution resulting from the written accusation. Failure to do so, such as not appearing to testify at a hearing or to produce requested documents necessary to the investigation or prosecution, without good cause, is a violation of this rule.

D. Rule 904 - Compliance with the Parental Responsibility Act. If an applicant for a certificate/license or a CPA or RPA certificate/license or firm permit holder is identified by the state of New Mexico human services department (HSD) as not in compliance with a judgment and order for support, the board or its legally authorized designee shall: deny an application for a license; deny the renewal of a license; have grounds for suspension or revocation of a license; and shall initiate a notice of contemplated action under provisions of the Uniform Licensing Act.

(1) If an applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD child support enforcement division. An applicant or licensee can provide the board with a subsequent statement of compliance, which shall preclude the board from taking any action based solely on the prior statement of non-compliance from HSD.

(2) When a disciplinary action is taken under this section solely because the

applicant or licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The board may also include any other conditions necessary to comply with board requirements for reapplications or reinstatement of lapsed licenses.

E. Rule 905 - Specialty designations. A CPA/RPA certificate/license holder may only represent a claim of special expertise through the use of "specialty designations" in conjunction with the CPA/RPA designation if the specialty designation is:

(1) consistent with designations prescribed by national or regional accreditation bodies offering the designations pursuant to a prescribed course of study, experience, or examination, and

(2) cannot be construed by the public or clients of the CPA/RPA practitioner to be a false fraudulent, misleading, or deceptive claim unsubstantiated by fact.

[16.60.5.11 - Rp 16 NMAC 60.7, 16 NMAC 60.9, and 16 NMAC 60.10, 02-14-2002; A, 06-30-2008; A, 01-01-2011; A, 01-17-2013]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT STATE PARKS DIVISION

This is an amendment to 18.17.2 NMAC, Sections 2, 6, 9, 10, 12, and 14, effective January 1, 2013.

18.17.2.2 SCOPE: [~~This part~~] 18.17.2 NMAC applies to persons using vessels in the waters of New Mexico. [12/21/89; 12/31/96; 18.17.2.2 NMAC - Rn, 18 NMAC 17.2.2, 9/15/06; A, 1/01/07; A, 1/01/13]

18.17.2.6 OBJECTIVE: [~~This part's~~] 18.17.2 NMAC's objective is to set forth registration requirements for vessels and to promote safety for persons and property in and connected with vessels' use, operation and equipment. [12/31/96; 18.17.2.6 NMAC - Rn, 18 NMAC 17.2.6, 9/15/06; A, 1/01/07; A, 1/01/13]

18.17.2.9 EQUIPMENT REQUIRED TO OPERATE A VESSEL: No person shall operate or give permission to operate a vessel on the waters of this state that is not equipped as required by 18.17.2.9 NMAC and the Boat Act.

A. Flotation devices:

(1) Vessels shall carry a U.S. coast guard approved wearable personal flotation device of proper size for each person on board or being pulled as a skier, plus one

U.S. coast guard approved throwable device, cushion or ring buoy. A throwable device is not required for personal watercraft, kayaks, canoes, paddleboards or rubber rafts. Personal flotation devices and throwable devices shall be in serviceable condition readily accessible for use and shall bear evidence of U.S. coast guard approval.

(2) Skiers and those being pulled on a floating object shall wear a U.S. coast guard approved type I, II or III personal flotation device while being pulled by a vessel.

(3) Vessels that carry passengers for hire shall provide a U.S. coast guard approved type I life preserver for each person on board. Vessels shall carry an additional number of approved type I life preservers of children size equal to at least 10 percent of the total number of persons carried unless the service is such that children are never carried. U.S. coast guard type II, III or IV devices will not suffice for 18.17.2.9 NMAC.

(4) Persons engaged in boating on a river or in boat races or persons using ice sailboats, personal watercraft, kayaks, canoes, paddleboards and rubber rafts on any waters of this state shall wear a U.S. coast guard approved wearable personal flotation device.

(5) Persons using wind sail boards, inner tubes, air mattresses, float tubes or other inflatable devices not covered in Paragraph (4) of Subsection A of 18.17.2.9 NMAC on waters of this state [~~may~~] shall wear a flotation assist device [~~in lieu of~~] or a personal flotation device.

(6) The operator of a vessel used for recreational purposes shall require children age 12 or under who are aboard the vessel to wear a personal flotation device approved by the United States coast guard while the vessel is underway, unless the child is below deck or in an enclosed cabin.

B. Fire extinguisher:

(1) Vessels constructed with any of the following characteristics shall be equipped with serviceable U.S. coast guard approved marine fire extinguisher of a size and in a quantity set forth in Paragraph (2) of Subsection B of 18.17.2.9 NMAC:

(a) inboard engine;

(b) closed compartments under thwarts and seats where portable fuel tanks may be stored;

(c) double bottoms not sealed to the hull or that are not completely filled with flotation material;

(d) closed living spaces;

(e) closed storage compartments in which combustible or flammable materials may be stored; or

(f) permanently installed fuel tanks.

(2) Fire extinguisher requirements by boat length:

| CLASS | LENGTH OF MOTORBOAT | NUMBER OF EXTINGUISHERS REQUIRED | SIZE OF FIRE EXTINGUISHERS |
|-------|------------------------------|----------------------------------|----------------------------|
| A | Less than 16 feet | One | B-I |
| 1 | 16 feet to less than 26 feet | One | B-I |
| 2 | 26 feet to less than 40 feet | Two or One | B-Is or B-II |
| 3 | 40 feet or more | Three or One each | BIs or B-II and B-I |

C. Sound producing devices: Vessels shall carry on board a sound producing device in accordance with the following minimum requirements:

(1) less than 26 feet (this includes kayaks, canoes, paddleboards and rubber rafts): mouth, hand or power operated whistle or other sound producing mechanical device capable of producing a blast of two second duration and audible for at least one-half mile;

(2) 26 feet but less than 40 feet: hand or power operated horn or whistle capable of producing a blast of two seconds or more duration and audible for a distance of at least one mile and a bell;

(3) 40 feet or more: power operated horn or whistle capable of producing a blast of two seconds or more duration and audible for a distance of at least one mile and a bell.

D. Flame arrestor: Enclosed gasoline engine carburetors (except outboard motors) installed in a vessel shall be equipped with a U.S. coast guard approved backfire flame arrestor that is marked with a U.S. coast guard approval number or in compliance with UL 1111 tests or the standard SAE J-1928, MARINE.

E. Water closets: No person shall maintain or operate a vessel on the waters of this state equipped with a water closet unless the closet is self-contained and incapable of discharging directly into the water.

F. Lights:

(1) Motorboats operating one-half hour after sunset to one-half hour before sunrise shall display a combination light on the vessel's fore part and a white light aft to show 360 degrees around the vessel's horizon and above the combination light. The combination light shall be green on the starboard (right) side and red on the port (left) side and shall throw the lights from dead ahead to two points abaft of the beam on their respective sides.

(2) Vessels not covered by Paragraph (1) of Subsection F of 18.17.2.9 NMAC shall when underway or anchored in a non-designated mooring area one-half hour after sunset to one-half hour before sunrise [~~exhibit a white light or lantern to show 360 degrees around the horizon and a distance of at least one-half mile~~] have ready at hand an electric torch or lighted lantern showing a white light, which shall be exhibited in sufficient time to prevent collision.

G. Other equipment: Persons engaged in canoeing, kayaking, paddle boarding or rubber rafting are not required to have a bailing bucket, bilge pump or any length of stout rope.

[7/17/67...12/31/96; 12/31/98; 18.17.2.9 NMAC - Rn, 18 NMAC 17.2.9, 9/15/06; A, 1/01/07; A, 1/01/13]

18.17.2.10 BOAT RENTALS:

A. Records: The owner of a boat rental facility shall keep a record of the name and address of persons borrowing or hiring a vessel, the identification number thereof, the departure date and time and the expected date and time of return. The owner of a boat rental facility shall preserve the record for at least six months.

B. Equipment: Neither the owner of a boat rental facility nor an agent ~~nor~~ or employee thereof shall permit a motorboat or a borrowed or hired vessel to depart from the facility unless it is provided with the equipment required by 18.17.2.9 NMAC and the Boat Act.

[12/21/89; 12/31/96; 18.17.2.10 NMAC - Rn, 18 NMAC 17.2.10, 9/15/06; A, 1/01/07; A, 1/01/13]

18.17.2.12 BOATING ACCIDENTS:

A. The operator or legal representative of a vessel involved in a collision, accident or other casualty on a water of this state shall:

(1) report the collision, accident or other casualty immediately to the local law enforcement agency; and

(2) file a U.S. coast guard boating accident report within 48 hours with the division if the collision, accident or other casualty resulted in a death, injury requiring more than standard first aid or property damage in excess of \$100; forms are available at offices of state parks with lakes; reports shall be sent to and forms are also available at: State Parks Division; ~~[P.O. Box 1147, Santa Fe, New Mexico 87504-1147]~~ 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505; (505) 476-3355.

B. No person shall knowingly make false claims or statements when reporting a collision, accident or casualty.

[10/17/68...12/31/96; 12/31/98; 18.17.2.12 NMAC - Rn, 18 NMAC 17.2.12, 9/15/06; A, 1/01/07; A, 1/01/13]

18.17.2.14 SPECIAL REGULATIONS:

A. Weather:

(1) If at any time the superintendent determines that the weather or the condition of a lake is dangerous for boats, the superintendent may prohibit the launching or use of boats for an indefinite period of time upon the posting of appropriate notice.

(2) Boaters shall observe small craft weather warnings and seek shelter ashore when flags or lights have been activated to indicate adverse weather conditions.

B. Anchoring and mooring:

(1) Vessels when not in use shall be firmly anchored, moored or otherwise secured so as to prohibit drifting or otherwise damaging another's property. No person shall moor or anchor a vessel within 150 feet of a marina, boat ramp or courtesy dock.

(2) Private docks are prohibited except as provided in 18.17.3 NMAC. Private buoys and the mooring of houseboats are prohibited unless authorized by the director. Persons may anchor vessels overnight provided it does not impede or present a hazard to navigation. Overnight anchoring of vessels within a state park is subject to overnight camping permits and fees, unless the person has paid camping fees for towing vehicle, except for vessels moored at concession operated facilities such as marinas or buoy lines. Persons may not leave anchored vessels vacant for more than 24 hours without the superintendent's permission unless moored at an authorized marina or buoy line.

(3) Courtesy docks are provided for the purpose of loading and unloading vessels. No person shall leave a vessel [unattended] moored at a courtesy dock for longer than 10 minutes.

C. Launching: Boaters using launching areas or launching ramps on waters of this state shall be prepared to launch or load their vessels promptly without undue delay to others. After the vessel is launched, the towing vehicle shall be immediately driven well away from the launching area and parked in a designated location if such is provided.

[7/17/67...12/31/96; 12/31/98; 18.17.2.14 NMAC - Rn, 18 NMAC 17.2.14, 9/15/06; A, 1/01/07; A, 1/01/13]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT STATE PARKS DIVISION

This is an amendment to 18.17.3 NMAC, Section 8, effective January 1, 2013.

18.17.3.8 GENERAL PROVISIONS:

A. Boat docks approved under 18.17.3 NMAC shall be for personal, family or community uses only and shall not be used for commercial activity.

B. The division operates a number of state parks under agreements with other entities. Those agreements and applicable federal, state and local statutes, regulations, rules and ordinances may contain provisions that supersede 18.17.3 NMAC. In addition, conditions at a particular lake, or the ownership of land on which a state park operates or around a lake, may restrict the construction or use of boat docks at a particular lake. Provisions applicable to individual state parks are set forth in 18.17.3.21 NMAC.

C. The provisions of the New Mexico Boat Act, NMSA 1978, Sections 66-12-1 through 66-12-23, and

statutory provisions applicable to the acquisition and management of state parks, including NMSA 1978, Section 16-2-11, shall guide interpretation of 18.17.3 NMAC.

D. In reviewing project plans for a boat dock, the division may consider, without limitation: applicable federal, state and local statutes, regulations, rules and ordinances; agreements with other public agencies and private parties, including concessionaires; the purposes for which the lake and the state park were created; the management plan for the state park; the health, safety and welfare of other users and activities at the lake and state park, including the impact on boating, fishing and other recreation activities; and, conditions at a given location.

E. Community boat docks approved under 18.17.3 NMAC shall be permitted subject to payment of the following fees.

(1) Application fee – all applications for boat docks made under 18.17.3 NMAC shall be accompanied by a non-refundable application fee of \$1,000. In the event an application is rejected or withdrawn, the subsequent application fee for the same boat dock, location and owner is \$200.

(2) Annual fees – permittees for community boat docks approved under 18.17.3 NMAC shall submit to the division annual rental fees equal to \$2.50 per each square foot of boat dock, but no less than \$750 per year. Annual rental fees are due to the division prior to December 1 for the current and subsequent year if it is for a new permit, or by December 1 for the subsequent year if it is for an established permit.

(3) Annual fees for the first year shall be prorated to reflect the actual amount of time the boat dock is present prior to December 1.

[18.17.3.8 NMAC - N, 7/1/2002; A, 1/1/2008; A, 1/1/2013]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT STATE PARKS DIVISION

This is an amendment to 19.5.1 NMAC, Section 7, effective January 1, 2013.

19.5.1.7 DEFINITIONS:

A. “Authorized areas” means locations, places, sites, regions, zones or spaces identified by the director or, for purposes of hunting or fishing, the state game commission. These areas may be defined with signs or other appropriate proclamation or means. For purposes of bowfishing, authorized areas include all parks where fishing is allowed.

B. “Boating and rafting excursions” means a guiding service for boating or rafting trips offered to the general public.

C. “Capital improvement” means a construction project by a concessionaire to the concession premises that is not maintenance or repair and that costs at least \$1,000.

D. “Commercial activity” means for-profit sales or services but does not include the operation of vending machines unless the vending machine is operated as part of a larger concession operation.

E. “Commercial filming” means the use of motion picture, videotaping, sound recording or other moving image or audio recording equipment that involves the advertisement of an event, product or service; or the creation of a product for sale including film, videotape, television broadcast or documentary of participants in commercial sporting or recreation events for the purpose of generating income [~~or the use of actors, models, sets, or props~~].

F. “Commercial photography” means still images taken with a camera that the photographer intends to sell.

G. “Concession” means commercial activity conducted within a park the department has authorized in writing.

H. “Concessionaire” means the owner or operator of a concession who operates pursuant to a department-issued concession contract.

I. “Concessions administrator” means a division employee who maintains records and documentation concerning concession contracts and concession permits.

J. “Concession contract” means an agreement between the department and a person, or business entity, which allows the concessionaire to provide services, merchandise, accommodations or facilities within a park. The concessionaire [shall] may or may not occupy a permanent structure or location within the park. The concession contract's term shall not exceed 30 years pursuant to NMSA 1978, Section 16-2-9.

K. “Concession permit” means a permit the department issues to a person or business entity to provide services or goods in a park for a time period of up to one year. The fee for a concession permit is established in 19.5.6 NMAC. Services the division may authorize under a concession permit include guiding and outfitting services for fishing, boating and rafting excursions; educational and park resource protection services; and other services or goods, including commercial services, that enhance visitors' experience and enjoyment, such as sales of firewood, propane, ice, food or refreshments.

L. "Concession permittee" means the holder of a department-issued concession permit.

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

N. "Department" means the energy, minerals and natural resources department.

O. "Developed site" means a park camping site with at least one shelter, table or grill or a combination of two or more such facilities at the site. Sites with recreational vehicle utility hookups are considered developed regardless of the presence of shelters, tables or grills.

P. "Director" means the director of the energy, minerals and natural resources department, state parks division.

Q. "Director designee" means persons the director appoints including deputy directors, bureau chiefs, regional managers and park superintendents.

R. "Division" means the energy, minerals and natural resources department, state parks division.

S. "Flotation assist device" means a wet suit or wearable flotation device in good condition capable of providing flotation to the wearer on the water's surface.

T. "Geocaching" means an outdoor treasure-hunting activity in which the participants use a global positioning system receiver or other navigational means to hide or find containers called "geocaches" or "caches".

U. "Gross receipts from sales and services" means the total amount of receipts from sales and services.

V. "Guide" means an individual or an employee of an outfitter who is hired to escort or accompany clients in fishing, rafting or boating.

W. "Letter boxing" means an outdoor hobby that combines elements of orienteering, art and puzzle solving. Letter boxers hide small, weatherproof boxes in publicly-accessible places and distribute clues to finding the boxes in printed catalogs, on websites or by word of mouth. The activity is characterized by the boxes containing a logbook and a rubber stamp. Letter boxers stamp the box's logbook with personal rubber stamps and use the box's stamp to imprint their personal logbooks as proof they found the box.

X. "Net receipts from sales and services" means the total amount of receipts from sales and services, less the amount of gross receipts taxes.

Y. "Off highway motor vehicle" means a motor vehicle [operated or used exclusively off New Mexico's highways and that is not legally equipped for operation on the highway; this includes all terrain vehicles] designed by the manufacturer for

operation exclusively off the highway or road and includes:

(1) "all-terrain vehicle," which means a motor vehicle 50 inches or less in width, having an unladen dry weight of 1,000 pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering control;

(2) "off-highway motorcycle," which means a motor vehicle traveling on not more than two tires and having a seat designed to be straddled by the operator and has handlebar-type steering control;

(3) "snowmobile," which means a motor vehicle designed for travel on snow or ice and steered and supported in whole or part by skis, belts, cleats, runners or low-pressure tires;

(4) "recreational off-highway vehicle," which means a motor vehicle designed for travel on four or more non-highway tires, for recreational use by one or more persons, and having:

(a) a steering wheel for steering control;

(b) non-straddle seating;

(c) maximum speed capability greater than 35 miles per hour;

(d) gross vehicle weight rating no greater than 1,750 pounds;

(e) less than 80 inches in overall width, exclusive of accessories;

(f) engine displacement of less than 1,000 cubic centimeters; and

(g) identification by means of a 17 character vehicle identification number; or

(5) by rule of the department of game and fish, any other vehicles that may enter the market that fit the general profile of vehicles operated off the highway for recreational purposes.

Z. "Other power driven mobility device" means any mobility device powered by batteries, fuel or other engines – whether or not designed primarily for use by individuals with mobility disabilities – that is used by individuals with mobility disabilities for the purpose of locomotion including golf cars, electronic personal assistance mobility devices, such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair.

[Z:] AA. "Outfitter" means a person or company who employs guides.

[AA:] BB. "Park" means an area designated as a state park within the state parks system and that the division manages or owns.

CC. "Park" or "parking" means the leaving of a vehicle, camping unit or trailer, whether occupied or not, in a location, other than when engaged in loading or unloading.

[BB:] DD. "Park management and development plan" means a

plan used as a guide for expansion, services, programs and development for the park.

[EE:] EE. "Park support group" means an organization as defined in NMSA 1978, Section 6-5A-1 or an organized group of individuals that volunteers time, services or funds to promote and support the division or an individual park and whose principal purpose as authorized by the division is to complement, contribute to and support, aid the function of or forward the division's or park's purposes.

[DD:] FF. "Person" means an individual, partnership, firm, corporation, association, joint venture or other entity.

[EE:] GG. "Personal flotation device" means a coast guard approved life preserver, buoyant vest, hybrid device, ring buoy or buoyant cushion.

[FF:] HH. "Primitive site" means a camping site that offers no facilities except a cleared area for camping. Primitive sites may have trash receptacles, chemical toilets or parking.

[GG:] II. "Rally" means a parking area or facility designated for group functions.

[HH:] JJ. "Receipts" means consideration in money and in trade received from sales and charges for services.

[H:] KK. "Regional manager" means a division employee responsible for several parks within a region.

LL. "Resource program" means a division employee or employees responsible for the natural and cultural resource protection program.

[JJ:] MM. "Sales and services" means transactions by a concessionaire, or a concessionaire's agents or employees, for which the concessionaire receives consideration in money or money's worth in connection with the concession business operated pursuant to the concession contract.

[KK:] NN. "Secretary" means the secretary of the department.

[LL:] OO. "Special use permit" means a permit the division has issued to a person, business entity, park support group or organized group to provide an event or activity within a park. Examples of special use events and activities include regattas, boat races, parades, races, fishing tournaments, exhibitions and educational activities. [The term of a special use permit shall be for the duration of the approved event or activity but shall not be issued for a period of more than five consecutive calendar days.]

[MM:] PP. "State park official" means a division employee.

[NN:] QQ. "State parks system" means land and water in a park.

[OO:] RR. "Superintendent" means a division

employee who is in charge of a specific park; which includes a park superintendent or park manager.

SS. “Vehicle” means an automobile, car, van, sport-utility truck, pickup truck, wagon, buggy or similar device that is used or may be used to transport persons or property on a highway, except devices moved exclusively by human power.

[PP:] TT. “Vending machine” means a coin-operated beverage, snack or service machine subject to division approval.

UU. “Wheelchair” means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or both indoor and outdoor locomotion.

[QQ:] VV. “Working days” means Monday through Friday, excluding state holidays.

[7-17-67, 7-25-72, 7-31-79, 12-21-89, 12-31-89, 5-20-92, 12-31-96, 12-31-98, 7-1-99; 19.5.1.7 NMAC - Rn & A, 19 NMAC 5.1.7, 12/31/02; A, 5/1/04; A, 1/1/08; A, 12/30/10; A, 1/1/13]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT STATE PARKS DIVISION

This is an amendment to 19.5.2 NMAC, Sections 11 through 39 and the addition of new Sections 40 through 42, effective January 1, 2013.

19.5.2.11 DAY USE:

A. Day use of a park area is from 6:00 a.m. to 9:00 p.m. unless the superintendent posts different hours or extends hours for special programs or events. Visitors shall pay day-use fees upon entering the park. See 19.5.6 NMAC.

B. ~~[Visitors may picnic in parks.]~~ The division may ~~[close areas designated for picnicking to camping]~~ designate areas solely for day use to exclude camping.

C. Visitors shall maintain sites in parks in a clean and sanitary condition at all times. ~~[Visitors shall clean the site after use and dispose of trash and litter in appropriate waste receptacles.]~~

D. Visitors shall clean the site and dispose of trash and litter in appropriate waste receptacles.

[19.5.2.11 NMAC - Rp, 19.5.2.11 NMAC, 1/1/2008; A, 1/1/2013]

19.5.2.12 CAMPING:

A. Visitors may camp in parks in designated areas, provided that they obtain a valid camping permit. Visitors shall obtain permits upon entry by paying appropriate fees. See 19.5.6 NMAC. Use

of park properties and facilities between the hours of 9:00 p.m. and 6:00 a.m., or as posted by the superintendent, is camping. Check out time, the time the campsite is to be vacated, is 2:00 p.m.; however, the camping permit allows day use of the park until 9:00 p.m. or as posted by the superintendent. Camping is not available at Living Desert Zoo and Gardens state park, Vietnam Veterans Memorial state park, Rio Grande Nature Center state park, Mesilla Valley state park or Smokey Bear historical park.

B. ~~[Campers may not retain and leave vacant a campsite for more than 24 hours without the superintendent's permission.]~~ Campers shall not leave unoccupied any type of vehicle, motorized camper, trailer, tent or other sleeping unit or facility or otherwise leave a campsite unoccupied for more than 24 hours without the superintendent's prior approval. Unoccupied means the camper is not present at the campsite for more than 24 hours.

C. Campers shall maintain campsites in a clean and sanitary condition at all times. Campers shall clean campsites ~~[after use]~~ and place litter only in appropriate disposal containers. ~~[Campers in remote areas shall carry out supplies and refuse, including human bioproducts, and dispose of these items properly in appropriate waste receptacles.]~~

D. Campers in areas or parks designated and posted by the superintendent as pack-in, pack-out, shall carry out supplies and solid waste or other refuse, including human bioproducts, and properly dispose of these items in appropriate waste receptacles outside of the designated area or park.

[D:] E. Campers may reside in a park for a maximum of 14 calendar days during any 20-calendar day period unless the director ~~[otherwise]~~ extends, decreases or waives this limit. Campers shall completely remove camping equipment and gear from the park for six calendar days during the 20-calendar day period.

[E:] F. The division shall charge fees according to the facilities provided at each campsite, as provided in 19.5.6 NMAC, regardless of whether the camper uses the facilities at the campsite. For example, camping at a site with electricity requires payment of the fee for a developed site with electrical hookup even if the camper uses no electricity.

[F:] G. Vehicles in a park between the hours of 9:00 p.m. and 6:00 a.m., or as posted by the superintendent, are individually subject to the appropriate camping fees. The division considers motor homes towing a vehicle or vehicles towing a camper a single vehicle for 19.5.2.12 NMAC's purposes.

[G:] H. The division may

require visitors to pay fees for their entire stay in advance (rather than on a daily basis) for weekends, holidays or special events.

[H:] I. Anchoring a boat or vessel overnight within a park constitutes camping and requires a valid camping permit for the anchored boat or vessel unless the visitor has paid camping fees for the towing vehicle.

(1) Visitors may not leave anchored boats or vessels vacant for more than 24 hours without the superintendent's permission. Anchored boats or vessels may remain within a park for a maximum of 14 calendar days during any 20-calendar day period unless the director extends, decreases or waives this limit. Visitors shall completely remove boats or vessels from the park for six calendar days during the 20 calendar-day period.

(2) Subsection [H] I of 19.5.2.12 NMAC does not apply to boats or vessels only while they are moored overnight at concession operated facilities such as marinas or buoy lines. ~~[Such]~~ Boats or vessels are ~~[not]~~ subject to division camping permits and camping fees [or] when moored overnight at any other location in the park. Time limits do not apply while ~~[they]~~ boats or vessels are moored at the concession facilities.

[19.5.2.12 NMAC - Rp, 19.5.2.12 NMAC, 1/1/2008; A, 1/1/2013]

19.5.2.13 USE OF FACILITIES:

A. Facilities are available on a first come, first served basis with the exception of parks where the division has established a reservation program and a visitor has reserved the facility. Campers shall not save or reserve camping spaces for other individuals even by purchasing additional permits. ~~[Campers shall not have sole and continuing possession of a picnic or shade shelter or other park facility to the exclusion of other visitors except as provided in 19.5.2.11 or 19.5.2.12 NMAC unless the superintendent has granted permission.]~~

B. Visitors using a park facility shall keep it in a clean and sanitary manner and shall leave it in a clean and sanitary condition.

C. Glass containers are prohibited outside vehicles, motor homes, campers, trailers and tents within the state parks system except on established commercial premises.

[E:] D. The division has developed and designated special facilities for the use of individuals with disabilities. Individuals with disabilities shall have preferential use of these facilities over other persons.

[D:] E. Visitors shall not remove water from the park for use outside the park or deposit trash generated outside the park within a park.

~~[E.]~~ **E.** Advance reservations are required for the use of meeting rooms. Meeting rooms are not available at all parks. A person who reserves a meeting room is responsible for setting up the room, cleaning the room after use and leaving the room in the same condition it was in before use. See 19.5.6 NMAC for meeting room fees.

~~[F.]~~ **G.** The director may designate areas within the state parks system for use by reservation.

~~[G.]~~ **H.** Advance reservations are required for the use of group shelters, group areas or reservation campsites. Users shall pay the appropriate day use or camping fees in addition to the reservation fee. The division may accept annual permits at reservation campsites if posted. See 19.5.6 NMAC for group shelter fees.

I. The superintendent may restrict the number or size of tents, shade or screen shelters occupying a campsite or day use site by posting the restriction or restrictions in the affected area or areas. [19.5.2.13 NMAC - Rp, 19.5.2.13 NMAC, 1/1/2008; A, 12/30/2010; A, 1/1/2013]

19.5.2.14 PARKING:

A. Visitors shall park vehicles, camping units or trailers only in established parking areas or parking turnouts where provided. [It is illegal to] Visitors shall not park any vehicle, camping unit or trailer in a manner that blocks access, restricts traffic or inhibits the free movement of other vehicles, persons or wheelchairs. Visitors shall not leave a trailer, boat or vessel that is not attached to a vehicle in parking areas or parking turnouts for a period of more than 72 hours without prior approval of the superintendent. At the superintendent's discretion, the division may remove vehicles so parked at the owner's expense.

B. Visitors shall not park a vehicle, camping unit or trailer in a designated disabled parking space unless the visitor's vehicle has registration plates or a state-issued placard indicating disability.

C. The superintendent may restrict the number or size of vehicles, camping units or trailers occupying a campsite, day use site or parking area by posting the restriction or restrictions in the affected area or areas. [19.5.2.14 NMAC - Rp, 19.5.2.14 NMAC, 1/1/2008; A, 1/1/2013]

19.5.2.15 VEHICLE TRAFFIC:

A. Visitors shall drive vehicles within the state parks system only on established roads or areas authorized for vehicle traffic [—provided that vehicle operation is—]. Visitors shall operate vehicles at speeds at or below the posted limit and in a manner that is reasonable and prudent, with due regard for traffic, pedestrians and road surface conditions and width.

(1) Visitors shall not operate vehicles in a manner that endangers the safety of persons, property or wildlife.

(2) Visitors shall not operate vehicles at speeds greater than the posted limit and shall not exceed 30 miles per hour where no limit is posted.

B. Vehicles operating within a park shall be registered and operated according to New Mexico motor vehicle laws.

C. It is unlawful to ride or to allow anyone to ride in a boat or vessel loaded on a trailer, except when launching or loading a boat or vessel at an established boat ramp.

[19.5.2.15 NMAC - Rp, 19.5.2.15 NMAC, 1/1/2008; A, 1/1/2013]

19.5.2.16 OFF-HIGHWAY MOTOR VEHICLES AND GOLF CARS:

A. Visitors shall not operate off-highway motor vehicles or golf cars in the state parks system, with the exception of persons with mobility disabilities as provided in Subsection D of 19.5.2.16 NMAC or as provided in Subsection F of 19.5.2.16 NMAC for ice fishing.

~~[B.]~~ Visitors with disabilities who rely on off-highway motor vehicles to launch or dock boats or to transport themselves from the dock area or other specifically designated area to their vehicle or campsite may submit a written request for an exception to use an off-highway motor vehicle in specific areas to the director. The director may grant a written exception to use an off-highway motor vehicle, which shall specifically designate the areas to which the exception applies and conditions of use, so long as such use complies with other applicable laws and will not adversely affect park resources. In determining whether to grant an exception to Subsection A of 19.5.2.16 NMAC, the director shall consider the nature and extent of the individual's disability and available alternatives. Visitors the director authorizes to operate off-highway motor vehicles within the state parks system shall comply with federal, state and local laws governing off-highway motor vehicle use.]

~~[C.]~~ **B.** State park officials may use off-highway motor vehicles or golf cars for park operations and maintenance.

C. The park superintendent may approve the use of golf cars by concessionaires within certain areas of a park for concession operations and maintenance.

D. [Visitors' use of an off-highway motor vehicle pursuant to Subsections B of 19.5.2.16 NMAC is limited to established and customarily used roads, parking areas, boat ramps and approaches. Off-highway motor vehicle use is also subject to more stringent laws of a landowner (e.g. United States department

of the interior, bureau of reclamation) from which the division leases the land or reservoir. Visitors and state park officials shall comply with laws of the landowner (e.g. United States department of the interior, bureau of reclamation; New Mexico department of game and fish; United States army corps of engineers, New Mexico state land office, etc.) when applicable.] Other power driven mobility devices may only be used by visitors with mobility disabilities on established roads, pathways, trails and other areas open to pedestrian use. The use of other power driven mobility devices is subject to more stringent laws or rules or regulations of a landowner (e.g. United States department of the interior, bureau of reclamation; New Mexico department of game and fish; United States army corps of engineers, New Mexico state land office, etc.) from which the division leases the land or reservoir. Visitors and state park officials shall comply with laws or regulations or rules of the landowner (e.g. United States department of the interior, bureau of reclamation) where applicable. Visitors shall consult park information provided at the park office and on the division's official website to determine limitations on park pathways, trails and other areas open to pedestrian use. To ensure protection of park resources, visitor safety and enjoyment:

(1) only other power driven mobility devices not exceeding 36 inches in width and 62 inches in length are permitted on park pathways, trails and other areas open to pedestrian use;

(2) certain park pathways, trails and other areas open to pedestrian use may have other size limitations, or use of other power driven mobility devices on certain park pathways, trails and other areas open to pedestrian use may be prohibited, as designated at the park office and on the division's official website;

(3) internal combustion engine devices are prohibited on park pathways, trails and other areas open to pedestrian use;

(4) maximum speed on park pathways, trails and other areas open to pedestrian use shall not exceed 10 miles per hour;

(5) the use of other power driven mobility devices on park pathways, trails and other areas open to pedestrian use that produces noise that exceeds 96 decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J1287 is prohibited.

E. Persons using an other power-driven mobility device may be required to provide verification that the mobility device is required because of the person's disability. Acceptable forms of verification are:

(1) a valid, state-issued, disability

parking placard or card;

(2) other state-issued proof of disability; or

(3) in lieu of Paragraphs (1) and (2) of Subsection E of 19.5.2.16 NMAC, a person may provide a verbal representation, not contradicted by observable fact, that the other power-driven mobility device is being used for a mobility disability.

F. Persons may use off-highway motor vehicles for ice fishing on the surface of the ice and in designated boat launch areas when the lake is open to ice fishing.

[19.5.2.16 NMAC - Rp, 19.5.2.16 NMAC, 1/1/2008; A, 1/1/2013]

19.5.2.17 S P A R K ARRESTORS: Internal or external combustion engines shall be equipped with a properly installed, maintained and functioning spark arrestor meeting either the:

A. United states department of agriculture, forest service standard 5100 (as amended); or

B. appropriate society of automotive engineers recommended practice J335(b) or J350(a).

[19.5.2.17 NMAC - Rp, 19.5.2.17 NMAC, 1/1/2008; 19.5.2.17 NMAC - N, 1/1/2013]

~~[19.5.2.17]~~ 19.5.2.18 SWIMMING:

Swimming shall be at the swimmer's own risk. Swimming is prohibited within 150 feet of [public or concession boat docks, launching] marinas, fishing piers, docks, ramps, [above or below] dams or [where] as otherwise posted. Visitors using air mattresses, inner tubes, surfboards, sail or wind, styrofoam flotation devices, paddleboards or other similar articles shall wear a United States coast guard approved personal flotation device or a flotation assist device. Swimming may be subject to more stringent laws or rules or regulations of a landowner (e.g. United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir.

[19.5.2.18 NMAC - Rp, 19.5.2.18 NMAC, 1/1/2008; 19.5.2.18 NMAC - Rn & A, 19.5.2.17 NMAC, 1/1/2013]

~~[19.5.2.18]~~ 19.5.2.19 SKIN OR SCUBA DIVING:

A. Skin or scuba diving is at the diver's own risk and is prohibited within 150 feet of marinas, fishing piers, docks, [and] ramps or dams except for official activities and in other areas the superintendent designates. Skin or scuba diving may be subject to more stringent laws or rules or regulations of a landowner (e.g. United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir.

B. The division permits scuba diving only in groups of two or more divers. An additional scuba diver or competent diver-tender shall remain above water at all times.

C. Equipment such as tanks, weight belts, etc. shall be equipped with quick-release fasteners.

D. Scuba divers shall be equipped with a buoyancy compensator. Scuba divers shall only use self-inflated, air supplied canister, or tank inflated, direct connection to the tank supplied air.

E. Divers shall use a diver's flag to mark the point of submergence. Divers shall fly the diver's flag from a boat or flotation device while diving. The flag shall be red with a white diagonal stripe running from the upper left corner to the lower right corner. [Boats shall stay at least 150 feet away from a diver's flag and shall exercise special care in the diver's flags' vicinity.]

F. Boats or vessels shall stay at least 150 feet away from a diver's flag and shall exercise special care in the diver's flags' vicinity.

[19.5.2.19 NMAC - Rp, 19.5.2.19 NMAC, 1/1/2008; A, 12/30/2010; 19.5.2.19 NMAC - Rn & A, 19.5.2.18 NMAC, 1/1/2013]

~~[19.5.2.19]~~ 19.5.2.20 HORSEBACK RIDING:

A. Visitors [may] shall not ride, stable or maintain horses [only] except in designated areas within the state parks system or without prior approval of the superintendent. [Visitors wishing to bring or ride horses in a park shall check with the superintendent in advance for approval, restrictions and area designations as some parks prohibit horses and horseback riding.]

B. Visitors shall not use or possess hay or feed in parks located on state game commission property, including Clayton Lake state park, Fenton Lake state park, Cimarron Canyon state park, Mesilla Valley state park and Eagle Nest Lake state park, or United States department of the interior, bureau of reclamation property, including Navajo Lake state park, Heron Lake state park, El Vado Lake state park, Elephant Butte Lake state park, Caballo Lake state park, Percha Dam state park, Leasburg Dam state park, Sumner Lake state park and Brantley Lake state park, that is not certified as weed free by the New Mexico state university's certified weed free forage program or another governmental entity's certified weed free forage program.

[19.5.2.20 NMAC - Rp, 19.5.2.20 NMAC, 1/1/2008; A, 12/30/2010; 19.5.2.20 NMAC - Rn & A, 19.5.2.19 NMAC, 1/1/2013]

~~[19.5.2.20]~~ 19.5.2.21 FIREARMS AND BOWS:

A. [Visitors shall not possess firearms, including concealed

firearms, with a cartridge in any portion of the mechanism or discharge firearms, including concealed firearms, except during designated hunting seasons or in authorized areas. No such activity is allowed within 300 yards of a developed park area or occupied campsite. Subsection A of 19.5.2.20 NMAC does not apply to on duty law enforcement officials.] Visitors shall not possess firearms with a cartridge in any portion of the mechanism except:

(1) a legally licensed hunter during a designated hunting season and within park areas designated as open to hunting for the species the hunter is licensed to hunt;

(2) on duty law enforcement officials;

(3) persons with a valid concealed handgun license issued to them pursuant to the Concealed Handgun Carry Act, NMSA 1978, Section 29-19-1 et seq.;

(4) persons with a concealed handgun license issued to them by a state that has a valid concealed handgun reciprocity agreement with the state on New Mexico; or

(5) persons carrying a firearm in a private vehicle or other private means of conveyance, for lawful protection of the person's or another's person or property.

B. Visitors shall not discharge a firearm within a state park except:

(1) a legally licensed hunter during designated hunting season who is hunting within park areas designated as open to hunting for the species the hunter is licensed to hunt and who is more than 300 yards from a developed park area or occupied campsite;

(2) on duty law enforcement officials pursuant to their official duties; or

(3) persons with a valid concealed handgun license issued to them pursuant to the Concealed Handgun Carry Act, NMSA 1978, Section 29-19-1 et seq. or another state that has a valid concealed handgun reciprocity agreement with the state of New Mexico when discharged in self defense, defense of another person or defense of a dwelling or habitation.

[B-] C. Visitors shall not use or discharge arrows, bolts [and] or air or gas fired projectiles, weapons and other devices capable of causing injury to persons or animals or damage or destruction of property in the state parks system, except [during designated hunting seasons or in authorized areas. Except for park authorized events and activities, no such activity is allowed within 100 yards of a developed park area or occupied campsite. Subsection B of 19.5.2.20 NMAC does not apply to on duty law enforcement officials.];

(1) a legally licensed hunter or fisherman during a designated hunting or fishing season who is hunting or fishing within park areas designated as open to hunting or fishing for the species the hunter

or fisherman is licensed to hunt or fish, or in authorized areas, and who is more than 100 yards from a developed park area or occupied campsite; or

(2) for park authorized events and activities.

D. Subsection C of 19.5.2.21 NMAC does not apply to on duty law enforcement officials acting pursuant to their official duties.

[19.5.2.21 NMAC - Rp, 19.5.2.21 NMAC, 1/1/2008; 19.5.2.21 NMAC - Rn & A, 19.5.2.20 NMAC, 1/1/2013]

~~[19.5.2.21]~~ 19.5.2.22 **I C E - SKATING AND ICE-FISHING:** Visitors may ice-skate or ice-fish within parks at their own risk. Superintendents may prohibit or limit these activities as conditions require. Ice-fishing is permitted as regulated by the state game commission. Visitors shall not cut holes in the ice for ice-fishing larger than 12 inches in diameter.

[19.5.2.22 NMAC - N, 1/1/2008; 19.5.2.22 NMAC - Rn, 19.5.2.21 NMAC, 1/1/2013]

~~[19.5.2.22]~~ 19.5.2.23 **L E T T E R BOXING AND GEOCACHING:**

Visitors shall not conduct letter boxing or geocaching activities in parks without the superintendent's written permission.

[19.5.2.23 NMAC - Rp, 19.5.2.30 NMAC, 1/1/2008; 19.5.2.23 NMAC - Rn, 19.5.2.22 NMAC, 1/1/2013]

~~[19.5.2.23]~~ 19.5.2.24 **M E T A L DETECTING:**

Metal detecting within a state park is prohibited unless a visitor obtains the superintendent's permission to use metal detectors for scientific activities such as projects permitted through the New Mexico cultural properties review committee or to retrieve lost items.

[19.5.2.24 NMAC - Rp, 19.5.2.22 NMAC, 1/1/2008; 19.5.2.24 NMAC - Rn, 19.5.2.23 NMAC, 1/1/2013]

19.5.2.25 **ROCK COLLECTING:**

A. Rock collecting is permissible in areas designated by the secretary and posted at the rockhound unit of Rockhound state park.

B. Rocks removed from Rockhound state park shall be as souvenirs only, not for resale, trade or commercial use.

C. Rock collecting is limited to small hand tools only. The following are prohibited: mechanical or motorized tools and equipment, tools with a handle longer than 12 inches, wheeled devices such as wheelbarrows, carts or wagons.

[19.5.2.25 NMAC - Rp, 19.5.2.23 NMAC, 1/1/2008; 19.5.2.25 NMAC - N, 1/1/2013]

~~[19.5.2.24]~~ 19.5.2.26 **N O I S E LIMITATIONS:**

A. Park "quiet hours" begin at 10:00 p.m. and end at 7:00 a.m. Visitors shall not operate generators, radios or unmuffled vehicles or engage in other loud activity [disturbing others] during this time period.

B. Except in case of an emergency, creation of loud noise through the use of a loudspeaker requires the superintendent's advance written approval. Visitors shall operate radios, tape players or other sound producing devices at a reasonable level during non-quiet hours so as not to disturb other visitors.

C. Visitors shall not use fireworks within parks without the superintendent's advance written approval. Use or possession of fireworks may be prohibited by the landowner (e.g. United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir.

[19.5.2.26 NMAC - Rp, 19.5.2.24 NMAC, 1/1/2008; 19.5.2.26 NMAC - Rn & A, 19.5.2.24 NMAC, 1/1/2013]

~~[19.5.2.25]~~ 19.5.2.27 **CONDUCT:**

A. Visitors are encouraged to enjoy park experiences without infringing upon other visitors' ability to enjoy the same experiences. Visitors shall not engage in threatening, abusive, boisterous, insulting or indecent language or behavior [are prohibited. Solicitation, gambling and illegal discrimination are prohibited].

B. Visitors shall not solicit, gamble or illegally discriminate.

~~[B.]~~ C. Visitors shall not evade, disobey or resist a state park official's lawful order.

~~[C.]~~ D. Parents, guardians or other adults in charge shall exercise constant direct supervision of minor children or adults who do not possess the intelligence or awareness to recognize possible danger.

~~[D.]~~ E. Law enforcement officers may forcibly eject a person who violates a state law or a department rule or a person who evades, disobeys or resists a state park official's lawful order from a park. Based on the severity of conduct or reported incident, i.e., threatening or intimidating conduct toward visitors or park staff, the ejection may be permanent.

(1) Permanent ejection requires the regional manager to issue written notification to the person being [permanently] permanently ejected.

(2) To request review of a permanent ejection a regional manager issues, an individual ejected from a park or parks shall submit a written request including the reasons for requesting review to the director within 15 calendar days of issuance and provide written notice to the regional manager.

(3) The regional manager and

the ejected individual shall submit written statements to the director within 10 working days of the submission of the request for review.

(4) The director shall base his or her decision on the written statements unless the ejected individual or the regional manager requests the opportunity to call witnesses or make oral arguments within 10 working days of the request for review.

(5) A request for hearing shall explain the need for any witness testimony or oral argument. If the ejected individual or regional manager asks to make oral arguments or call witnesses, the director may set a hearing to be held within 10 working days after receiving that request and provide notice of the hearing date, time and location to the regional manager and the ejected individual. Oral testimony shall be made under oath. A tape or stenographic record shall be made of any oral argument or witness testimony.

(6) The director shall issue a written final decision, including findings of fact within 10 working days after the date for submission of written statements, or a hearing if any, and send copies to the ejected individual and the regional manager.

[19.5.2.27 NMAC - Rp, 19.5.2.25 NMAC, 1/1/2008; 19.5.2.27 NMAC - Rn & A, 19.5.2.25 NMAC, 1/1/2013]

~~[19.5.2.26]~~ 19.5.2.28 **[P E T S -] ANIMALS:**

A. Visitors with dogs, cats or other domestic [pets] animals in areas of the state parks system shall control their [pets] animals, so as not to cause a nuisance to others. [Pet-owners] Visitors shall ensure [pets] their animals are vaccinated in accordance with applicable municipal or county ordinances and state laws.

B. [Pet-owners] Visitors shall pick up after their [pets] animals and shall maintain the area in a clean and sanitary condition.

C. [Pet-owners] Visitors shall restrain [pets] dogs on leashes that are not more than 10 feet in length, except in areas the superintendent designates. Subsection C of [19.5.2.26] 19.5.2.28 NMAC does not apply to [pets] dogs being used in authorized activities such as field trials, retriever training or hunting. Visitors shall otherwise restrain their animals other than dogs to keep them from roaming freely within the parks.

D. [Pet-owners] Visitors shall prevent their [pets] animals from excessive barking, howling and making loud noises [so as not to disturb others. Pet-owners]. Visitors shall prevent their [pets] animals from biting or attacking any person or destroying property. [Pet-owners] Visitors shall not leave their [pets] animals unattended in vehicles or campsites.

E. [Pets] Animals are prohibited, except [~~disability assistance dogs with valid document that verifies the dog is an assistance dog that can be presented to the state park official at time of use~~] service animals, within visitor centers and at the following parks:

(1) Rio Grande Nature Center state park;

(2) Living Desert Zoo and Gardens state park; and

(3) Smokey Bear historical park.
[19.5.2.28 NMAC - Rp, 19.5.2.26 NMAC, 1/1/2008; 19.5.2.28 NMAC - Rn & A, 19.5.2.26 NMAC, 1/1/2013]

~~[19.5.2.27]~~ **19.5.2.29 LITTERING:**

A. Visitors shall not dispose of solid or liquid waste in the state parks system, except in receptacles provided for that purpose.

B. [~~Glass containers are prohibited outside vehicles, motor homes, campers, trailers and tents within the state parks system except on established commercial premises.~~] The superintendent may designate and post an area or an entire park as pack-in, pack-out, where visitors are responsible for properly disposing their solid waste outside of the designated area or park.
[19.5.2.29 NMAC - Rp, 19.5.2.29 NMAC, 1/1/2008; 19.5.2.29 NMAC - Rn & A, 19.5.2.27 NMAC, 1/1/2013]

~~[19.5.2.28]~~ **19.5.2.30 ABANDONED PROPERTY:**

Unless the visitor has obtained the superintendent's prior written permission, personal property left in any park for longer than 14 calendar days shall be deemed abandoned. State park officials shall remove property deemed abandoned at the owner's expense and dispose of it as provided by law.

[19.5.2.30 NMAC - Rp, 19.5.2.27 NMAC, 1/1/2008; A, 12/30/2010; 19.5.2.30 NMAC - Rn, 19.5.2.28 NMAC, 1/1/2013]

~~[19.5.2.29]~~ **19.5.2.31 PROHIBITION OF ALCOHOLIC BEVERAGES:**

The director may prohibit alcohol consumption or possession within a park or a designated area within a park and the superintendent shall post notice of the prohibition.

[19.5.2.31 NMAC- Rp, 19.5.2.28 NMAC, 1/1/2008; 19.5.2.31 NMAC - Rn, 19.5.2.29 NMAC, 1/1/2013]

~~[19.5.2.30]~~ **19.5.2.32 FEES AND CHARGES:**

A. Upon entering a park, visitors shall pay fees and charges in accordance with 19.5.6 NMAC. The visitor shall display applicable permits in accordance with instructions provided with the permit. If a visitor fails to obtain a permit, state park officials may field collect fees and may include an administrative fee in addition

to the required fee. See 19.5.6 NMAC. The visitor's failure to pay the administrative fee may result in civil damages, criminal action or eviction from the park.

B. Fees, charges and permit display requirements do not apply to:

(1) government agencies or government officials or employees, including law enforcement and emergency service personnel, who are performing official duties (official duties do not include activities that do not have to occur in a park such as conferences, retreats or training);

(2) non-governmental emergency service personnel, such as private ambulance companies, who are performing their official duties;

(3) persons traveling nonstop through a park on a state or federal highway, county road, federal road or municipal road or street;

(4) on duty news media personnel who are reporting on events or activities within a park and are only in the park to report on those events or activities; or

(5) individuals or groups who are entering the park to provide volunteer services and have signed a volunteer agreement with the division or have made arrangements with the division to provide volunteer services.

C. Fees and charges do not apply to:

(1) division contractors, suppliers or agents or other persons providing services to a park who are not using the park or its facilities for purposes other than providing services to the park;

(2) concessionaires, concession permittees or their employees or commercial contractors, suppliers and agents who are only traveling to and from the concession and are not using the park or its facilities for personal use;

(3) persons needing to pass through a park to access private property who are only passing through the park and are not using the park or its facilities; [or]

(4) park support group members or volunteers who have a park pass issued pursuant to Subsection D of 19.5.2.36 NMAC; or

(5) persons who are only entering the Conchas Lake state park to access the concessionaire store, restaurant or bar at the north area of Conchas Lake state park and are not using the park or its facilities, provided they park in the designated concessionaire parking area at the north area.

D. Visitors not subject to Subsection B of ~~[19.5.2.30]~~ 19.5.2.32 NMAC shall display permits at all times inside a park.

E. The superintendent or director may waive or reduce park fees for primary or secondary school groups or college or university groups that are involved

with a division educational program or have made arrangements with the division to conduct research within a park or for governmental entities holding such activities as trainings or other educational activities or projects, retreats or conferences at a park.

F. State park officials may issue rain checks for unused, prepaid daily camping activities or the cancellation of a group shelter reservation.

G. The division or its contractors may charge fees in addition to the appropriate use fee for reservation processing and cancellation. The contractor or state park officials shall collect the reservation fee for those park sites where the division has established a reservation program. See 19.5.6 NMAC. Visitors shall pay the reservation fee in advance with applicable fees for camping, electricity or other service for the total reservation period.

H. In addition to the appropriate use fees, the division may charge additional fees for special events such as concerts, festivals, etc. The additional fees shall not exceed the value of admission to the special events.

[19.5.2.32 NMAC - N, 1/1/2008; 19.5.2.32 NMAC - Rn & A, 19.5.2.30 NMAC, 1/1/2013]

~~[19.5.2.31]~~ **19.5.2.33 PERMITS AND CONCESSIONS:**

Concession-operated camp grounds do not accept division-issued permits.

[19.5.2.33 NMAC - Rp, 19.5.2.28 NMAC, 1/1/2008; A, 12/30/2010; 19.5.2.33 NMAC - Rn, 19.5.2.31 NMAC, 1/1/2013]

~~[19.5.2.32]~~ **19.5.2.34 DAY USE AND CAMPING PERMITS:**

A. Day use permits.

(1) Day use permits authorize visitors to use park facilities that do not require other fees, such as meeting rooms or group shelters, from 6:00 a.m. to 9:00 p.m.; unless the superintendent has posted different hours.

(2) When purchasing the day use permit visitors shall comply with the instructions on the permit and provide, as requested, their name, address and vehicle license number as well as the date of purchase and the amount enclosed and, if applicable, their site number. Visitors shall indicate that they are only paying for day use.

B. Camping permits.

(1) Subject to the availability of a campsite, camping permits authorize visitors to camp in a park.

(2) When purchasing the camping permit visitors shall comply with the instructions on the permit and provide, as requested, their name, address and vehicle license number as well as their site number, the date of purchase, the amount enclosed

and length of stay and, if applicable, their annual permit number. Visitors shall also indicate that they are camping.

[19.5.2.34 NMAC - N, 1/1/2008; 19.5.2.34 NMAC - Rn, 19.5.2.32 NMAC, 1/1/2013]

[19.5.2.33] 19.5.2.35 ANNUAL PERMITS AND PASSES:

A. Annual day use passes.

(1) Annual day use passes authorize the vehicle owner or individual to access and use the park at no additional charge during the times indicated in 19.5.2.11 NMAC. Visitors may use annual day use passes at all parks, except at the Living Desert Zoo and Gardens state park and Smokey Bear historical park.

(2) When purchasing an annual day use pass visitors shall comply with the instructions on the pass and provide their name and address.

(3) The division does not issue extra vehicle passes for annual day use passes.

B. Annual camping permits.

(1) Annual camping permits authorize the vehicle owner or individual to access and use the park at no additional charge except for utility hookups during the times indicated in 19.5.2.12 NMAC. The annual camping permit allows the visitor one sleeping unit. A motor home towing a vehicle or a vehicle towing a camping trailer is considered a sleeping unit. The visitor shall pay the per night camping fee for additional vehicles.

(2) Annual camping permits are available for:

(a) New Mexico residents as documented with a current New Mexico driver's license or other state of New Mexico issued photo identification;

(b) New Mexico residents 62 years of age or older as documented with a current New Mexico driver's license or other state of New Mexico issued photo identification;

(c) New Mexico residents with disabilities who present a New Mexico handicap motor vehicle license plate issued to them; a ~~[blue handicap placard]~~ parking placard for mobility impaired individuals with a placard holder identification card issued to them by the taxation and revenue department, motor vehicle division if the placard was issued before June 4, 2008; a ~~[blue handicap placard]~~ parking placard for mobility impaired individuals with the photograph of the placard holder issued to them by the taxation and revenue department, motor vehicle division if the placard was issued on June 4, 2008 or after; a New Mexico department of game and fish lifetime hunting and fishing card containing their name; a written determination from the United States social security administration finding that they are currently eligible

for social security disability benefits or supplemental security income disability benefits; or a photocopy of the award letter the United States department of veterans affairs issues indicating they have a 100% service-connected disability; and

(d) all-out-of-state-residents including senior citizens and persons with disabilities.

(3) When purchasing an annual camping permit, visitors shall comply with the instructions on the permit and provide their name; address; if applicable, proof of age or residency; and the license plate number of the vehicle for which the visitor is purchasing the permit.

(4) Visitors may use annual camping permits at all parks, except at the Living Desert Zoo and Gardens state park and Smokey Bear historical park.

(5) Annual camping permits are authorized for use by the person the permit is issued to as indicated on the permit receipt and are non-transferrable.

C. Annual day use passes and annual camping permits expire 12 months after the date the division issues them. The division shall not make refunds or prorations for permits or passes that remain in effect for less than 12 months.

D. Visitors may obtain replacement annual camping permits and stickers by submitting a signed affidavit describing the facts of the purchase and the permit's loss or destruction and, if available, the original permit or proof of purchase. The division does not issue replacements for annual day use passes.

E. The division may sell gift certificates for annual day use passes and annual camping permits.

[19.5.2.35 NMAC - N, 1/1/2008; 19.5.2.35 NMAC - Rn & A, 19.5.2.33 NMAC, 1/1/2013]

[19.5.2.34] 19.5.2.36 DISABLED VETERANS PASSES:

A. Disabled veterans camping passes.

(1) A disabled veterans camping pass authorizes New Mexico resident veterans with a 50% or greater service-connected disability to camp at a park at no charge for three nights, consecutive or non-consecutive, within a 12-month period.

(2) To obtain the three one-night passes, an eligible veteran shall apply with the New Mexico department of veterans services for certification that verifies the veteran's disability and residency (current address) and that the New Mexico department of veterans services forwards to the division.

(3) Disabled veterans may obtain replacement camping passes and stickers by submitting a signed affidavit describing the facts of the issuance and loss or destruction

of the pass and, if available, the original pass or proof of issuance.

B. Disabled veterans annual day use passes.

(1) Disabled veterans annual day uses passes authorize New Mexico resident veterans with a permanent 50% or greater service-connected disability to obtain one annual day use pass at no charge for personal use only. An eligible veteran desiring more than one annual day use pass shall purchase additional annual day use passes at full price.

(2) To obtain an annual day use pass, an eligible veteran shall apply with the New Mexico department of veterans services for certification that verifies the veteran's disability and residency (current address) and that the New Mexico department of veterans services forwards to the division.

(3) The division does not issue replacements for disabled veterans annual day use passes.

[19.5.2.36 NMAC - Rp, 19.5.2.28 NMAC, 1/1/2008; A, 12/30/2010; 19.5.2.36 NMAC - Rn, 19.5.2.34 NMAC, 1/1/2013]

[19.5.2.35] 19.5.2.37 VETERANS' DAY:

On the federally designated legal holiday known as Veterans' day any New Mexico resident who provides satisfactory proof that the resident is currently serving or has served in the United States armed forces, and the resident's spouse and dependent children are entitled to free use of any park including the waiving of all day use, camping or other fees.

[19.5.2.37 NMAC - Rp, 19.5.2.28 NMAC, 1/1/2008; A, 12/30/2010; 19.5.2.37 NMAC - Rn, 19.5.2.35 NMAC, 1/1/2013]

[19.5.2.36] 19.5.2.38 PARK PASSES:

A. Concessionaires. The director or director designee (see Subsection Q of 19.5.7 NMAC) may issue park passes to concessionaires, concession permittees or their employees or commercial contractors, suppliers and agents for access to and from the concession. Concessionaires, concession permittees or their employees or commercial contractors, suppliers and agents using the park, lake or facilities away from the concession premise shall pay the appropriate fees.

B. Contractors. The director or director designee (see Subsection Q of 19.5.1.7 NMAC) may issue park passes to division contractors, suppliers or agents or other persons providing services to a park for access to the park. Division contractors, suppliers or agents or other persons providing services to a park using the park or its facilities for purposes other than providing services to a park shall pay the appropriate fees.

C. Access to private property. The director or director designee

may issue park passes to persons needing to pass through a park to access private property. Persons with such park passes shall only use the park passes to travel through the park. If they use the park or its facilities they shall pay the appropriate fees.

D. Park support groups and volunteers. The director or director designee may issue park passes to individuals who are members of a park support group that has entered into an agreement with the department or, as provided in division policy, to volunteers who significantly contribute to the division.

E. Complimentary park passes. The director or director designee (see Subsection Q of 19.5.1.7 NMAC) may issue complimentary passes as rainchecks to visitors for unused services or to resolve visitor complaints about park operation or maintenance.

F. Official use passes. The director may issue "official use only" passes to state government executive branch officials with direct oversight of the division, park advisory board members and state legislators for the performance of their official duties.

G. Advertising and promotions. To promote the parks or in exchange for advertising or promotion of parks, the director may issue free or discounted park passes or not charge fees if the director obtains the secretary's approval after the division provides the secretary with written justification showing that the issuance of park passes for promotion or advertising or not charging fees for promotional purposes provides a benefit to the division. Reduced rates for advertising must be equal to or exceed the value of the park passes that the division provides in exchange for receiving the reduced rates.

[19.5.2.38 NMAC - N, 12/30/2010; 19.5.2.38 NMAC - Rn, 19.5.2.36 NMAC, 1/1/2013]

[19.5.2.37] 19.5.2.39 SPECIAL USE PERMITS:

A. The division shall authorize public assemblies involving groups of more than 10 people; public assemblies involving groups of 10 people or less that are using stages, platforms or structures; or special events within the state parks system only by special use permit and only after payment of associated fees. Persons shall submit applications for special use permits to the superintendent of the park where the special event or public assembly is proposed at least 15 calendar days prior to the special event or public assembly, or at least 30 calendar days prior to the special event if the special event is a regatta, motorboat or boat race, marine parade, tournament or exhibition. The director may waive the time limits for submittal of special use permit applications where arrangements can

be made in a shorter time without placing an undue administrative burden on staff or when no special arrangements are necessary.

B. Persons shall complete the division-provided special use permit, which may include the park where the special event or public assembly is proposed; the location of the proposed special event or public assembly within the park; the date of the proposed special event or public assembly; start and end times for the proposed special event or public assembly; the number of people expected to attend; a detailed description of the proposed special event or public assembly; the applicant's name, address and phone number; a hold harmless requirement if the applicant is a non-governmental entity; insurance coverage; and designation of the type of proposed special event or public assembly (*i.e.* special use, marine event, park event, etc.).

C. The superintendent shall approve the special use permit, approve the special use permit with conditions or deny the special use permit as provided in [19.5.2.37] 19.5.2.39 through [19.5.2.39] 19.5.2.41 NMAC. The superintendent shall not issue a special use permit for a period of more than [five] 14 consecutive calendar days without the director's approval. The director may approve a special use permit for more than 14 consecutive calendar days if the event will exceed 14 consecutive calendar days. The park may charge fees in addition to the special use permit fee to cover costs of additional staff, facilities, etc. needed for the special event or public assembly. The division may enter into an agreement with the special use permittee to have the special use permittee pay a fee equal to the estimated fees, such as day use fees, that individuals attending the special event would have paid in fees in lieu of such fees.

D. No person shall violate a condition or restriction attached to or indicated on the special use permit. The division may revoke a permit if the permit holder violates 19.5.2 NMAC. The superintendent may also revoke a special use permit for any of the conditions that constitute grounds for denial of a special use permit as provided in Subsection B of [19.5.2.38] 19.5.2.40 NMAC for special events and Subsection B of [19.5.2.39] 19.5.2.41 NMAC for public assemblies, or for violation of the terms and conditions of the special use permit. Such a revocation shall be made in writing, with the reasons for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation may be made to be followed by written confirmation within 72 hours.

[19.5.2.39 NMAC - N, 12/30/2010; 19.5.2.39 NMAC - Rn & A, 19.5.2.37

NMAC, 1/1/2013]

[19.5.2.38] 19.5.2.40 SPECIAL EVENTS:

A. Special events are allowed in a park if the applicant has obtained a special use permit from the superintendent.

B. The superintendent shall deny a special use permit if such activities would:

(1) cause injury or damage to park resources;

(2) be contrary to the purposes for which the park is established or operated; or unreasonably impair the purposes for which the park is established or operated;

(3) unreasonably interfere with interpretive, visitor service or other program activities, or with the division's administrative activities;

(4) substantially impair the operation of the division's public use facilities or services of concessionaires or contractors;

(5) present a danger to the public health and safety;

(6) result in significant conflict with other existing uses; or

(7) not comply with the laws or policies of the landowner (*e.g.* United States department of the interior, bureau of reclamation; New Mexico department of game and fish; United States army corps of engineers, New Mexico state land office, etc.).

C. As a condition of the special use permit's issuance, the superintendent may require:

(1) for non-New Mexico government or non-federal government applicants, the filing of a bond payable to the director, in an amount adequate to cover costs such as restoration, rehabilitation and cleanup of the area used, and other costs resulting from the event; or

(2) the acquisition of liability insurance in which the state, department and division, and if applicable the landowner (e.g. United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir, are named as co-insured in an amount sufficient to protect the state, the department and the division, and if applicable the landowner.

D. The special use permit may contain such conditions as are reasonably consistent with protection and use of the park for the purposes for which it is established or operated. It may also contain reasonable limitations on the equipment used and the time and area within which the special event is allowed.

[19.5.2.40 NMAC - Rn & A, 19.5.2.38 NMAC, 1/1/2013]

[19.5.2.39] 19.5.2.41 PUBLIC ASSEMBLIES, MEETINGS:

A. Public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views are allowed within parks. A special use permit issued by the park superintendent is required for public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views that involve groups of

(1) more than 10 people; or

(2) 10 people or less who are using stages, platforms or structures.

B. The superintendent shall, without unreasonable delay, issue a special use permit on proper application unless:

(1) a prior application for a special use permit for the same time and place has been made that has been or will be granted and the activities authorized by that special use permit do not reasonably allow multiple occupancy of that particular area;

(2) it reasonably appears that the event will present a danger to the public health or safety; or

(3) the event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering such things as damage to park resources or facilities, interference with program activities or impairment of public use facilities.

C. If the superintendent denies a special use permit, the superintendent shall inform the applicant in writing with the reasons for the denial set forth.

D. The superintendent shall designate on a map, which shall be available in the office of the superintendent, the locations available for public assemblies. Locations may be designated as not available if such activities would:

(1) cause injury or damage to park resources;

(2) unreasonably interfere with interpretive, visitor service or other program activities, or with the division's administrative activities;

(3) substantially impair the operation of public use facilities or services of division concessionaires or contractors; or

(4) present a danger to the public health and safety.

E. The special use permit may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is established. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

F. It is prohibited for persons engaged in activities permitted or authorized pursuant to [19.5.2.39] 19.5.2.41 NMAC to obstruct or impede pedestrians or vehicles, harass park visitors, interfere with park programs or create security or

accessibility hazards.

[19.5.2.41 NMAC - Rn & A, 19.5.2.39 NMAC, 1/1/2013]

19.5.2.42 RESEARCH AND COLLECTIONS:

A. Academic research activities, including plant and animal collecting, are allowed in a park if the person or entity has obtained a research permit through the division's resource program.

B. The division shall deny a research permit if such activities would:

(1) cause undue injury or damage to park resources;

(2) be contrary to the purposes for which the park is established or operated; or unreasonably impair the purposes for which the park is established or operated;

(3) unreasonably interfere with interpretive, visitor service or other program activities, or with the division's administrative activities;

(4) substantially impair the operation of the division's public use facilities or services of concessionaires or contractors;

(5) present a danger to the public health and safety;

(6) result in significant conflict with other existing uses;

(7) not comply with the laws or policies of the landowner (e.g. United States department of the interior, bureau of reclamation; New Mexico department of game and fish; United States army corps of engineers; New Mexico state land office, etc.); or

(8) not comply with federal or state laws concerning threatened and endangered species or cultural resources.

C. As a condition of the research permit's issuance, the division may require:

(1) the acquisition of liability insurance in which the state, department and division, and if applicable the landowner (e.g. United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir, are named as co-insured in an amount sufficient to protect the state, the department and the division, and if applicable the landowner; or

(2) the permittee to submit to the resource program a written report summarizing the data collected within six months of completion of the permitted activity.

D. The research permit may contain such conditions as are reasonably consistent with protection and use of the park for the purposes for which it is established or operated. It may also contain reasonable limitations on the equipment used and the time and area within which the research activity is allowed.

E. The park may charge

fees to cover costs of additional staff, facilities, etc. needed for the research activities.

[19.5.2.42 NMAC - N, 1/1/2013]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT STATE PARKS DIVISION

This is an amendment to 19.5.3 NMAC, Section 12, effective January 1, 2013.

19.5.3.12 MODIFICATION OF PARK MANAGEMENT AND DEVELOPMENT PLAN:

The division shall not modify or change a park management and development plan without a public comment period as provided in 19.5.3.10 NMAC. [~~The division shall review and update park management and development plans in effect at least every five years.~~] The division may review and update park management and development plans at any time if the director determines review is necessary.

[12-31-96; 19.5.312 NMAC - Rn & A, 19 NMAC 5.3.12, 12/31/2002; A, 1/1/2008; A, 1/1/2013]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT STATE PARKS DIVISION

This is an amendment to 19.5.5 NMAC, Sections 8 through 10 and 14 through 20, effective January 1, 2013.

19.5.5.8 SUBMITTAL OF PROPOSALS FOR CONCESSION CONTRACTS:

A. An interested person seeking to operate a concession within a park or a concessionaire within a park who wishes to expand services beyond the location the concession contract authorizes may send a proposal summary including a brief description of the concession operation with the services to be offered, the concession's proposed location within the park and a description of how the concession meets the criteria in Subsection A of 19.5.5.9 NMAC to the superintendent at the park where the concession is proposed.

B. The director shall evaluate the proposal summary, with the understanding that new or replacement contracts shall be awarded on a competitive basis and notify the interested person and any existing concessionaire that:

(1) the proposal summary indicates the concession does not fit the criteria as listed in Subsection A of 19.5.5.9 NMAC; or

(2) the division will issue a request for concession proposals and the interested person may submit a proposal.

C. The division may request concession proposals when the division determines that there is a concession opportunity within a park, when a concession contract with an existing concessionaire has been terminated or expires or when an existing concessionaire no longer wishes to provide the services. The division shall consider at least the following in deciding whether to issue a request for proposals for the concession:

(1) the park's location, remoteness and, if applicable, facility accommodations;

(2) the population of the area surrounding the park and similar services being offered within the area;

(3) whether other persons have expressed an interest in providing the concession;

(4) the proposed concession operation's size; and

(5) whether an existing concession can provide the new and expanded service, as provided by the existing contract.

D. An interested person responding to a request for concession proposals shall submit the original of a concession proposal consisting of a cover letter and proposal summary, bound with tab dividers indicating the separately numbered paragraphs corresponding to the following numbers and information requested to the concessions administrator at the division office in Santa Fe through the superintendent at the prospective park where the concession is to be located.

(1) Business plan for the proposed concession that identifies:

(a) the type of business;

(b) the park name and the business' specific location within the park;

(c) services to be offered;

(d) proposed concession fee;

(e) the percentage mark up of goods and services to be offered;

(f) a description of how the business will be operated;

(g) an assurance statement that the concessionaire will follow all federal, state and local statutes or ordinances and regulations or rules;

(h) a proposed maintenance schedule;

(i) a building and improvements schedule outlining any proposed capital improvements, including a plan for the financing of the capital improvements, if applicable;

(j) identification of all investors or potential investors; and

(k) a current financial statement.

(2) A market analysis that:

(a) defines the market area;

(b) identifies existing concessions

and other similar ventures within the market area and an indication of their success;

(c) provides the results of any existing public demand survey; and

(d) estimates the economic impact to the park and neighboring community.

(3) Plan for advertising and promoting the proposed concession and the park.

(4) Environmental evaluation of the effects of operating the proposed business that addresses solid and liquid waste generation/removal; air quality; water quality; and compliance with federal, state and local environmental laws.

(5) A cultural property evaluation that includes the identification and significance of cultural properties in the project area and outlines the project impact on cultural properties and proposed impact mitigation, which follows appropriate state or federal cultural property legislation, guidelines and standards, and is coordinated with appropriate federal and state agencies, including the state historic preservation office.

(6) Statement of the proposed terms and conditions relating to revenue generated to the state and term of agreement.

(7) Identification of required permits from other agencies and authorization or pre-approval, as required.

(8) Description of past business or other experience that demonstrates the interested person's ability to operate the concession.

(9) Projected revenue statement.

E. The division shall not evaluate incomplete proposals. The division may request additional information from the interested person as necessary for the proposal's review and evaluation.

F. The division may allow persons submitting proposals the opportunity to discuss the proposals with the division and revise the proposals, but may accept proposals without these discussions. The division may permit interested persons to revise their proposals after submittal of proposals and prior to the division's acceptance for the purpose of obtaining best and final offers. The division may conduct negotiations with interested persons who submit proposals the division finds to be reasonably likely to be selected.

G. The division should notify the interested person of its decision to accept or reject the proposal. During the review process, the division reserves the right to seek comment on a proposal from the public, federal and state agencies and other appropriate entities. If the division requests comments, it may take additional time to review and evaluate a proposal and reach a decision to accept or reject the proposal.

H. When an existing concession contract expires, the division

shall not give the existing concessionaire preference for selection. The division may consider performance and the amount of capital investment in the selection process.

[19.5.5.8 NMAC - Rp, 19.5.5.8 NMAC, 1/1/2008; A, 1/1/2013]

19.5.5.9 C R I T E R I A FOR GRANTING CONCESSION CONTRACTS:

The secretary shall consider at least the following in determining whether or not to grant a concession contract.

A. Concessions shall:

(1) provide a needed service or a service in which visitors have shown a substantial interest and the service is not adequately provided within the park or within the area;

(2) provide services to the general public rather than a particular individual or group;

(3) enhance, improve, protect and conserve park natural, historical and cultural resources;

(4) provide reasonable revenue to the state in exchange for the concession agreement;

(5) include facilities, if required, that are of sufficient size to support the proposed activity and that are harmonious in form, line, color and texture with the surrounding landscape; and

(6) be consistent with the park management and development plan in effect for the park in which the concession is to be located.

B. The division shall not grant new concession contracts unless the director and secretary have approved a park management and development plan that identifies the concession development.

C. Concessionaires shall:

(1) provide evidence to the division that the concessionaire possesses a sufficient level of experience and adequate financial resources to operate the concession in an efficient and professional manner; and

(2) not have past concession performance problems, such as repeated noncompliance with previous or current concession contracts or concession permits or 19.5.5 NMAC.

[19.5.5.9 NMAC - Rp, 19.5.5.9 NMAC, 1/1/2008; A, 1/1/2013]

19.5.5.10 C O N C E S S I O N CONTRACT PROVISIONS:

Following a proposal's acceptance, the division shall enter into negotiations with the successful offeror for a concession contract to operate the concession or with a concessionaire to amend an existing concession contract. To the extent 19.5.5.10 NMAC contradicts an existing concession contract in effect on May 15, 1997, 19.5.5.10 NMAC shall not apply to those contracts unless they are renegotiated or amended. The concession

contract's provisions shall be consistent with the following requirements.

A. The concession contract's term shall be limited to the shortest period possible and the term shall not exceed five years unless justified by at least the following: the amount of a concessionaire's investment, the capital improvements made or to be made on the premises and the types of services offered. Under no circumstances shall the concession contract's term exceed 30 years. The division may terminate the concession contract for the concessionaire's noncompliance with the concession contract or 19.5.5 NMAC, or if the division's lease or other agreement with the landowner (e.g. United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir terminates.

B. Each concession contract shall include a legal description or a detailed map that defines the area in which the concession will operate.

C. A concession contract is subject to limitations applicable federal and state agencies place on the division. The division reserves the right to install park facilities and utilities and to use the park for authorized purposes. The division reserves the right to close the park or the concessionaire's operations for reasonable law enforcement or safety purposes.

D. A concession contract shall require the concessionaire to pay the division a monthly concession fee, based on a flat fee or a percentage of the concessionaire's net receipts from sales and services. The concessionaire shall submit the concession fee and a monthly report detailing net receipts from sales and services on a division provided form to the concessions administrator at the division office in Santa Fe. The concession fee and monthly report shall be postmarked no later than 5:00 p.m. on the 25th day of the month after the reporting month, unless the 25th falls on a Saturday, Sunday or state-recognized holiday in which case the concession fee and monthly report shall be postmarked no later than 5:00 p.m. of the next business day. The concessionaire's failure to submit the concession fee and monthly report shall result in a penalty fee of 10 percent of the concession fee for the month that is late or \$50.00, whichever is greater.

E. The concession contract shall include a schedule for construction. If the schedule for construction includes improvements to publicly owned property, the division may authorize the concessionaire in writing to expend a percentage of amounts due the division in lieu of remitting them to the division for construction and alterations to publicly owned property to benefit the park. Improvements shall be consistent with the park management and development

plan and the concessionaire shall obtain the division's, and if applicable the landowner's, prior approval for the improvements.

F. The concession contract shall require the concessionaire to have liability [~~and workers' compensation~~] insurance naming the state of New Mexico, the department and the division, and if applicable the landowner from which the division leases the land or reservoir, as co-insured, and indemnifying the state of New Mexico, the department [~~and other state agencies or the United States, if required~~] and the division, and if applicable the landowner from which the division leases the land or reservoir, for public liability, personal injury and property damage in amount equal to or greater than the liability limits set forth in NMSA 1978, Section 41-4-19, as it may be amended from time to time along with worker's compensation insurance, if applicable, prior to taking control of the concession premises.

G. The concession contract shall require the concessionaire, prior to taking control of the concession premises, to have the greater of:

(1) financial assurance satisfactory to the division conditioned upon the faithful performance of the concession contract in a minimum amount of 10 percent of the gross receipts from sales and services for the prior year; or

(2) financial assurance satisfactory to the division conditioned upon the faithful performance of the concession contract in a minimum amount of \$5,000 annually, by performance bond or irrevocable letter of credit; if the receipts are anticipated to be less than \$50,000, the division shall consider the concession operation's size and nature and may reduce the financial assurance amount.

H. The concessionaire shall properly maintain concession facilities and real property the concessionaire intends to use in operating the concession and capital improvements the concessionaire makes to the premises. The concessionaire shall complete maintenance with due diligence, in a commercially reasonable manner, so as to ensure visitors' health, safety and welfare. The concessionaire shall prepare an annual operation and maintenance plan, which requires the superintendent's approval. The superintendent shall submit a copy of the approved operation and maintenance plan to the concessions administrator. The approved operations and maintenance plan shall become part of the file the concessions administrator maintains.

I. The concessionaire shall comply with appropriate local, state and federal laws and shall comply with current applicable environmental regulations or rules and building code requirements, including those for accessibility, historical preservation

and cultural properties protection. The concessionaire shall obtain applicable permits prior to beginning construction and provide copies to the superintendent.

J. Concessions offering food services shall comply with federal statutes and regulations, state statutes and rules and county or municipal ordinances regarding food sanitation.

K. A concession's advertising and signs within the park shall be subject to the director's prior written approval, and the appropriate federal agency or other state agency if applicable. Approvals shall become a part of the file the concessions administrator maintains. Advertising through any media, including the internet, shall acknowledge that the concession premises are within the park in which the concession is located. Printed information using the logo of the division or a federal agency or other state agency requires prior written approval from the division or the federal agency or other state agency.

L. No concession contract shall be amended except by written instrument executed by the parties and approved by the New Mexico board of finance and applicable state or federal agencies.

M. Either the division or a concessionaire may request to amend the concession contract provisions or to renegotiate the contract at any time during the contract term. A concessionaire shall make such a request in writing to the superintendent. Within 30 calendar days of receipt of such a request, the division should either notify the concessionaire of its decision or schedule a meeting with the concessionaire to negotiate the contract. If the concessionaire seeks to amend the contract provisions or to renegotiate the contract in order to expand services beyond those authorized by the concession contract, the concessionaire shall comply with 19.5.5.8 NMAC. The concessionaire shall also submit a copy of a request for amendment to the concessions administrator.

N. [~~Upon expiration or termination of the concession contract, the concessionaire shall have 120 calendar days to either sell the permanent improvements that have been placed on the concession premises with the secretary's prior written approval as required in Subsection N of 19.5.5.10 NMAC or remove the personal and movable property from the concession premises at the concessionaire's own cost. The concessionaire shall restore the concession premises to a safe and natural condition after removing permanent improvements that the division has not authorized the concessionaire to leave in place.~~] Upon expiration or termination of the concession contract the following shall apply

to disposal or removal of improvements.

(1) Upon expiration or termination of the concession contract, the incoming concessionaire shall purchase the permanent improvements that have been placed on the concession premises with the secretary's prior written approval. Sale of improvements and personal property shall be at appraised value and conducted as follows. The current concessionaire shall at concessionaire's own expense provide an appraisal conducted by a licensed independent appraiser six months prior to expiration of the contract. Any person submitting a concession proposal pursuant to 19.5.5.8 NMAC, for an existing concession where such appraised improvements exist, shall provide, with his or her proposal, proof of financing based on the appraisal. Upon award the incoming concessionaire may accept the appraisal or at the incoming concessionaire's expense conduct a second appraisal. If neither appraisal is acceptable to both the prior concessionaire and the incoming concessionaire a third appraiser acceptable to both may be sought. The third appraisal shall be binding on both the prior concessionaire and incoming concessionaire.

(2) If upon the expiration or termination of the concession contract there is not an incoming concessionaire, within 120 calendar days after expiration or termination the concessionaire shall remove the personal property and any permanent improvements the division has directed the concessionaire to remove from the concession premises at the concessionaire's own costs and the concessionaire shall restore the concession premises to a safe and natural condition after removing permanent improvements that the division has not authorized the concessionaire to leave in place.

O. A concessionaire shall establish and maintain a system for record keeping that uses generally accepted accounting principles. A concessionaire shall submit a year-end financial statement a New Mexico independent certified public accountant prepared that includes an income statement, balance sheet and statement of cash flows no later than 90 calendar days after the end of the concession fiscal year to the concessions administrator at the division office in Santa Fe. The level of certified public accountant assurance certification may be an audit, review or compilation of the financial statements. The division shall consider the amount of the concessionaire's gross receipts from sales and services and length of term of the concession contract when determining the level of certification required.

P. The department and, if applicable, the federal agency or other state agency shall have access to and may examine and audit a concessionaire's pertinent books, documents, papers and other records related to the concession business operated

pursuant to the concession contract during the concession contract's term and for three years after the concession contract has expired. A concession shall make such records available at the concession operation or at the division's office in Santa Fe upon demand during usual business hours. Such records include financial, employer and equipment records.

Q. If the division operates the park in which the concession is located pursuant to a lease with a local, state or federal agency, the concession contract is subject to the lease agreement between the division and the agency and may require the appropriate agency's approval. [19.5.5.10 NMAC - Rp, 19.5.5.10 NMAC, 1/1/2008; A, 1/1/2013]

19.5.5.14 CONCESSION PERMITS:

A. A concession permit is valid for one year or less. For outfitters and guides, the concession permit's full one-year period is from April 1st until March 31st annually. All other concession permits are valid for 12 months from the date of issue, unless otherwise indicated on the concession permit. The concession permit activity is allowed only on the date or dates of activity approved in the permit.

B. A person applying for a concession permit shall obtain a concession permit application from the superintendent at the park where the applicant intends to operate. The application shall require the following information: a detailed description and location of the proposed activity, when the proposed activity will take place and the number of people involved; the applicant's information including name, address and telephone number; the applicant's New Mexico tax identification number and proof of insurance naming the state of New Mexico, the department and the division, and if applicable the landowner from which the division leases the land or reservoir, as additional insured; and a hold harmless agreement signed by the applicant. The person shall complete the application and return it to the superintendent along with the concession permit fee (see 19.5.6 NMAC). An outfitter or guide shall submit a concession permit application to the superintendent by March 1st if the applicant intends to hold a concession permit for the full permit term beginning April 1st.

C. The superintendent shall review the application and determine whether the service or activity meets the following criteria:

(1) does not significantly adversely impact an existing concessionaire's operation;

(2) provides a needed service to park visitors or a service in which the public has shown a substantial interest;

(3) enhances, improves or protects park resources or enjoyment thereof; and

(4) meets the concession permit definition in 19.5.1.7 NMAC.

D. The superintendent should contact the applicant within 15 calendar days if the application is incomplete. The superintendent may request additional information from the applicant as necessary for the application's review and evaluation. The regional manager shall submit applications the superintendent and regional manager approve to the concessions administrator for the division's processing and review and the secretary's final approval.

E. The concession permittee shall not maintain fixed assets within the park.

F. The concession permittee's business address shall be outside of the park.

G. Concession permittees, their employees and their clients shall pay applicable fees associated with a park's use. See 19.5.6 NMAC.

H. A concession permit is valid only within the park for which it is issued. However, a concession permittee may use a single concession permit for Heron Lake state park and El Vado Lake state park or Elephant Butte Lake state park and Caballo Lake state park and Percha Dam state park.

I. The division shall not issue a concession permit until the applicant has provided proof of insurance for public liability for personal injury and property damage, which shall at a minimum provide a \$1,000,000 limit for each occurrence and a \$2,000,000 general aggregate limit in which the state of New Mexico, department and division, and if applicable the landowner from which the division leases the land or reservoir, are named as co-insured.

J. Concession permittees, their employees and their clients are subject to appropriate state rules and federal regulations.

K. Concession permits are not transferable. A concession permittee shall not sell or transfer a concession permit for any reason. The department shall not refund a portion of the permit fee if the permittee ceases business during the permit year.

L. The director may limit the number and type of concession permits issued for a park in order to protect park resources. In determining whether to limit the number or type of concession permits, the director shall consider factors such as impact to the park infrastructure or impact to natural resources such as vegetation, erodible soils, etc. The director may prescribe special requirements and conditions for concession permits when it is in the division or state's best interests, including limitations on use

of park resources, grounds and facilities; designation of a specific area within a park in which a concession permittee is allowed to operate; designation of specific days or hours during which a concession permittee is allowed to operate; limitations on prices the concession permittee charges; requirements for submission of use and price data including number of customers and charges for services provided; and training requirements.

M. A permittee shall not violate a condition or restriction of the concession permit or 19.5.5 NMAC. The division may immediately cancel a concession permit if the permittee violates the concession permit or 19.5.5 NMAC. [19.5.5.14 NMAC - Rp, 19.5.5.14 NMAC, 1/1/2008; A, 1/1/2013]

19.5.5.15 **OUTFITTERS AND GUIDES:**

A. An outfitter may apply for one concession permit and purchase guide cards for guides the outfitter employs who will be conducting guided fishing, boating or rafting trips. The outfitter shall provide the superintendent with a list of guides authorized to conduct guided trips for the outfitter and request the number of guide cards the outfitter wishes to purchase at the time the outfitter submits a concession permit application and fee. The fee for a guide card shall be the same as the fee for a concession permit. See 19.5.6 NMAC. During the concession permit's term, the outfitter shall have public liability [and] insurance naming the state of New Mexico, the department and the division, and if applicable the landowner from which the division leases the land or reservoir, as principal beneficiaries and shall have, if applicable, workers' compensation insurance in force and effect with a carrier licensed to do business in New Mexico [naming the state of New Mexico, the department and the division as principal beneficiaries]. The public liability insurance shall cover personal injury and property damage in amounts equal to or greater than the liability limits set forth in NMSA 1978, Section 41-4-19, as it may be amended from time to time.

B. The number of guides on the [permittee's] outfitter's guide list may exceed the number of guide cards the [permittee] outfitter purchased. However, at no time shall the number of guides conducting commercial activity in a park exceed the number of guide cards the division issued to the [permittee] outfitter. Only guides whose names appear on the [permittee's] guide list may conduct guided trips.

C. Each guide shall be able to present a guide card to a state park official at all times when the guide is conducting commercial activity in a park. A person

shall not conduct commercial guiding activities without having a guide card in his or her possession. An outfitter or guide shall present the guide card to a state park official when requested to do so.

D. The [permittee] outfitter is responsible for all guide cards the division issues to the permittee and for updating the guide list as necessary and providing the updated guide list to the superintendent.

E. Each outfitter shall submit an annual report that provides information concerning the outfitter's activities for the preceding year to the superintendent by [March] April 15th. Annual reports shall include dates of guided trips, number of trips on each date and total number of clients on each date or a statement that no trips were made during the year.

F. An outfitter or guide shall not take more than three clients on a wade trip or more than three clients on a float boat at one time.

G. Outfitters and guides are subject to boat safety inspections at all times while boating.

H. Commercial boat use on the San Juan river, Navajo Lake state park is allowed only from the Texas hole and downstream.

I. Outfitters shall identify their boats with the outfitter's company name prominently and clearly printed on the vessel on both the port and starboard sides. Lettering shall be at least three inches in height.

J. Outfitters or guides shall display a concession permittee vehicle pass while conducting commercial activities within the boundaries of a state park. The concession permittee vehicle pass does not exempt the holder from paying park fees if the outfitter or guide is using the park or its facilities for personal use.

K. Outfitters shall submit trip ticket information using the internet-based trip ticket reporting system for commercial trips. The outfitter, or the outfitter's guide or agent, shall complete this form prior to the trip commencing. The guide conducting the trip shall carry a copy of the trip ticket for the duration of the commercial trip. A person shall not conduct commercial fishing or hunting activities within a state park without having a valid trip ticket in his or her possession.

[19.5.5.15 NMAC - Rp, 19.5.5.14 NMAC, 1/1/2008; A, 1/1/2013]

~~19.5.5.16~~ **S P E C I A L REQUIREMENTS FOR THE SAN JUAN RIVER LOCATED IN NAVAJO LAKE STATE PARK:**

A. ~~A permittee or guide shall not take more than three clients on a wade trip or more than three clients on a float boat at one time:~~

~~**B.** Permittees and guides are subject to boat safety inspections at all times while boating:~~

~~**C.** Permittees shall not anchor boats to fishing piers and shall anchor boats well away from fishing piers:~~

~~**D.** Commercial boat use is allowed only from the Texas hole downstream:~~

~~**E.** Permittees and guides shall ready their boats before launching. After launching, permittees and guides shall remove vehicles and trailers from the launching area or park the vehicles and trailers in designated parking areas. Vehicle use is restricted to launching and retrieving roads. Vehicle use on other roads or trails inside gated areas is prohibited:~~

~~**F.** Permittees and guides may access restricted or special use areas for launching and loading boats. Permittees, guides and permittees' employees or agents shall close gates upon leaving those areas when no other boaters are using or waiting to use the launching or loading areas:~~

~~**G.** Permittees shall identify their boats with the permittee's company name prominently and clearly printed on the vessel on both the port and starboard sides. Lettering shall be at least three inches in height:~~

~~**H.** Division personnel shall mark annual day use passes for outfitters and guides with a code number specifically assigned to each outfitter. When purchasing annual passes, permittees and guides shall advise division personnel that they represent an outfitter:~~

~~**I.** Permittees shall submit a Navajo lake state park San Juan river trip ticket for commercial trips taken on the San Juan river. The superintendent shall provide permittees with trip tickets. The permittee or the permittee's guide or agent, shall complete this form on the day of each commercial trip and deposit the completed form in a park self-pay tube on the same day a trip is made. Self-pay tubes are available on the San Juan river for this purpose. A self-pay tube is also available at the Navajo lake state park visitor center:~~

~~**J.** Permittees and guides operating on the San Juan river shall have a current red cross or American heart association CPR certificate and a current red cross or American heart association basic first aid certificate. Permittees shall submit certificates to the superintendent:~~

~~**K.** Permittees are responsible for training guides in safe boating and wading operations and proper fishing etiquette:]~~

[19.5.5.16 NMAC - Rp, 19.5.5.14 NMAC, 1/1/2008; Repealed, 1/1/2013]

~~[19.5.5.17] 19.5.5.16~~

PROHIBITED

COMMERCIAL

ACTIVITIES: The following commercial activities are prohibited within the state parks system:

- A. commercial activity without written authorization pursuant to a concession contract, concession permit, film permit or special use permit;
- B. services or activities not benefiting the visitor’s experience;
- C. services or activities that may threaten the public’s health or safety;
- D. services or activities that may threaten or damage park resources;
- E. sale of goods or services outside of a specifically-defined location designated for a concession, unless authorized in a concession permit, special use permit or cooperative agreement; and
- F. solicitation of unwanted business.

[19.5.5.16 NMAC - Rp, 19.5.5.14 NMAC, 1/1/2008; 19.5.5.16 NMAC - Rn, 19.5.5.17 NMAC, 1/1/2013]

[19.5.5.18]19.5.5.17 CONCESSION MANAGEMENT PROCEDURES: The superintendent is the division’s designated representative with concessionaires and concession permittees in day-to-day operations. Concessionaires shall direct questions concerning a concession contract or permit, including responsibilities pursuant to the contract or permit and interpretation of a contract’s or permit’s terms to the superintendent. Concessionaires or concession permittees shall direct questions, problems or complaints to the superintendent. The concessions administrator shall maintain historical, fiscal and administrative records at the division office in Santa Fe to ensure compliance with the concession contract. The concessions administrator shall notify the director of a concession contract’s expiration at least nine months prior to the expiration date.

[19.5.5.17 NMAC - Rp, 19.5.5.15 NMAC, 1/1/2008; 19.5.5.17 NMAC - Rn, 19.5.5.18 NMAC, 1/1/2013]

[19.5.5.19] 19.5.5.18 INSPECTIONS:

- A. Concessionaires are subject, with prior notice, to a state park official’s inspection of the concession premises for public safety and health reasons and to monitor compliance with the concession contract and operation and maintenance plan. Concessionaires shall always maintain a safe and healthy environment for the public and the concessionaire’s employees. If applicable, the landowner from which the division leases the land or reservoir may inspect the concession premises.
- B. The department shall have the right to close down a concession operation at any time without prior notice in order to protect the safety and health of parks, visitors and staff.
- C. Concession operations shall comply with applicable codes and rules or regulations of applicable authorities.

[19.5.5.18 NMAC - Rp, 19.5.5.16 NMAC, 1/1/2008; 19.5.5.18 NMAC - Rn & A, 19.5.5.19 NMAC, 1/1/2013]

[19.5.5.20]19.5.5.19 PREFERENCES FOR BLIND PERSONS: The department shall comply with NMSA 1978, Section 22-14-27 in assuring that it gives blind persons the commission for the blind licenses preference in the establishment and operation of vending machines with the state parks system when blind persons may properly and satisfactorily operate vending machines.

[19.5.5.19 NMAC - Rp, 19.5.17 NMAC, 1/1/2008; 19.5.5.19 NMAC - Rn, 19.5.5.20 NMAC, 1/1/2013]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
STATE PARKS DIVISION

This is an amendment to 19.5.6 NMAC, Sections 11, 15, and 18 and repeal of Section 20, effective January 1, 2013.

19.5.6.11 ANNUAL CAMPING PERMIT (per vehicle includes one tow vehicle upon request):

| | |
|--|----------|
| New Mexico resident | \$180.00 |
| New Mexico senior resident - 62 years or older | \$100.00 |
| New Mexico physically disabled resident (see Subsection B of [19.5.2.33] 19.5.2.35 NMAC) | \$100.00 |
| Out-of-state resident | \$225.00 |

[19.5.6.11 NMAC - Rp, 19 NMAC 5.6.11, 5/1/04; A, 1/1/08; A, 1/1/13]

19.5.6.15 SPECIAL USE PERMIT: \$15.00 (see [19.5.2.37] 19.5.2.39 NMAC)

[19.5.6.15 NMAC - Rp 19 NMAC 5.6.15, 5/1/04; A, 1/1/08; A, 1/1/13]

19.5.6.18 MEETING ROOM:

- A. Conference room.

| | |
|-----------------|---------|
| Park open hours | \$30.00 |
| After hours | \$60.00 |

- B. Entire entrance building.

| | |
|-----------------|----------|
| Park open hours | \$125.00 |
| After hours | \$275.00 |

- C. Hyde Memorial state park lodge, Mesilla Valley state park visitor center, Eagle Nest Lake state park visitor center and Bottomless Lakes state park pavilion.

| | |
|---|----------|
| Rental inclusive of day use fees | \$500.00 |
| Damage and cleaning deposit (reimbursed upon satisfactory inspection) | \$200.00 |

- D. Persons using the facilities listed in 19.5.6.18 NMAC may be required to enter into an agreement with the division that contains conditions of use.

[19.5.6.18 NMAC - Rp, 19 NMAC 5.6.18, 5/1/04; A, 1/1/08; A, 1/1/13]

19.5.6.20 **[RESERVATIONS:** _____ \$ 9.95] **[RESERVED]**

[19.5.6.20 NMAC - Rp, 19 NMAC 5.6.20, 5/1/04; Repealed, 1/1/13]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
STATE PARKS DIVISION

This is an amendment to 19.5.7 NMAC, Sections 9 and 12, effective January 1, 2013.

19.5.7.9 **ACTIVITIES NOT REQUIRING A FILM PERMIT:** [An individual or entity does not need to obtain a film permit:

~~A.~~ when using a camera or other audio or video recording device for the individual or entity's own personal use in areas open to visitors;

~~B.~~ for commercial photography, so long as the project does not require a film permit for any of the reasons stated in 19.5.7.8 NMAC; or

~~C.~~ when filming or photographing a news event that occurs in a park.]

~~A.~~ An individual or entity does not need to obtain a film permit:

~~(1)~~ when using a camera or other audio or video recording device for the individual's or entity's own personal use in areas open to visitors;

~~(2)~~ for commercial photography, so long as the project does not require a film permit for any of the reasons stated in 19.5.7.8 NMAC; or

~~(3)~~ when filming, photographing or audio recording a news event that occurs in a park.

~~B.~~ When a film permit is not required pursuant to Subsection A of 19.5.7.9 NMAC, a special use permit may be required pursuant to 19.5.2.39 NMAC, depending on the scope of the activity.

[19.5.7.9 NMAC - N, 1/1/2008; A, 1/1/2013]

19.5.7.12 **FILM PERMIT FEES:**

A. Non-refundable application fee: [~~\$100.00~~] \$100.

B. Rental fees.

| | |
|--|----------------------|
| Motion pictures/videos/television documentaries: | |
| 1-30 people | \$250/location/day |
| 31-60 people | \$500/location/day |
| over 60 people | \$1,000/location/day |
| Commercial still photography: | |
| 1-10 people | \$100/location/day |
| 11-30 people | \$150/location/day |
| over 30 people | \$250/location/day |

C. Monitoring fees: \$25 per ranger/per hour.

D. Damage deposits.

| | |
|---|---------------------------------------|
| Less than five people, no stock (animals), props or sets | \$500 |
| Five to 10 people, no stock (animals) | \$1,000 |
| Six to 24 people or up to five consecutive calendar days scheduled filming; complex sets; construction of sets at location | \$2,000 plus \$100 per animal/per day |
| 25 or more people or more than five consecutive calendar days scheduled filming; complex sets; construction of sets at location | \$5,000 plus \$100 per animal/per day |

E. The superintendent or director may waive or reduce the fees for individual student projects that are non-commercial.

[19.5.7.12 NMAC - N, 1/1/2008; A, 1/1/2013]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.7.10 NMAC, Sections 2, 3, 7, 8, 9, 100, 101, 102, 104, 200, 201, 202, 300, 400, 401, 500, 501, 504 and 505, effective January 6, 2013.

20.7.10.2 **SCOPE:** All persons who own or operate a public water system or for sections 200 and 201, any persons constructing a public water system project. This part shall apply to each public water system, unless the public water system meets all of the following conditions: (a) it consists of only distribution and storage facilities (and does not have any collection and treatment facilities); (b) it obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply; (c) it does not sell water to any person; and (d) it is not a carrier which conveys passengers in interstate commerce.

[20.7.10.2 NMAC - Rp 20 NMAC 7.1.I.2, 12/04/2002; A, 01/06/2013]

20.7.10.3 **STATUTORY AUTHORITY:** NMSA 1978, Sections 74-1-6, 74-1-8, 74-1-10, 74-1-13 and 74-1-13.1.

[20.7.10.3 NMAC - Rp 20 NMAC 7.1.I.3, 12/04/2002; A, 04/16/2007; A, 01/06/2013]

20.7.10.7 DEFINITIONS: [In addition to the terms defined in 40 CFR Parts 141 and 143, the following terms, as used in this part shall have the following meanings:

A. "As-built drawings" means construction drawings that show details of work as originally planned plus modifications and deviations to reflect actual construction.

B. "CFR" means the code of federal regulations.

C. "Cross-connection" means any unprotected actual or potential connection or structural arrangement between a public water system and any other source or system through which it is possible to introduce into any part of the public water system any contaminant or non-potable substance.

D. "Department" means the New Mexico environment department.

E. "Guidance document" means any manual or other document developed or adopted by the department for official use to provide general direction, instruction or advice to department employees in determinations regarding application of or compliance with regulations.

F. "Modification" means the replacing, changing, installing, adding to, or construction of a component of an existing public water system to increase or decrease the system's capacity to draw or supply water or to improve its performance or service life. Neither routine maintenance nor the replacement of electrical or mechanical equipment is a modification for purposes of this part.

G. "Non-public water system" means a system for the provision of water for human consumption for domestic purposes, if such system does not have at least fifteen service connections and does not regularly serve an average of twenty-five individuals at least sixty days out of the year.

H. "Public water system project" or "project" means the construction of a new public water system, modification to an existing public water system, or conversion of a non-public water system to a public water system.

I. "Record drawings" means as-built drawings certified by a registered professional engineer on behalf of a public water system.

J. "Sanitary survey" means an onsite review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water. A sanitary survey evaluates at least nine components: source; treatment; distribution system; finished water storage; pumps; pump facilities and controls; monitoring and reporting and

data verification; system management and operation; and operator compliance with state requirements.

K. "Secretary" means the secretary of the environment department, or an authorized representative.

L. "Service connection" means a pipe, hose, appurtenance, constructed conveyance or any other temporary or permanent connection between a public water system and a user.

M. "State act" means the Environment Improvement Act, NMSA 1978, Section 74-1-1 et seq.

N. "USEPA" means the United States environmental protection agency.] In addition to any other terms defined in 40 CFR Parts 141 and 143, the following terms, as used in this part shall have the following meanings.

A. "Definitions that begin with the letter 'A.'" "Appurtenance" or "Appurtenances" means machinery, appliances, structures and other parts of the main structure necessary to allow the main structure to operate as intended, but not considered part of the main structure.

B. "Definitions that begin with the letter 'B.'" "

(1) "Bag filters" has the meaning defined in 40 CFR Part 141.

(2) "Best available technology" or "BAT" has the meaning defined in 40 CFR Part 141.

(3) "Bureau" means the drinking water bureau of the New Mexico environment department.

"CFR" means the code of federal regulations.

C. "Definitions that begin with the letter 'C.'" "

(1) "Cartridge filters" has the meaning defined in 40 CFR Part 141.

(2) "CFR" means the code of federal regulations.

(3) "Challenge test" means a study conducted to determine the removal efficiency (i.e., log removal value (LRV)) of a membrane material for a particular organism, particulate, or surrogate.

(4) "Community water system" has the meaning defined in 40 CFR Part 141.

(5) "Consecutive systems" has the meaning defined in 40 CFR Part 141.

(6) "Contaminant" has the meaning defined in 40 CFR Part 141.

(7) "Cross-connection" means any unprotected actual or potential connection or structural arrangement between a public water system and any other source or system through which it is possible to introduce into any part of the public water system any contaminant or non-potable substance.

(8) "CT" or "CTcalc" has the meaning defined in 40 CFR Part 141 and under the definition of inactivation ratio.

D. "Definitions that begin with the letter 'D.'" "

(1) "Department" means the New Mexico environment department.

(2) "Direct integrity test" has the meaning defined in 40 CFR Part 141.

(3) "Disinfectant" has the meaning defined in 40 CFR Part 141.

(4) "Disinfectant contact time ("T" in CT calculations)" has the meaning defined in 40 CFR Part 141.

(5) "Disinfection" has the meaning defined in 40 CFR Part 141.

E. "Definitions that begin with the letter 'E.'" [RESERVED]

F. "Definitions that begin with the letter 'F.'" "

(1) "Filtration" has the meaning defined in 40 CFR Part 141.

(2) "Finished water" has the meaning defined in 40 CFR Part 141.

G. "Definitions that begin with the letter 'G.'" "

(1) "Ground water under the direct influence of surface water (GWUDI)" has the meaning defined in 40 CFR Part 141.

(2) "Guidance document" means any manual or other document developed or adopted by the department for determining generally acceptable standards for construction and operation of public water systems.

H. "Definitions that begin with the letter 'H.'" "Human consumption" means drinking, bathing, showering, cooking dishwashing, and maintaining oral hygiene. The term "bathing" means use of the water for personal hygiene purposes. The term "bathing" does not refer to situations such as (1) swimming in an open canal or (2) incidental, casual contact with water from an open canal in connection with outdoor activities such as agricultural work, canal maintenance, or lawn and garden care.

I. "Definitions that begin with the letter 'I.'" "Inactivation ratio"

with respect to viruses means the ratio that quantifies inactivation of viruses. The sum of the virus inactivation ratios, or total virus inactivation ratio shown as $\Sigma(CT_{calc})/(CT_{99.99})$.

"CT or CT_{calc}" is the product of "residual disinfectant concentration" (C) in mg/l determined before or after the first customer, and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T." If a public water system applies disinfectants at more than one point prior to the first customer, it must determine the total percent inactivation or "total inactivation ratio." In determining the total inactivation ratio, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point(s). "CT_{99.99}" is the CT value required for 99.99 percent (4-log) inactivation of viruses. CT_{99.99} for a variety of disinfectants and conditions appears in Tables D-7, D-9, D-11, D-13 and

D-14 in the EPA Handbook for Optimizing Water Treatment Plant Performance Using the Composite Correction Program.

J. “Definitions that begin with the letter “J.” [RESERVED]

K. “Definitions that begin with the letter “K.” [RESERVED]

L. “Definitions that begin with the letter “L.” [RESERVED]

M. “Definitions that begin with the letter “M.”

(1) “Maximum contaminant level” has the meaning defined in 40 CFR Part 141.

(2) “Membrane filtration” has the meaning defined in 40 CFR Part 141.

(3) “Modified” or “modification” means a change, installation, addition, rehabilitation, or construction of a component of an existing public water system to substantially increase or decrease the system’s capability to draw or supply water. For the purposes of this part, “modification” does not include routine maintenance.

N. “Definitions that begin with the letter “N.”

(1) “Non-community water system” has the meaning defined in 40 CFR Part 141.

(2) “Non-public water source” means a water source that is not regulated as a public water source.

(3) “Non-public water system” means a water system that does not meet the definition of a public water system as defined in 40 CFR Part 141.

(4) “Non-transient non-community water system or NTNCWS” has the meaning defined in 40 CFR Part 141.

O. “Definitions that begin with the letter “O.” [RESERVED]

P. “Definitions that begin with the letter “P.”

(1) “Performance demonstration” means documentation that proves the efficacy of a treatment technology.

(2) “Person” has the meaning defined in 40 CFR Part 141.

(3) “Pilot study” means a specific type of performance demonstration in which the efficacy of a treatment system is tested by using a full scale model of the treatment system.

(4) “Plans and specifications” means the technical design drawings and precise standards of performance for construction work, materials and manufactured products certified by a registered professional engineer on behalf of the owner or operator of a public water system.

(5) “Point-of-entry treatment device (POE)” has the meaning defined in 40 CFR Part 141.

(6) “Point-of-use treatment device (POU)” has the meaning defined in 40 CFR Part 141.

(7) “Public water system project”

or “project” means the construction of a new public water system, modification to an existing public water system, or conversion of a non-public water system to a public water system.

Q. “Definitions that begin with the letter “Q.” [RESERVED]

R. “Definitions that begin with the letter “R.”

(1) “Record drawings” means drawings that show detail or work as originally planned plus modifications and deviations to reflect actual construction, certified by a registered professional engineer on behalf of the owner or operator of a public water system.

(2) “Registered professional engineer” means a professional engineer registered in the state of New Mexico.

(3) “Regulated contaminant” means a contaminant for which an action level, maximum contaminant level or treatment technique is provided in 40 CFR Part 141.

(4) “Residual disinfectant concentration (“C” in CT calculations)” has the meaning defined in 40 CFR Part 141 and under the definition of inactivation ratio.

(5) “Routine maintenance” means activities associated with regularly scheduled and general upkeep of a building, equipment, machine, plant, appurtenance, or system against normal wear and tear, including but not limited to those activities set forth in Subsection B of 20.7.10.200 NMAC.

S. “Definitions that begin with the letter “S.”

(1) “Sample tap” means a device (e.g. sillcocks, storage tank hatches, sampling stations etc.) where access, pressure, and volume can be controlled to the extent that the sample collected is representative of the water quality.

(2) “Sanitary survey” means an onsite review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water. Pursuant to 40 CFR Part 141, a sanitary survey evaluates at least eight components: source; treatment; distribution system; finished water storage; pump facilities and controls; monitoring and reporting and data verification; system management and operation; and operator compliance with state requirements.

(3) “Secondary contaminant” means a contaminant listed in 40 CFR Part 143.

(4) “Secretary” means the secretary of the department, or an authorized representative.

(5) “Service connection” in addition to the meaning given in 40 CFR

Part 141, means a pipe, hose, appurtenance, constructed conveyance or any other temporary or permanent connection between a public water system and a user. Service connection, as used in the definition of a public water system, does not include a connection to a system that delivers by constructed conveyance other than a pipe if: (1) the water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses); (2) the department determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or (3) the department determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

(6) “State” means the New Mexico environment department when used in 40 CFR Part 141 and 40 CFR Part 143 in lieu of the meaning set forth in 40 CFR Part 141 and 40 CFR Part 143.

(7) “State act” means the Environmental Improvement Act, NMSA 1978, Section 74-1-1 et seq.

(8) “Storage facility” means a compartment used to accumulate the product water from a water treatment unit so that sufficient quantity, pressure, or both are available for intermittent periods of higher flow-rate water use.

(9) “Subpart H systems” has the meaning defined in 40 CFR Part 141.

(10) “Supplier of water” has the meaning defined in 40 CFR Part 141.

(11) “Surface water” has the meaning defined in 40 CFR Part 141.

T. “Definitions that begin with the letter “T.” “Transient non-community water system or TWS” has the meaning defined in 40 CFR Part 141.

U. “Definitions that begin with the letter “U.” “USEPA” means the United States environmental protection agency.

V. “Definitions that begin with the letter “V.” [RESERVED]

W. “Definitions that begin with the letter “W.” “Water hauler” means a person in the business of transporting by vehicle water intended for human consumption to at least 15 service connections or who regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

X. “Definitions that begin with the letter “X.” [RESERVED]

Y. “Definitions that begin with the letter “Y.” [RESERVED]

Z. “Definitions that begin with the letter “Z.” [RESERVED] [20.7.10.7 NMAC - Rp 20 NMAC 7.1.I.103, 12/04/2002; A, 04/16/2007; A, 01/06/2013]

20.7.10.8 SUBMITTALS TO THE DEPARTMENT: The submittal to the department of any application, notification, or other information required in this part shall be accomplished by submitting the required documents to the drinking water bureau within the department, unless otherwise specified. [20.7.10.8 NMAC - N, 01/06/2013]

20.7.10.9 DOCUMENTATION REQUIRED FOR POPULATION DETERMINATION:

A. Owners or operators of community water systems shall document, and make available to the department upon request, a determination of the population served by the water system. The residential portion of the population shall be calculated by multiplying the number of service connections by the average household size in the county where the service connections are located. The most recent census conducted by the U.S. census bureau shall be the source of the average household size data. Water haulers shall document, and make available to the department upon request, the number of residential accounts using water for human consumption.

B. Owners or operators of nontransient non-community water systems and transient non-community water system shall document, and make available to the department upon request, a determination of the population served (e.g., number of employees, number of students, restaurant seating capacity, number of patrons, etc.)

C. Owners or operators of water systems may present written documentation to the department for consideration of a population determination that differs from that described in Subsection A or B of this section.

D. The department will document, in writing, approval or disapproval of any population determination that differs from the population determination described in Subsections A or B of this section.

E. Owners or operators of public water systems shall make the information required in this section available to the department upon request within 45 days of the request. [20.7.10.9 NMAC - N, 01/06/2013]

20.7.10.100 ADOPTION OF 40 CFR PART 141:

A. Except as otherwise provided in this section, the regulations of the USEPA set forth at 40 CFR Part 141 [through June 4, 2010] as amended from time to time, are hereby incorporated by

reference into this part.

B. The term “state” means the New Mexico environment department when used in 40 CFR Part 141, in lieu of the meaning set forth in 40 CFR [section 141.2] Part 141.

[C.] The term “service connection” has the meaning set forth in Subsection L of 20.7.10.7 NMAC, in addition to the meaning set forth in 40 CFR section 141.2. [20.7.10.100 NMAC - N, 12/04/2002; A, 04/16/2007; A, 10/15/2008; A, 10/28/2010; A, 01/06/2013]

20.7.10.101 ADOPTION OF 40 CFR PART 143:

A. Except as otherwise provided, the regulations of the USEPA set forth at 40 CFR Part 143 [through July 1, 2007] as amended from time to time, are hereby incorporated by reference into this part.

B. The term “state” means the New Mexico environment department when used in 40 CFR Part 143, in lieu of the meaning set forth in 40 CFR [section 143.2] Part 143.

[20.7.10.101 NMAC - N, 12/04/2002; A, 04/16/2007; A, 10/15/2008; A, 01/06/2013]

20.7.10.102 GUIDANCE DOCUMENTS: [The current editions of the following materials, including all future editions and amendments are used by the department as guidance documents for determining generally acceptable standards for construction and operation of public water systems:

A. Standards for disinfecting water mains, wells, water-storage facilities, and water treatment plants; American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

B. Manual for the certification of laboratories analyzing drinking water for microbiological parameters, New Mexico Environment Department, Drinking Water Bureau, 525 Camino de Los Marquez, Santa Fe, Suite 4, New Mexico 87501.

C. Laboratory certification manual for chemistry and radiochemistry parameter, drinking water analysis, New Mexico Environment Department, Drinking Water Bureau, 525 Camino de Los Marquez, Santa Fe, Suite 4, New Mexico 87501.

D. Recommended standards for water works, Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, P.O. Box 7126, Albany, New York 12224.

E. Recommended standards for water facilities, Construction Programs Bureau, New Mexico Environment

Department, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

F. NSF listings - drinking water treatment chemicals - health effects, American National Standards Institute, NSF/ANSI 60, 25 West 43rd Street, New York, NY 10036.

G. NSF listings - drinking water system components - health effects, American National Standards Institute, NSF/ANSI 61, 25 West 43rd Street, New York, NY 10036.

H. NSF listings - drinking water treatment units - health effects, American National Standards Institute, NSF/ANSI 42, 44, 53, 58, 67, 177, 25 West 43rd Street, New York, NY 10036.

I. NSF listings - plumbing system components - health effects, American National Standards Institute, NSF/ANSI 14, 24, 25 West 43rd Street, New York, NY 10036.

J. List of approved backflow prevention assemblies, University of Southern California Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California, Kaprielian Hall 200, Los Angeles, CA 90089-2531.

K. UL listings - drinking water treatment additives, Underwriters Laboratory, 333 Pfingston Road, Northbrook, IL 60062-2096.

L. UL listings - drinking water treatment/filtration units, Underwriters Laboratory, 333 Pfingston Road, Northbrook, IL 60062-2096.

M. UL listings - drinking water system components and additives, Underwriters Laboratory, 333 Pfingston Road, Northbrook, IL 60062-2096.

N. UL listings - distribution and plumbing products, Underwriters Laboratory, 333 Pfingston Road, Northbrook, IL 60062-2096.

O. Cross connection control manual, USEPA, Washington D.C., 20460, EPA 816-R-03-002.] The current editions of the following materials, including all future editions and amendments are used by the department as guidance documents.

A. Recommended standards for water works (“10 States Standards”), Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, P.O. Box 7126, Albany, New York 12224.

B. Devices listed in the American society of sanitary engineering seal authorization booklet, American society of sanitary engineering, 901 Canterbury Road, Suite A, Westlake, OH 44145.

C. Cross connection control manual, USEPA, Washington D.C., 20460.

[20.7.10.102 NMAC - N, 12/04/2002; A, 04/16/2007; A, 01/06/2013]

20.7.10.104 REFERENCES:

The current editions of the following materials, including all future editions and amendments form a part of this rule to the extent referenced.

A. *Disinfecting water mains*, AWWA standard, (ANSI/AWWA C651), American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

B. *Disinfection of water-storage facilities*, AWWA standard, (ANSI/AWWA C652), American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

C. *Disinfection of water treatment plants*, AWWA standard, (ANSI/AWWA C653), American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

D. *Disinfection of wells*, AWWA standard, (ANSI/AWWA C654), American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

E. *Drinking water laboratory certification program guidance manual*, New Mexico Environment Department, Drinking Water Bureau, 525 Camino de los Marquez, Suite 4, Santa Fe, New Mexico 87501.

F. *Drinking water laboratory certification program guidance manual appendix A - certification application*, New Mexico Environment Department, Drinking Water Bureau, 525 Camino de los Marquez, Suite 4, Santa Fe, New Mexico 87501.

G. *Recommended standards for water facilities*, New Mexico Environment Department, Construction Programs Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

H. NSF/ANSI Standard 60 - *drinking water treatment chemicals - health effects*, NSF International P.O. Box 130140, Ann Arbor, MI 48113-0140.

I. NSF/ANSI Standard 61 - *drinking water system components - health effects*, NSF International P.O. Box 130140, Ann Arbor, MI 48113-0140.

J. NSF product and service listings, NSF/ANSI 60 - *drinking water treatment chemicals - health effects*, http://nsf.org/business/search_listings/.

K. NSF product and service listings, NSF/ANSI 61 - *drinking water system components - health effects*, http://nsf.org/business/search_listings/.

L. NSF product and service listings, NSF/ANSI 44, 53, 58, 62 - *drinking water treatment units: - health effects*, http://nsf.org/business/search_listings/.

M. NSF product and service listings, NSF/ANSI 14, 24- *plumbing system components*, http://nsf.org/business/search_listings/.

listings/

N. Devices listed in the American society of sanitary engineering "prevention rather than cure" seal authorization booklet, American society of sanitary engineering, 901 Cantebury Road, Suite A, Westlake, OH 44145.

O. *Handbook for optimizing water treatment plant performance using the composite correction program*, EPA/625/6-91/027, U.S. EPA/NSCEP, P.O. Box 42419, Cincinnati, OH 45242-041.

P. EPA membrane filtration guidance manual, EPA 815-R-06-009 November 2005, 26 West Martin Luther King Dr., Cincinnati, OH 45268.

Q. *Environmental technology verification (ETV) program information and guidance for vendors*, Drinking Water Systems (DWS) center February 2004, NSF International, 789 N. Dixboro Road, Ann Arbor, Michigan 48105.

R. *Source water assessment & protection program report of a New Mexico water utility, July 2004 (template for ground water)*, New Mexico environment department, drinking water bureau, 525 Camino de los Marquez, Suite 4, Santa Fe, New Mexico 87501.

S. *Source water assessment & protection program report of a New Mexico water utility, February 2004 (template for surface water)*, New Mexico environment department, drinking water bureau, 525 Camino de los Marquez, Suite 4, Santa Fe, New Mexico 87501.

T. *New Mexico Environment Department Drinking Water Bureau Application for Ground Water Rule 4-log Certification*, New Mexico environment department, drinking water bureau, 525 Camino de los Marquez, Suite 4, Santa Fe, New Mexico 87501.

[20.7.10.104 NMAC - N, 01/06/2013]

20.7.10.200 PUBLIC WATER SYSTEM PROJECTS:

A. Except as provided in Subsections B and C of this section, no person shall undertake a public water system project without first obtaining written approval from the department.

B. The following public water system projects do not require approval from the department:

(1) a modification that involves the replacement or construction of less than 1,000 feet of distribution piping and appurtenances during any sixty calendar day period; or

(2) a modification that involves the replacement or construction of only distribution lines and appurtenances, pump stations, or pressure regulating facilities for which the public water system employs a water utility staff that includes, either by contract or direct employment, a professional

engineer registered in New Mexico who is responsible for the project;

(3) on-going operation and maintenance procedures; the following activities are considered to be on-going operation and maintenance procedures:

(a) pipeline leak repair;

(b) replacement of existing deteriorated pipeline where the new pipeline segment is the same size and alignment as the pipeline to be replaced;

(c) distribution pipeline additions where the pipeline size is the same as the main supplying the addition, the length is less than 500 feet and contiguous segments of new pipe total less than 1,000 feet in any sixty calendar day period;

(d) entry into a drinking water storage facility for the purposes of cleaning and maintenance;

(e) the replacement of chemical feed pumps and associated appurtenances;

(f) the replacement of electrical or mechanical equipment in an existing public water supply system; and

(g) the replacement of equipment or pipeline appurtenances with the same type, size and rated capacity (fire hydrants, valves, pressure regulators, meters, service laterals, chemical feeders and booster pumps including deep well pumps).

C. The plan approval requirement in this section may be waived for transmission, storage, and distribution projects proposed for implementation that are certified to be in conformance with a "master design plan" previously approved by the department. Such master design plans may be approved upon submission to the department and must at a minimum contain:

(1) identification of existing system components and service area;

(2) a complete set of standard plans, details, and specifications for any component or facility to be eligible for a waiver under this section; and

(3) written verification that the standard plans, details, and specifications have been adopted by ordinance or resolution in such a manner as to require their use in all associated projects.

D. All changes to the standard plans, details, or specifications must be approved by the department prior to being eligible for a waiver under this section.

E. To obtain a waiver, the owner of the system must submit, in lieu of the application materials in 20.7.10.201 NMAC, a written summary of the project and certification that the project will be installed in accordance with the approved drawings and specifications, signed by a registered professional engineer who is responsible for the design, development, or maintenance of the public water system. All waiver requests shall be properly documented prior to receiving the department's approval.]

A. Any person undertaking a public water system project shall submit an application to the department and shall not use the new or modified facility to produce, treat, store or distribute water for human consumption until the department has approved the application in writing except that:

(1) a person conducting the activities under Subsection B of this section need not submit an application or obtain department approval; and

(2) a person undertaking a water projects under Subsection C of this section must submit an application but may undertake the project without written approval from the department; the department will respond to each application within the period specified in Subsection K of Section 201 of this part.

B. The following activities are considered on-going operation and routine maintenance procedures. These activities are not considered public water system projects. There is no requirement to notify or seek approval of the department for these activities:

(1) pipeline leak repair;

(2) replacement of existing deteriorated pipeline, or addition of distribution pipeline, if such replacements or additions, or both, total less than 1,000 feet in any 60 calendar day period;

(3) entry into a drinking water storage facility for the purposes of cleaning and maintenance;

(4) the replacement of chemical feed pumps and associated appurtenances;

(5) the replacement of electrical or mechanical equipment in an existing public water supply system; and

(6) the replacement of equipment or pipeline appurtenances with the same type, size and rated capacity (fire hydrants, valves, pressure regulators, meters, service laterals, chemical feeders and booster pumps including deep well pumps).

C. Any person proposing to undertake the following public water system projects must give the department written notice by submitting an application; department approval is not required:

(1) a modification that involves only the replacement or construction of more than 1,000 feet of distribution lines, or of appurtenances, pump stations, or pressure regulating facilities for which the public water system employs, either by contract or direct employment, a registered professional engineer who is responsible for the project; or

(2) installation of a hypochlorination system, including an on-site hypochlorination generation system, in a public water system under the following conditions:

(a) water is supplied by ground water that is not under the direct influence of

surface water;

(b) the owner or operator of the system employs, by contract or direct employment, a water operator certified in New Mexico at the level required in the Utility Operator Certification Regulations, 20.7.4 NMAC; and

(c) the certified operator is responsible for the project and certifies the inactivation ratio achieved by the hypochlorination system; the water system operator shall calculate the inactivation ratio and document the calculation on a form provided by the department.

D. In order to expedite future public water system projects, a public water system with the legal authority to adopt construction plans, details, and specifications by ordinance or resolution may submit a master design plan to the department for approval. Such plan must at a minimum contain:

(1) identification of existing system components and service area;

(2) a complete set of plans, details, and specifications for any component or facility to be eligible for a consideration under this section; and

(3) written verification that the plans, details, and specifications have been adopted by ordinance or resolution in such a manner as to require their use in all associated projects.

E. The approval requirement in Subsection A of Section 201 of this part is satisfied when a transmission, storage, or distribution project is proposed for implementation that is certified to be in conformance with a master design plan previously approved by the department. For a project to be considered under this subsection, the owner or operator of the system must submit in lieu of the application materials in Section 201 of this part, a written summary of the project and certification that the project will be installed in accordance with the approved drawings and specifications, signed by a registered professional engineer who is responsible for the design, development, or maintenance of the public water system. A project request under this subsection shall include all of the documentation listed in this subsection.

[20.7.10.200 NMAC - Rp 20 NMAC 7.1.V.501 and 502, 12/04/2002; A, 04/16/2007; A, 01/06/2013]

20.7.10.201 APPLICATIONS FOR PUBLIC WATER SYSTEM PROJECT APPROVAL:

A. Any person proposing to undertake a public water system project [that requires the review and approval of the department] for which an application is required under Section 200 of this part shall complete, sign and submit an application to the department as described in this section.

~~**B.** The applicant shall submit an application to the department no less than thirty days prior to advertising the public water system project for bid or, if the project is not advertised for bid, not less than thirty days prior to the commencement of construction, except that the department may permit an applicant to advertise for bids or commence construction of a public water system project prior to the submission of a written application if, in the judgment of the department, exigent circumstances warrant a waiver of the thirty-day notice requirement. Permission to advertise for bids or commence construction without first submitting an application shall expire if the applicant does not submit a written application to the department that meets the requirements of this section within fifteen days of the date of permission.~~

~~**C.] B.** The application shall be made on forms furnished by the department [and shall include]. Applications for projects that require department approval shall include:~~

(1) one set of complete plans and specifications for the project; the plans and specifications must be prepared under the direct supervision of and sealed by a registered professional engineer [in New Mexico];

(2) an engineering design summary which shall include engineering information that sets forth the basis of the project design;

(3) a plan to disinfect the system and sample for the presence of bacterial contamination following completion of the project and prior to providing water to the public; the criteria used by the department to review the adequacy of the plan shall include the current standards of the American water works association for disinfecting water mains, wells, water-storage facilities and water treatment plants; and

~~(4) an inventory of existing and planned sources of actual and potential contamination located within one thousand (1,000) feet of a water source proposed to be utilized by the public water system; and~~

~~(5) (4) any other relevant information [as needed] requested by the department in order to determine compliance with this part.~~

~~**D.** The department shall require an applicant proposing to undertake a public water system project to submit, in addition to the materials set forth in Subsection C of this section:~~

~~(1) for projects involving the construction of a new public water system, documents demonstrating that the public water system has sufficient technical, managerial and financial capacity, such as a certified operator, testing equipment required to meet regulatory treatment techniques, ownership accountability, staffing and organization, revenue sufficiency, credit~~

worthiness and fiscal management; and

(2) for projects involving the construction of a new water source, analytical results of nitrate sampling conducted during exploratory drilling or aquifer testing and prior to commencement of construction;

(3) for projects involving the construction of distribution facilities, provision shall be made to include sufficient hydrants or blow-offs to provide for complete flushing of the newly constructed facilities; this may include reference to existing flushing appurtenances.]

C. For a project involving the construction of a new public water system or conversion of an existing water system to a public water system, an applicant proposing to undertake a public water system project shall submit, in addition to the materials set forth in Subsection B of this section documents demonstrating that the public water system has sufficient technical, managerial and financial capacity, such as a certified operator, testing equipment required to meet regulatory treatment techniques, ownership accountability, staffing and organization, revenue sufficiency, and credit worthiness and fiscal management.

D. For a project involving a storage facility or distribution facility, the applicant shall submit an application to the department no less than 30 days prior to advertising the public water system project for bid; or if the project is not advertised for bid prior to commencement of construction. In addition to the materials set forth in Subsection B and Subsection C of this section the application shall include:

(1) a description of an adequate foundation for each storage facility; and

(2) plans and specifications showing hydrants or blow-offs to provide for complete flushing or cleaning of the newly constructed facility if existing flushing appurtenances are insufficient.

E. For a project that involves construction of a new water source or conversion of an existing non-public source to a public source, in addition to the materials set forth in Subsection B and Subsection C, of this section the application shall include:

(1) the appropriate state engineer office permit;

(2) analytical results for regulated contaminants and secondary contaminants sampling prior to commencement of construction; this section requires sampling for those regulated contaminants and secondary contaminants that are monitored at the source or at the entry point(s).

F. For a project involving a ground water source that is not under the direct influence of surface water, the applicant shall submit an application to the department no less than 30 days prior to advertising the public water system project

for bid; or if the project is not advertised for bid prior to commencement of construction.

(1) In addition to the requirements in Subsection E of this section, a project involving a new ground water source that is not under the direct influence of surface water must include an inventory of existing and planned facilities and land uses that are actual or potential sources of contaminants of concern located within 1,000 feet of a water source.

(2) At a minimum, potential sources of contamination and land uses in Appendix K of the NMED *source water assessment and protection program report of a New Mexico water utility, July 2004 (template for ground water)* must be considered.

G. For a project involving a 40 CFR Part 141 Subpart H source, including an existing non-public surface water source or a non-public ground water under the direct influence of surface water source that is converted to a public 40 CFR Part 141 Subpart H source, the applicant shall submit:

(1) an application to the department no less than 60 days prior to advertising the public water system project for bid; or if the project is not advertised for bid prior to commencement of construction; and

(2) an inventory of existing and planned facilities and land uses that are actual or potential sources of contaminants of concern, located within the delineation specified in *source water assessment and protection program report of a New Mexico water utility, February 2004 (template for surface water)* New Mexico environment department, drinking water bureau.

H. For a project using a best available technology identified in 40 CFR Part 141 for treatment of chemical, radiological or microbiological contaminants, except for *Cryptosporidium*, the application shall be submitted to the department no less than 45 days prior to advertising the public water system project for bid; or if the project is not advertised for bid prior to commencement of construction. Treatment using a point-of-entry treatment device (POE) or a point-of-use treatment device (POU) will be considered only for treatment of chemical contaminants, except nitrate, nitrite and chlorine dioxide, within systems serving not more than 100 service connections.

I. For a project involving treatment of *Cryptosporidium* or a project involving treatment of chemical, radiological or microbiological contaminants that uses a technology other than those identified in 40 CFR 141 as a best available technology, the applicant shall submit an application to the department no less than 120 days prior to advertising the public water system project for bid; or, prior to commencement of

construction. The application shall include a performance demonstration. A pilot study submitted as a performance demonstration shall have been conducted by a field testing organization in accordance with Subsection J of this section.

(1) The following requirements apply to each surface water project involving treatment for *Cryptosporidium*:

(a) The application shall include a test protocol to demonstrate the performance of *Cryptosporidium* treatment meeting the requirements of the Long Term 2 Enhanced Surface Water Treatment rule, 40 CFR Part 141 Section 715 (microbial toolbox options for meeting *Cryptosporidium* treatment requirements).

(b) For a project involving treatment of *Cryptosporidium* using bag filters or cartridge filters or membrane filtration, the application shall also include a challenge test demonstrating performance, pursuant to 40 CFR Section 141.719(a)(2) through (a)(10) or (b)(2) as applicable.

(c) For a project involving treatment of *Cryptosporidium* using membrane filtration, pursuant to 40 CFR Section 141.719(b)(3), the application shall include documentation of the log removal that can be verified by a direct integrity test in addition to the challenge required in Paragraph (2) of Subsection I of Section 201 of this part.

(d) If the project will be conducted by a public water system that serves at least 10,000 people:

(i) turbidity shall be measured;

(ii) a surface water microscopic particulate analysis (MPA) shall be conducted; and

(iii) removal efficiencies for *E. coli* (analyzed by an enumeration method) and *Cryptosporidium* shall be determined; and

(iv) plant detention time shall be factored into the sample collection.

(e) If the project will be conducted by a public water system that serves fewer than 10,000 people:

(i) removal efficiencies for *E. coli* shall be determined (*E. coli* shall be analyzed by an enumeration method); and

(ii) plant detention time shall be factored into the sample collection.

(2) For all contaminants other than *Cryptosporidium*, the application shall include a test protocol developed by the "USEPA environmental technology verification program" for demonstrating treatment performance of chemical, radiological or microbiological contaminants. The department will also consider other test protocols.

J. A pilot study submitted pursuant to Subsection I of Section 201 of this part must be or must have been

conducted by a field testing organization or person with the following qualifications:

(1) a registered professional engineer with experience in conducting drinking water pilot studies who will oversee field testing operations; or

(2) experience in conducting drinking water pilot studies for a state or an organization conforming to the requirements of that state; or

(3) experience in preparing and executing a project-specific QA/QC plan (i.e., a quality assurance project plan (QAPP)) for a drinking water treatment project or pilot study under the direction of the USEPA, water research foundation, national water research institute or other relevant organization.

~~[E.]~~ **K.** Incomplete applications will not be reviewed. The applicant will be notified within 15 days of the need to submit a complete application. The department shall either approve an application, approve an application subject to conditions, or deny an application, and shall notify the applicant [by mail of such determination within thirty days after filing of a complete application pursuant to this section] of such determination. The department shall not condition or in any manner require as part of an approval that the applicant use a specific process or type of equipment.

(1) For a project involving a storage facility, or for a project involving a distribution facility, the department shall notify the applicant of the determination within 30 days after receipt of the complete application.

(2) For a project involving ground water sources that are not under the direct influence of surface water, the department shall notify the applicant of the determination within 30 days after receipt of the complete application.

(3) For a project involving a surface water source or ground water under the direct influence of surface water, the department shall notify the applicant of the determination within 60 days after receipt of the complete application.

(4) For a project using a best available technology identified in 40 CFR Part 141 for treatment of a chemical, radiological or microbiological contaminant, except for *Cryptosporidium*, the department shall notify the applicant of the determination within 45 days after receipt of the complete application.

(5) For a project involving treatment of *Cryptosporidium* or for a project involving treatment of a chemical, radiological or microbiological contaminant that use a technology other than those identified in 40 CFR Part 141 as a best available technology, the department shall notify the applicant of the determination within 120 days after receipt of the complete

application.

~~L.~~ If, in the judgment of the department, exigent circumstances warrant a waiver of the requirement for approval of an application prior to construction, the department may permit a prospective applicant to commence construction of a public water system project upon receipt of written permission from the department. The owner or operator of the public water system must submit an application within 30 days of receipt of the permission.

~~[F.]~~ **M.** The department may deny an application for a public water system project, in whole or in part, if the department determines that:

(1) any maximum contaminant level (MCL) or treatment technique set forth at 40 CFR Part 141 will not be met after completion of the project;

(2) any other requirement of 20.7.10 NMAC will not be met after completion of the project;

(3) the design of the project is inconsistent with generally acceptable standards for construction of public water systems and their components including, but not limited to, *the recommended standards for water facilities, construction programs bureau*, New Mexico environment department[~~, H190 St. Francis Drive, Santa Fe, New Mexico 87502~~];

(4) the design of the project will not meet project goals;

(5) the public water system does not demonstrate sufficient technical, managerial or financial capacity; ~~[or]~~

(6) an existing or planned source of actual or potential contamination may adversely impact a water source proposed to be utilized by the system; to make this determination, the department may require the applicant to submit to the department analyses relating to hydrogeological, soil or ground water conditions at the site, ~~[and/ or]~~ and information regarding proposed technology or installation methods that may be employed to prevent or mitigate the impact of the contaminant source on the water source; or

(7) a regulated contaminant or disinfectant will be injected into the source (e.g., chlorine pellet drop system).

~~[G.]~~ **N.** The department's approval of an application is limited to the sanitary features of design and other features of public health significance. The department's approval of an application does not imply a guarantee of any type for the constructed project nor does it relieve the applicant from the responsibility for the overall integrity of the project, the adequacy of the project's design, or from the responsibility of complying with any of the provisions of this part or other applicable state and federal laws or regulations.

~~[H.]~~ **O.** The department is not

responsible for increased costs resulting from defects in the plans, design drawings and specifications or any other contract documents.

~~[I.]~~ **P.** The applicant shall notify the department in writing when work on the public water system project is initiated. The department may inspect the project during construction and at completion to ensure compliance with the approved plans and specifications.

~~[J.]~~ **Q.** If a public water system project receives approval from the department but does not commence construction within one year after the date of department approval, the supplier of water must submit a new application to the department.

~~[K.]~~ **R.** Any deviations from approved plans or specifications affecting capacity, operating units, the functioning of water treatment processes, or the quality of water to be delivered, shall be reported to the department in writing. If deemed appropriate, the department may require that revised plans and specifications be submitted for review. Revised plans or specifications shall be submitted to the department in time to permit the review and approval of such plans or specifications before any construction work, which will be affected by such changes, is begun. In the event that this requirement would result in construction delays, verbal approval by the department may be given followed by written review within 30 days. The applicant must submit a copy of the completed change order to the department as soon as possible for review, final approval and filing.

~~[L.]~~ **S.** Staff from the department, after reasonable notice and presentation of credentials, may make visits to the work site to assure compliance with these rules. In the event deficiencies are noted, the ~~[engineer]~~ applicant will be notified in writing of any deficiency. All deficiencies must be resolved prior to the start-up of the system or component of the system.

~~[M.]~~ The department shall be informed when a public water supply system project, or well-defined phase thereof, is at or near completion. The new or modified facility shall not be used to produce, store, distribute, or treat potable water for public consumption until the department has been notified in writing. This notification shall consist of:

T. The department shall be notified when a public water supply system project, or well-defined phase thereof, is at or near completion. This notification shall consist of:

(1) for a project requiring department approval, a written statement from a registered professional engineer or a representative of the water system that

all conditions of project approval were accomplished;

(2) evidence of proper flushing and disinfection in accordance with the appropriate ANSI/AWWA standard, including bacteriological sampling results;

(3) other water quality data where appropriate;

(4) all other documentation which may have been required during the plan review process; ~~and~~

(5) confirmation that the water system owner has been provided with an operation and maintenance manual for the new facility, where appropriate; ~~and~~

(6) when the project includes construction of a new source or incorporation of an existing source into a public water supply system, documents filed with the state engineer office, including the well log and proof of completion of well for ground water sources, and a proof of completion of works for surface water sources.

~~[N-] U.~~ For a project requiring department approval, the supplier of water shall submit record ~~[or as-built plans]~~ drawings and certification of project completion in an electronic format acceptable to the department within ~~[ninety]~~ 120 days after completion of the project.

[20.7.10.201 NMAC - Rp 20 NMAC 7.1.I.109 and 20 NMAC 7.1.V.502, 12/04/2002; A, 04/16/2007; A, 01/06/2013]

20.7.10.202 APPLICATION FOR WATER HAULERS THAT ARE NOT OWNED OR OPERATED BY ANOTHER PUBLIC WATER SYSTEM:

A. This section applies to each water hauler that is not owned or operated by a public water system. This section does not apply to the transport of bottled water regulated pursuant to 21 CFR Part 165.

B. Any person proposing to commence a water hauling operation for human consumption under this section shall complete, sign and submit an application to the department no later than 30 days prior to entering a service contract for delivering water for human consumption. The water hauler shall not produce, withdraw, store, transport or deliver water for human consumption until the department has approved the application in writing.

C. The application shall be made on form(s) furnished by the department and shall include:

(1) evidence that the water tank and other delivery components are approved for contact with water for human consumption;

(2) a declaration that the water tank and other water delivery components have never come into contact with a non-potable or non-food grade product, or a declaration listing any such products and evidence that the tank has been sufficiently reconditioned

to enable hauling of potable water;

(3) a contract with a public water system authorizing receipt of water or other documentation demonstrating that the water to be hauled will come from a drinking water system that is included in the safe drinking water information system (SDWIS) inventory;

(4) a description of water hauling operation including the procedures for obtaining, storing, treatment of and delivery of water; and

(5) a disinfection plan for routine and seasonal disinfection of each tank. [20.7.10.202 NMAC - N, 01/06/2013]

20.7.10.300 COMPLIANCE ; EMERGENCY POWERS:

A. No public water system shall supply drinking water to the public unless the system is operated and maintained in compliance with this part.

B. Powers of the secretary.

(1) The secretary may take any action necessary to protect the health of persons who are or may be served by a public water system, including but not limited to issuing orders, assessing penalties or commencing a civil action for appropriate relief:

(a) if the public water system fails to meet any requirement of this part;

(b) upon receiving information that a contaminant, whether or not listed in 40 CFR Part 141, Subparts B and G, is present in or likely to enter the public water system, that the presence of such contaminant may present an imminent and substantial endangerment to the health of persons served by the system, and that appropriate local authorities have not acted to protect the health of such persons; or

(c) in response to a civil emergency involving public drinking water; the secretary's response shall be coordinated, when appropriate, with other state emergency response and relief efforts.

(2) If the secretary determines that treatment of water is necessary for a public water system to ~~[meet]~~ achieve concentrations no greater than the maximum contaminant levels set forth at 40 CFR Part 141, Subparts B and G, such treatment shall be continuously maintained until the public water system can demonstrate to the secretary that such treatment is no longer necessary.

[20.7.10.300 NMAC - Rp 20 NMAC 7.1.II.201, 12/04/2002; A, 04/16/2007; A, 01/06/2013]

20.7.10.400 GENERAL OPERATING REQUIREMENTS:

A. Protection of public water systems during [routine] maintenance or replacement of electrical or mechanical equipment. The owner

or operator of a public water system shall prevent contamination of the water in the system while undergoing [routine] maintenance or replacement of electrical or mechanical equipment.

B. Security and protection of a public water system. Any part or component of a public water system including but not limited to spring junction boxes, well houses, storage reservoirs, collection devices, pump facilities, and treatment facilities shall be constructed, operated and maintained to prevent:

(1) unauthorized entry to the water supply;

(2) flooding of the water supply;

and (3) contamination of [] the water supply.

C. Protection of a public water system well. A ground water supply well serving a public water system shall have a sanitary seal installed at the wellhead to protect against entry of storm water and other non-potable fluids or foreign materials and against access by insects, rodents, birds or other vermin. ~~[Well vents shall be screened with a fine corrosion-resistant screen (24 mesh or smaller).]~~ All vents installed in the well casing shall be protected against entrance of foreign material and flooding. If the well is completed in a subsurface vault, the casing shall extend above the potential flooding height. All cracks, joints or other openings at the wellhead and all penetrations to the casing at or near the ground surface shall be tightly sealed with an impermeable material.

D. Finished water storage facilities. A finished water storage facility shall be protected from flooding or infiltration of raw or non-potable water and from entry by birds, insects, rodents or other vermin. Overflow pipes and vents shall be screened with a corrosion-resistant material or be fitted with an acceptable flap valve. Access hatches or openings that are below the maximum operating water level shall be fitted with a watertight cover or appropriate seal or gasket. Roof hatches or other openings above the maximum operating water level shall be fitted with a watertight cover, appropriate seal or gasket, or framed above the surface of the tank at the opening. Framed hatches must be fitted with a solid cover that overlaps the framed opening and extends down around the frame. All framed hatches must restrict the entry of vermin or water.

E. Notice to the department. If the safety precautions or preventive measures required to be employed under this section fail to protect the public water system from unauthorized entry or contamination, or if the water supply is endangered for any reason, the supplier of water shall immediately notify

the department and take appropriate action to protect the supply.

F. Disinfection following the completion of a public water system project requiring department approval. Any part or component of a public water system that has undergone construction or modification requiring department approval shall be flushed, disinfected and sampled for the presence of bacterial contaminants upon completion of the project and prior to providing water to the public. Disinfection and sampling shall be conducted in accordance with a plan submitted to and approved by the department pursuant to Paragraph (3) of Subsection [C] B of 20.7.10.201 NMAC.

G. Disinfection following construction, modification or repair not requiring department approval. Any part or component of a public water system that has undergone repair, construction or modification not requiring department approval shall be flushed, disinfected and sampled in accordance with the current editions of the *standards for disinfecting water mains*, American water works association; *standards for disinfection of wells*, American water works association; *standards for disinfection of water-storage facilities*, American water works association; and *standards for disinfection of water treatment plants*, American water works association.

H. Disinfection of seasonally operated facilities. A public water system that operates on a seasonal basis shall be flushed and disinfected following the non-use period and shall conduct special sampling to demonstrate the absence of bacterial contaminants in the system prior to providing drinking water to the public. During the public water system's non-use period, the public water system shall be maintained to prevent unauthorized entry to, and contamination of, the water supply.

I. Maintenance and disinfection of storage structures. All materials used to re-coat or repair the interior of water storage structures must be suitable for potable water contact. After the interior of a storage structure has undergone maintenance or re-coating, the storage structure must be flushed and disinfected pursuant to Subsection G of this section.

J. Prohibition of iodine as a disinfectant. No public water system shall use iodine as a disinfectant.

K. [~~Direct and indirect additives. A component, material, treatment chemical or other substance that may come into contact with drinking water shall be certified by an independent, third-party certifier accredited by ANSI as meeting at a minimum the most recent version of NSF/ANSI standard 60: drinking water treatment chemical-health effects, or NSF/~~

~~ANSI standard 61: drinking water system components-health effects.] **Standards for additives, materials and equipment - direct additives.** Each product added directly to water during production or treatment, including treatment in storage and distribution, shall conform to American national standards institute (ANSI) or national sanitation foundation international (NSF) Standard 60. Products covered by this subsection may include but are not limited to:~~

~~(1) coagulation and flocculation chemicals;~~

~~(2) chemicals for corrosion and scale control;~~

~~(3) chemicals for softening, precipitation, sequestering, and pH adjustment;~~

~~(4) disinfection and oxidation chemicals;~~

~~(5) chemicals for fluoridation, defluoridation, algae control, and dechlorination;~~

~~(6) dyes and tracers;~~

~~(7) antifreezes, antifoamers, regenerants, and separation process scale inhibitors and cleaners;~~

~~(8) water well drilling and rehabilitation aids; and~~

~~(9) well pump lubricants and well sealants.~~

L. Standards for additives, materials and equipment - indirect additives. Except as identified in Subsections N and O, a material or product that comes into contact with water or water treatment chemical shall conform to ANSI/NSF Standard 61. Products and materials covered by this subsection may include but are not limited to:

(1) process media, such as carbon and sand;

(2) joining and sealing materials, such as solvents, cements, welding materials, and gaskets;

(3) mechanical plumbing devices;

(4) pipes and related products, such as pipe and fittings;

(5) mechanical devices used in treatment, transmission, or distribution systems such as tanks, valves, chlorinators, and separation membranes; and

(6) protective (barrier) materials such as coatings.

M. Standards for additives, materials and equipment - certification. The appearance on the product or product package of a seal of a certifying entity that is accredited by the ANSI/NSF to provide the certification or inclusion of the product in the NSF product and service listings shall be considered as proof that a product conforms to the requirement of this section.

N. Standards for additives, materials and equipment -

alternative certification. In those instances where a chemical, additive or drinking water system component that comes into contact with drinking water is essential to the design, construction or operation of the drinking water system and has not been certified by the ANSI/NSF, the operator may utilize the alternatives given in this subsection:

(1) a water system owner or operator may submit evidence that a chemical not included in ANSI/NSF Standard 60, such as EPI-DMA polyamines, anhydrous monosodium phosphate, permanganates other than potassium permanganate and sodium fluorosilicate, meets standards consistent with NSF Standard 60;

(2) a water system owner or operator may submit evidence that a system is made entirely of components certified under ANSI/NSF Standard 61; or

(3) a water system owner or operator may submit evidence that a component meets standards consistent with ANSI/NSF Standard 61.

O. Standards for additives, materials and equipment - exemptions. The following materials and products are exempt from the requirement to conform to ANSI/NSF Standard 61.

(1) an uncoated concrete structure, tank or treatment basin that is constructed onsite if the structure, tank, or basin is not normally coated or sealed and the construction materials used in the concrete are consistent with Subsection N;

(2) an earthen reservoir or canal located upstream of water treatment; and

(3) a water treatment plant that is comprised of components that comply with Subsections L or N.

~~[P.]~~ **P. Cross-connections.** Cross-connections to a public water system or within a public water system shall be prohibited, unless the public water system is protected by a method acceptable to the department using either a device listed [~~by the foundation for cross-connection control and hydraulic research] in the American society of sanitary engineering "prevention rather than cure" seal authorization booklet~~ or a device acceptable to the department to prevent the back flow of water.

~~[M.]~~ **Q. Operator certification.** Public water systems shall comply with the utility operator certification requirements in the Utility Operator Certification Act, NMSA 1978, 61-33-1 et seq. as amended, and in regulations and program requirements adopted pursuant to the Safe Drinking Water Act.

[20.7.10.400 NMAC - Rp 20 NMAC 7.1.II.208, 12/04/2002; A, 04/16/2007; A, 01/06/2013]

20.7.10.401 G E N E R A L OPERATING REQUIREMENTS FOR WATER HAULERS:

A. This section applies to each water hauler.

B. A water hauler subject to this section shall obtain for delivery disinfected water only from public water systems that are part of the department safe drinking water information system (SDWIS) inventory and do not pose an acute health threat based on violation of a maximum contaminant level or treatment technique.

C. A water hauler subject to this section shall:

(1) disinfect each tank, before filling the tank for delivery, if it has not been used more than eight consecutive days;

(2) disinfect each tank after every three months of continuous operation;

(3) measure and record the disinfectant residual at the same time and place water is obtained from the public water system and immediately prior to when the water is delivered to the customer;

(4) maintain a record of the date and time that each water hauling truck is disinfected;

(5) for those water haulers that are owned or operated by a public water system, comply with the sampling requirements applicable to consecutive systems in accordance with Subsection E of Section 500 of this part; and

(6) make each vehicle used for water hauling available for inspection by the department; at the time of the inspection the tank shall be empty and have a hatch or other opening to facilitate internal inspection.

D. A water hauler subject to this section shall use only water tanks with the following features:

(1) Hatches or openings must have water tight covers.

(2) The tank drain must allow for complete draining of the tank.

(3) All hoses and other dispensing units must be equipped with water tight caps. [20.7.10.401 NMAC - N, 01/06/2013]

20.7.10.500 [SAMPLING] MONITORING REQUIREMENTS:

A. Pursuant to NMSA 1978, 74-1-13.1, the department shall test non-transient non-community water systems for arsenic, fluoride and radionuclides. The reporting and public notification requirements for non-transient non-community water systems for these contaminants shall be identical to those for community water systems as set forth in 40 CFR Subpart Q.

B. [A] Each supplier of water shall begin routine sampling in accordance with 40 CFR Part 141 within [ninety days after commencing operation of a public water system] 90 days after providing water for human consumption.

C. All public water systems shall conduct sampling at the rates set forth

in 40 CFR Part 141, Subpart C, except that non-transient non-community systems shall conduct coliform sampling at the same rates as like-sized community water systems in 40 CFR 141.21(a)(2) and except that consecutive systems shall sample as required in Subsection E of Section 500 of this part. The department may order a supplier of water, when necessary, to conduct more frequent sampling than is required under 40 CFR Part 141.

D. The department may order a public water system that uses two or more water sources to collect special purpose samples directly from the water sources, in addition to routine samples from sampling points as required under 40 CFR Part 141.

E. Consecutive systems shall collect samples for those contaminants for which monitoring is required in the distribution system. This includes measurement of disinfectant residuals and collection of samples for total coliform, lead and copper, and disinfection byproducts.

F. All public water systems must have sample taps to collect water representative of each applicable facility at sampling points required under 40 CFR Part 141.

G. For systems subject to triggered monitoring under 40 CFR Part 141 ground water rule: for each total coliform positive sample collected from the distribution system, at least one ground water source sample must be collected from each ground water source that was in use at the time the total coliform-positive sample was collected. [20.7.10.500 NMAC - Rp 20 NMAC 7.1.III.301, 12/04/2002; A, 04/16/2007; A, 01/06/2013]

20.7.10.501 [LABORATORIES]:

A. The department may certify or decertify laboratories to conduct microbiological, chemical and radiological analyses in accordance with most recent editions of the department's "Manual for the Certification of Laboratories Analyzing Drinking Water for Microbiological Parameters" and "Laboratory Certification Manual for Chemistry and Radiochemistry Parameter, Drinking Water Analysis." Certification issued by the department under this Section shall be valid for no longer than three years.

B. The department may accept any sample for purposes of determining compliance with this part if such sample has been analyzed by a laboratory certified by the USEPA or the department.] [RESERVED]

[20.7.10.501 NMAC - Rp 20 NMAC 7.1.III.309, 12/04/2002; Repealed, 01/06/2013]

20.7.10.504 INSPECTIONS, INVESTIGATIONS AND SANITARY SURVEYS:

A. The secretary may, upon the presentation of proper credentials and after receiving consent from the supplier of water, enter at reasonable times upon or through the premises of any public water system to conduct a sanitary survey, inspection or investigation and during such survey, inspection or investigation:

(1) have access to and copy, at reasonable times, any records required to be kept pursuant to this part;

(2) inspect or review any monitoring equipment or methods required under this part; [and]

(3) sample or otherwise test the water supplied by such system; and

(4) have access to a public water system facility for visual inspection.

B. If permission to enter a public water system to conduct a sanitary survey, inspection or investigation in accordance with Subsection A of this section is denied, the secretary may apply to a court of competent jurisdiction for an order allowing for such entry.

C. To aid the secretary in conducting sanitary surveys, inspections or investigations pursuant to this part, the supplier of water or his duly authorized representative shall, prior to the commencement of such inspection or investigation, be given the opportunity to accompany the inspector upon or through the premises of the public water system.

[20.7.10.504 NMAC - Rp 20 NMAC 7.1.I.108, 12/04/2002; A, 01/06/2013]

20.7.10.505 SUBPART H SYSTEM REPORTING:

In addition to complying with any other reporting requirements in 40 CFR Part 141, operators of public water systems shall submit the following reports electronically on forms furnished by the department, if applicable:

A. monthly operating reports required of 40 CFR 141 Subpart H systems; and

B. for systems that use membrane filtration, a direct integrity test required of 40 CFR Part 141 Subpart W. [20.7.10.505 NMAC - N, 01/06/2013]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.33.6 NMAC, Sections 2 and 6 through 9, effective December 31, 2012.

19.33.6.2 SCOPE: The department of game and fish and all persons

who may affect wildlife[—or possess exotic large cats,] in New Mexico. The department collects biological information for managing threatened and endangered species. Except as otherwise provided in the Wildlife Conservation Act (17-2-37 to 17-2-46 NMSA 1978), it is unlawful for any person to take, possess, transport, export, sell or offer for sale or ship any threatened or endangered species or subspecies[—or any restricted species]. The department may authorize such activities, by permit, for scientific or educational purposes, for propagation in captivity, or to protect private property.

[1-31-96; 19.33.1.2 NMAC - Rn, 19 NMAC 33.1.2, 4/14/00; 19.33.6.2 NMAC - Rn, 19.33.1.2 NMAC, 11/30/00; A, 12/31/12]

19.33.6.6 OBJECTIVE: To provide a list of the threatened[—] or endangered[—and restricted] wildlife of New Mexico.

[1-11-91, 1-31-96; 19.33.1.6 NMAC - Rn, 19 NMAC 33.1.6, 4/14/00; 19.33.6.6 NMAC - Rn, 19.33.1.6 NMAC, 11/30/00; A, 12/31/12]

19.33.6.7 DEFINITIONS:

A. “Endangered”, as used herein, means any species or subspecies whose prospects of survival or recruitment in New Mexico are in jeopardy.

B. “Threatened”, as used herein, means any species or subspecies that is likely to become endangered within the foreseeable future throughout all or a significant portion of its range in New Mexico.

~~[C. “Restricted species”~~, as used herein, means any listed large exotic cat species or subspecies:

~~ⓓ.] C. “Identification format”~~, Where both threatened or endangered, and non-endangered, subspecies occur in the state, the former are identified by being listed by common name (in parentheses) and trinomial.

[1-11-91, 1-31-96; 19.33.1.7 NMAC - Rn, 19 NMAC 33.1.7, 4/14/00; 19.33.6.7 NMAC - Rn, 19.33.1.7 NMAC, 11/30/00; A, 12/31/12]

19.33.6.8 THREATENED AND ENDANGERED SPECIES OF NEW MEXICO:

A. MAMMALS

(1) Endangered:

- (a) Arizona shrew, *Sorex arizonae*
- (b) Mexican long-nosed bat, *Leptonycteris nivalis*
- (c) (Penasco) least chipmunk, *Neotamias minimus atristriatus*
- (d) meadow jumping mouse, *Zapus hudsonius*
- (e) (Arizona) montane vole, *Microtus montanus arizonensis*

(f) gray wolf, *Canis lupus*

(2) Threatened:

- (a) North American least shrew, *Cryptotis parva*
- (b) lesser long-nosed bat, *Leptonycteris [curasoae] yerbabuena*
- (c) spotted bat, *Eudermata maculatum*
- (d) western yellow bat, *Lasiurus xanthius*
- (e) white-sided jackrabbit, *Lepus callotis*
- (f) (Organ mountains) Colorado chipmunk, *Neotamias quadrivittatus australis*
- (g) southern pocket gopher, *Thomomys umbrinus*
- (h) American marten, *Martes Americana*

B. BIRDS

(1) Endangered:

- (a) brown pelican, *Pelecanus occidentalis*
- (b) aplomado falcon, *Falco femoralis*
- (c) white-tailed ptarmigan, *Lagopus [fasciatus] leucura*
- (d) whooping crane, *Grus americana*
- (e) least tern, *Sterna antillarum*
- (f) common ground-dove, *Columbina passerina*
- (g) buff-collared nightjar, *Caprimulgus ridgway*
- (h) elegant trogon, *Trogon elegans*
- (i) northern beardless-tyrannulet, *Camptostoma imberbe*
- (j) (southwestern) willow flycatcher, *Empidonax traillii extimus*
- (k) thick-billed kingbird, *Tyrannus crassirostris*
- (l) (Arizona) grasshopper sparrow, *Ammodramus savannarum ammoregus*

(2) Threatened:

- (a) neotropic cormorant, *Phalacrocorax brasilianus*
- (b) bald eagle, *Haliaeetus leucocephalus*
- (c) common black-hawk, *Buteogallus anthracinus*
- (d) peregrine falcon, *Falco peregrinus*
- (e) (Gould’s) wild turkey, *Meleagris gallopavo mexicana*
- (f) piping plover, *Charadrius melodus*
- (g) whiskered screech-owl, *Megascops trichopsis*
- (h) boreal owl, *Aegolius funereus*
- (i) broad-billed hummingbird, *Cyananthus latirostris*
- (j) white-eared hummingbird, *Hylocharis leucotis*
- (k) violet-crowned hummingbird, *Amazilia violiceps*
- (l) lucifer hummingbird, *Calothorax lucifer*

(m) Costa’s hummingbird, *Calypte costae*

(n) Gila woodpecker, *Melanerpes uropygialis*

(o) Bell’s vireo, *Vireo bellii*

(p) gray vireo, *vireo vicinior*

(q) Abert’s towhee, [*Pipilo*]

Melezone **aberti**

(r) Baird’s sparrow, *Ammodramus bairdii*

(s) yellow-eyed junco, *Junco phaeonotus*

(t) varied bunting, *Passerina versicolor*

C. REPTILES

(1) Endangered:

(a) Gila monster, *Heloderma suspectum*

(b) sand dune lizard, *Sceloporus arenicolus*

(c) gray-checked whiptail *Aspidoscelis dixonii*

(d) gray-banded kingsnake, *Lampropeltis alterna*

(e) Mexican gartersnake, *Thamnophis eques*

(f) plain-bellied water snake, *Nerodia erythrogaster*

(g) (New Mexico) ridgenosed rattlesnake, *Crotalus willardi obscurus*

(2) Threatened:

(a) western river cooter, *Pseudemys gorzugi*

(b) Slevin’s bunch grass lizard, *Sceloporus slevini*

(c) canyon spotted whiptail, *Aspidoscelis burti*

(d) mountain skink, [*Eumeces*]

Plestiodon **callicephalus**

(e) green ratsnake, *Senticolis triaspis*

(f) narrow-headed gartersnake, *Thamnophis rufipunctatus*

(g) western ribbonsnake, *Thamnophis proximus*

(h) (mottled) rock rattlesnake, *Crotalus lepidus lepidus*

D. AMPHIBIANS

(1) Endangered:

(a) Jemez mountains salamander, *Plethodon neomexicanus*

(b) lowland leopard frog, [*Rana*]

Lithobates **yavapaiensis**

(c) [mountain] boreal toad, [*Bufo*]

Anaxyrus **boreas**

(d) Great Plains narrow-mouthed toad, *Gastrophryne olivacea*

(2) Threatened:

(a) Sacramento mountain salamander, *Aneides hardii*

(b) Sonoran desert toad, [*Bufo alvarius*]

Qllotis **alvaria**

E. FISHES

(1) Endangered:

(a) Gila chub, *Gila intermedia*

(b) Headwater chub, *Gila nigra*

(c) Chihuahua chub, *Gila*

nigrescens
 (d) roundtail chub, *Gila robusta*
 (e) Rio Grande silvery minnow,
Hybognathus amarus
 (f) spikedace *Meda fulgia*
 (g) Arkansas river shiner, *Notropis girard*
 (h) (Pecos) bluntnose shiner,
Notropis simus pecosensis
 (i) southern redbelly dace,
Phoxinus erythrogaster
 (j) Colorado pikeminnow,
Ptychocheilus lucius
 (k) loach minnow, *Tiaroga cobitis*
 (l) (Zuni) bluehead sucker,
Catostomus discobolus yarrowi
 (m) blue sucker, *Cypleptus elongates*
 (n) gray redhorse, *Moxostoma congestum*
 (o) Pecos gambusia, *Gambusia nobilis*
(2) Threatened:
 (a) Gila trout, *Oncorhynchus gilae*
 (b) Mexican tetra, *Astyanax mexicanus*
 (c) peppered chub, *Macrhybopsis tetranema*
 (d) suckermouth minnow,
Phenacobius mirabilis
 (e) Pecos pupfish, *Cyprinodon pecosensis*
 (f) White Sands pupfish,
Cyprinodon Tularosa
 (g) Gila topminnow, *Poeciliopsis occidentalis*
 (h) greenthroat darter, *Etheostoma lepidum*
 (i) bigscale logperch, *Percina macrolepida*
(3) Listing exceptions: Gila trout-excludes the population in McKnight creek, Grant county; Arkansas river shiner-excludes the population in the Pecos river drainage; bigscale logperch- excludes the population in the Canadian river drainage
F. CRUSTACEANS:
(1) Endangered:
 (a) Socorro isopod,
Thermosphaeroma thermophilum
 (b) Noel's amphipod, *Gammarus desperatus*
G. MOLLUSKS
(1) Endangered:
 (a) paper pondshell, *Utterbackia imbecillis*
 (b) Texas hornshell, *Popenaias popeii*
 (c) Koster's springsnail, *Juturnia kosteri*
 (d) Alamosa springsnail,
Pseudotryonia alamosae
 (e) Chupadera springsnail,
Pyrgulopsis chupaderae
 (f) Socorro springsnail,
Pyrgulopsis neomexicana
 (g) Roswell springsnail,

Pyrgulopsis roswellensis
 (h) Pecos assiminea, *Assiminea pecos*,
 (i) wrinkled marshsnail,
Stagnicola caperata
 (j) Florida mountainsnail,
Oreohelix florida
(2) Threatened:
 (a) lake fingernailclam, *Musculium lacustre*
 (b) swamp fingernailclam,
Musculium partumeium
 (c) long fingernailclam, *Musculium transversum*
 (d) Lilljeborg's peaclam, *Pisidium lilljeborgi*
 (e) Sangre de Cristo peaclam,
Pisidium sanguinichristi
 (f) Gila springsnail, *Pyrgulopsis gilae*
 (g) Pecos springsnail, *Pyrgulopsis pecosensis*
 (h) New Mexico springsnail,
Pyrgulopsis thermalis
 (i) star gyro, *Gyraulus crista*
 (j) shortneck snaggletooth,
Gastrocopta dalliana dalliana
 (k) ovate vertigo, *Vertigo ovata*
 (l) Hacheta Grande woodlandsnail,
Ashmunella hebardii
 (m) Cooke's peak woodlandsnail,
Ashmunella macromphala
 (n) Mineral creek mountainsnail,
Oreohelix pilsbryi
 (o) Doña Ana talussnail, *Sonorella todseni*
 [1-11-91, 11-15-95, 12-31-96, 8-15-98; 19.33.1.8 NMAC - Rn & A, 19 NMAC 33.1.8, 4/14/00; 19.33.6.8 NMAC - Rn, 19.33.1.8 NMAC & A, 11/30/00; A, 11/14/02; A, 1/31/05; A, 9/15/05; A, 10/16/06; A, 12/29/06; A, 1/15/10; A, 1/31/12; A, 2/15/12; A, 12/31/12]

19.33.6.9 [RESTRICTED SPECIES OF NEW MEXICO:

A. ~~leopard,~~ *Panthera pardus*
B. ~~clouded leopard,~~
Neofelis nebulosa
C. ~~snow leopard,~~ *Uncia uncia*
D. ~~jaguar,~~ *Panthera onca*
E. ~~Florida panther,~~ *Puma concolor coryi*
F. ~~tiger,~~ *Panthera tigris*
G. ~~ocelot,~~ *Leopardus pardalis*] [RESERVED]
 [8-6-91, 8-15-98; 19.33.1.8 NMAC - Rn, 19 NMAC 33.1.9, 4/14/00; 19.33.6.9 NMAC - Rn, 19.33.1.9 NMAC, 11/30/00; A, 9/15/05; A, 1/31/12; Repealed, 12/31/12]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.36.3 NMAC, Sections 2, 3, 5 and 8 through 12, effective 01/01/2013. This rule is also renumbered and reformatted from 19 NMAC 36.1 to comply with current NMAC requirements.

19.36.3.2 SCOPE: Hunters under the age of eighteen (18).
 [12/30/95; 19.36.3.2 NMAC - Rn & A, 19 NMAC 36.1.2, 01/01/2013]

19.36.3.3 STATUTORY AUTHORITY: Sections 17-2-33 [NMSA 1978 thru 17-2-35 creates the Hunter Training Act and gives] through 17-2-35 NMSA 1978 create the Hunter Training Act and give the department of game and fish the authority to promulgate rules [and regulations] to implement the provisions of the act.
 [12/30/95; 19.36.3.3 NMAC - Rn & A, 19 NMAC 36.1.3, 01/01/2013]

19.36.3.5 EFFECTIVE DATE: December 30, 1995, unless a later date is cited at the end of a section.
 [12/30/95; 19.36.3.5 NMAC - Rn & A, 19 NMAC 36.1.5, 01/01/2013]

19.36.3.6 OBJECTIVE : Regulation designed to carry the provisions of the Hunter Training Act.
 [12/30/95; 19.36.3.6 NMAC - Rn, 19 NMAC 36.1.6, 01/01/2013]

19.36.3.8 HUNTER TRAINING COURSE REQUIRED: It [is] shall be unlawful for any person under the age of eighteen (18) years to purchase or apply for any type of firearm hunting license unless that person has first successfully completed the New Mexico hunter training course or a hunter training course of another state which is approved by the New Mexico department of game and fish.
 [6/25/90; 19.36.3.8 NMAC - Rn & A, 19 NMAC 36.1.7, 01/01/2013]

19.36.3.9 TYPES OF COURSES:
 A. A person under the age of eighteen (18) years who satisfies the requirements of either of the following training courses shall be issued a certificate following successful completion of a hunter training course:
 (1) completion of a hunter training course comprised of class work and firearms proficiency training and testing; or
 (2) completion of an abbreviated hunter training course comprised of written lessons and testing and current registration in

the department's mentored-youth program.

B. Registration in the department's mentored-youth program is limited to first-time youth hunters for a period of two consecutive license years and a person shall only register in the program once.

C. Mentored-youth program hunters shall hunt with a firearm only after successful completion of the written lesson and testing portion of the course and while supervised by a licensed parent, guardian or another licensed adult with consent of the parent or guardian who is within unaided voice and sight distance. [19.36.3.9 NMAC - N, 01/01/2013]

~~[19.36.3.9]~~ **19.36.3.10 PENALTY:** Any person violating the provisions of [Section 7] 19.36.3.8 NMAC is guilty of a petty misdemeanor and will be subject to penalties provided in Section 31-19-1, New Mexico Statutes Annotated, 1978 Compilation. [6/25/90; 19.36.3.10 NMAC - Rn & A, 19 NMAC 36.1.8, 01/01/2013]

~~[19.36.3.10]~~ **19.36.3.11 REVOCATION OF HUNTER TRAINING CARD:**

A. Hunter training cards will be revoked in accordance with 19.31.2 NMAC.

B. Hunter training cards may also be revoked for negligent use of a firearm. [6/25/90, 12/30/95; 19.36.3.11 NMAC - Rn, 19 NMAC 36.1.9, 01/01/2013]

~~[19.36.3.11]~~ **19.36.3.12 LIVE - FIRING COURSES:**

A. Live-firing courses may be taught in conjunction with hunter education classes, in accordance with policies and procedures developed by the agency and distributed to certified instructors.

B. Live-firing courses may be taught only by hunter education instructors certified in live-firing instruction. [10/3/91; 19.36.3.12 NMAC - Rn, 19 NMAC 36.1.10, 01/01/2013]

**NEW MEXICO
DEPARTMENT OF HEALTH**

7.27.11 NMAC, Supplemental Licensing Provisions (filed 10/15/2012) repealed 12/31/2012 and replaced by 7.27.11 NMAC, Supplemental Licensing Provisions, effective 12/31/2012.

NEW MEXICO DEPARTMENT OF HEALTH

**TITLE 7 HEALTH
CHAPTER 1 HEALTH GENERAL PROVISIONS
PART 27 HEALTH INFORMATION SYSTEM REPORTING
REQUIREMENTS FOR HEALTHCARE FACILITIES AND ACCESS TO DATA AND REPORTS**

7.1.27.1 ISSUING AGENCY: New Mexico Department of Health. [7.1.27.1 NMAC - N, 12/31/2012]

7.1.27.2 SCOPE: This rule applies to all licensed inpatient and outpatient general and specialty health care facilities located within New Mexico. [7.1.27.2 NMAC - N, 12/31/2012]

7.1.27.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to Subsections 24-14A-3D (5) and (6); 24-14A-5(A) through C; 24-14A-8(A) and B; and 24-14A-9 of the Health Information System (HIS) Act, Sections 24-14A-1 to -10, NMSA 1978. [7.1.27.3 NMAC - N, 12/31/2012]

7.1.27.4 DURATION: Permanent. [7.1.27.4 NMAC - N, 12/31/2012]

7.1.27.5 EFFECTIVE DATE: December 31, 2012, unless another date is cited at the end of a section. [7.1.27.5 NMAC - N, 12/31/2012]

7.1.27.6 OBJECTIVE: The purpose of this rule is to specify the data reporting requirements for licensed inpatient and outpatient general and specialty health care facilities pursuant to the HIS Act, Sections 24-14A-1 to -10, NMSA 1978. [7.1.27.6 NMAC - N, 12/31/2012]

7.1.27.7 DEFINITIONS: In addition to the definitions in the HIS Act, Sections 24-14A-1 to -10, NMSA 1978, the following terms have the following meaning for purposes of this rule.

A. All definitions that begin with the letter A.

(1) **Accident state** means the two-digit state abbreviation where the accident occurred when services are related to an auto accident.

(2) **Admission hour** means the hour and minute the patient was admitted as an inpatient, coded in military time (e.g., 2:45 p.m. is represented as 1445).

(3) **Aggregate analysis** means information in report form that contains data combined in a manner which precludes specific identification of a single patient or health care provider.

(4) **Annual permanent database** means one calendar year of permanent hospital inpatient discharge data or any other database collected under the HIS Act that is deemed complete by division staff.

(5) **Attending physician NPI** means the national provider identifier (NPI), a unique, government-issued, standard identification 10-digit number for individual health care providers and provider organizations like clinics, hospitals, schools and group practices.

B. All definitions that begin with the letter B. **Birth weight** means weight of newborns coded in grams.

C. All definitions that begin with the letter C.

(1) **Centers for medicare and medicaid services or CMS** means the United States federal agency which administers medicare, medicaid, and the state children's health insurance programs.

(2) **1st condition code, 2nd condition code, 3rd condition code, 4th condition code, 5th condition code, 6th condition code, 7th condition code, 8th condition code, 9th condition code, 10th condition code, 11th condition code** means the codes used to identify conditions or events relating to the billing claim that may affect processing as defined in the form locators 18-28 of the UB-04 manual. (**Usage note: The state requires public health data reporting to indicate that a patient was admitted directly from the facility's emergency room/department. Provider will use the code "P7" to indicate the patient was admitted from the provider facility's emergency room/department.**)

D. All definitions that begin with the letter D.

(1) **Data provider** means a data source that has provided data to the health information system on a regular basis.

(2) **Data source** has the meaning given in Section 24-14A-2 of the HIS Act, and includes those categories of persons or entities that possess health information, including any public or private sector licensed hospital, health care practitioner, primary care clinic, ambulatory surgery center, ambulatory urgent care center, ambulatory dialysis unit, home health agency, long-term care facility, pharmacy, third-party payer, and any public entity that has health information.

(3) **Database** means a set of data based on individual patient hospital discharge abstract data or any other database collected under the HIS Act.

(4) **Department** means the New Mexico department of health.

(5) **Division** means the epidemiology and response division of the department, P.O. Box 26110, Santa Fe, NM 87502-6110.

(6) **Discharge hour** means the hour and minute the patient was discharged as an inpatient, coded in military time (e.g., 2:45 p.m. is represented as 1445).

(7) **Durable medical equipment or DME** means medical equipment used in the home to aid in a better quality of living.

E. All definitions that begin with the letter E.

(1) **1st e-code** means the first code for external causes of injury, poisoning, or adverse effect. (Usage note: If a patient has an injury diagnosis in a range of ICD-9-CM 800-999, an e-code is required. This is the primary (first-listed) external cause of injury).

(2) **2nd e-code** means the second code for external causes of injury, poisoning, or adverse effect.

(3) **3rd e-code** means the third code for external causes of injury, poisoning, or adverse effect.

F. All definitions that begin with the letter F. **Federal agency** means any agency, department, bureau, board, division, institution, or other organization of the United States government.

G. All definitions that begin with the letter G.

H. All definitions that begin with the letter H.

(1) **Health care** means any care, treatment, service, or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

(2) **Health care professional** means any individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the practice of a profession.

(3) **Health care provider** means any individual, corporation, partnership, organization, facility, institution, or other entity licensed, certified, or otherwise authorized or permitted by law to provide

health care in the ordinary course of business or practice of a profession.

(4) **Health information system or HIS** means the health information system established by the Health Information System Act, Sections 24-14A-1 to 24-14A-10, NMSA 1978.

(5) **HIS advisory committee** means individuals from the division pursuant to Subsection 24-14A-3.1 of the HIS Act.

(6) **Health Information System Act (HIS Act)** means the Health Information System Act, Sections 24-14A-1 to 24-14A-10, NMSA 1978.

(7) **Health insurance prospective payment system (HIPPS) rate code** means the three-digit codes that represent specific sets of patient characteristics (or case-mix groups) on which payment determinations are made under several prospective payment systems. Case-mix groups are developed based on research into utilization patterns among various provider types. For the payment systems that use HIPPS codes, clinical assessment data is the basic input used to determine which case-mix group applies to a particular patient. A standard patient assessment instrument is interpreted by case-mix grouping software algorithms, which assign the case mix group. For payment purposes, at least one HIPPS code is defined to represent each case-mix group. These HIPPS codes are reported on claims to insurers and reported in form locator 71 of the UB-04 manual.

I. All definitions that begin with the letter I.

(1) **ICD-9-CM** is the international classification of disease, ninth revision, clinical modification for clinical diagnosis and procedure coding (October 2011) American medical association.

(2) **ICD-10-CM** is the international classification of disease, 10th revision, clinical modification for clinical diagnosis coding.

(3) **ICD-10-PCS** is the international classification of disease, 10th revision, clinical modification for procedure coding.

(4) **Identifier** means any information that reveals the identity of, or could reasonably be used to reveal the identity of, a single patient, or health care professional, but does not include a number assigned to a single patient for the purpose of conducting longitudinal or linking studies.

(5) **Inpatient health care facility** means a hospital or other health facility which admits patients for overnight or longer (and therefore is responsible for patients' room and board) for the purpose of providing diagnostic treatment or other health services.

(6) **Inpatient rehabilitation facility or IRF** is an inpatient rehabilitation hospital or part of a rehabilitation hospital,

which provides an intensive rehabilitation program for inpatients.

(7) **ISO 3166** is the codes for representation of names of countries issued by the American national standards institute (ANSI) (latest release).

J. All definitions that begin with the letter J.

K. All definitions that begin with the letter K.

L. All definitions that begin with the letter L. **Long-term care hospital or LTCH** means an acute care hospital certified by the centers for medicare and medicaid services (CMS) that provide rehabilitative, restorative, or on-going skilled nursing care to patients or residents in need of assistance with activities of daily living. Long-term care facilities include nursing homes, rehabilitation facilities, inpatient behavioral health facilities, and long-term chronic care hospitals.

M. All definitions that begin with the letter M. **Medicare provider number** means the six digit number assigned by medicare to the data source providing the reported service(s).

N. All definitions that begin with the letter N.

(1) **National provider identifier (NPI)** means the 10-digit NPI from the national plan and provider enumeration system (NPPES).

(2) **New Mexico state license number** means the four to eight digit license number issued by the New Mexico health department for the data source providing the reported service(s).

(3) **National uniform billing committee or NUBC** is an entity formed by the American hospital association (AHA) in 1975, which includes participation by all major national provider and payer organizations and develops single billing forms and standard data sets that are used nationwide by institutional providers and payers for handling health care claims.

O. All definitions that begin with the letter O.

(1) **Operating physician NPI** means the national provider identifier (NPI), a unique, government-issued, standard identification 10-digit number for individual health care providers and provider organizations like clinics, hospitals, schools and group practices.

(2) **Outpatient health care facility** means a hospital or other health facility that provides ambulatory care to a patient without admitting the patient to the facility or providing lodging services.

P. All definitions that begin with the letter P.

(1) **Patient** means a person who has received or is receiving health care.

(2) **Patient admission date** means the date the patient was admitted by

the provider for inpatient care. Format as, “mmddyyyy”. For example, if the admission date was July 1, 1983, “07011983” would be coded.

(3) **Patient admitting diagnosis code, patient principle diagnosis code, patient 2nd diagnosis code, patient 3rd diagnosis code, patient 4th diagnosis code, patient 5th diagnosis code, patient 6th diagnosis code, patient 7th diagnosis code, patient 8th diagnosis code, patient 9th diagnosis code, patient 10th diagnosis code, patient 11th diagnosis code, patient 12th diagnosis code, patient 13th diagnosis code, patient 14th diagnosis code, patient 15th diagnosis code, patient 16th diagnosis code, patient 17th diagnosis code, and patient 18th diagnosis code** means the ICD-9-CM (or ICD-10-CM or subsequent versions of ICD coding) diagnosis codes corresponding to additional conditions that co-exist at the time of admission, or develop subsequently, and which have an effect on the treatment received or the length of stay.

(4) **Patient city** means the city of the patient’s residence at the time of discharge.

(5) **Patient control number** means the patient’s unique alpha-numeric number assigned by the provider.

(6) **Patient country code** means the two-digit alpha-two codes of the patient’s residence at the time of discharge, from Part I of the ISO 3166 as required in form locator 9e of the UB-04 manual. (Usage note: Reported only if other than a United States residence).

(7) **Patient county** means the county of the patient’s residence at the time of discharge.

(8) **Patient date of birth** means the date of birth of the patient. Required format is “mmddyyyy”. Note that all four digits of year are required (e.g., “08191898” is for August 19, 1898).

(9) **Patient diagnosis related group (DRG) code** means the diagnostic related group code used for the HIPPS code in form locator 71 of the UB-04 manual.

(10) **Patient diagnostic code qualifier** means the revision number of the international classifications of disease diagnosis codes used to record the diagnoses represented by Paragraph (20) of Subsection P of 7.1.27.7 NMAC.

(a) 9-ICD-9-CM, ninth revision required on claims through September 30, 2013.

(b) 0-ICD-10-CM, 10th revision when implemented.

(c) 1-ICD-11-CM, 11th revision reservation for future reporting requirements.

(11) **Patient’s discharge date** means the date the patient was discharged by the provider from the inpatient health care facility. Formatted as “mmddyyyy” (i.e., an admission date of July 1, 1983, would be

coded “07011983”).

(12) **Patient’s emergency medical services (EMS) ambulance run number** means the emergency medical services ambulance run number.

(13) **Patient’s ethnicity** means the gross classification of a patient’s stated ethnicity, coded as follows:

(a) E1-Hispanic or Latino;

(b) E2-not Hispanic or Latino;

(c) E6-declined;

(d) E7-unknown or unable to obtain.

(14) **Patient’s first name** means the first name of the patient.

(15) **Patient’s medicaid number** means the patient’s unique identification number assigned by medicaid.

(16) **Patient’s medical record number** means the medical record number used by the provider to identify the patient.

(17) **Patient’s middle initial** means the middle initial of the patient.

(18) **Patient’s last name** means the last name of patient. Last name should not have a space between a prefix and a name as in “MacBeth”, but hyphenated names retain the hyphen as in “Smith-Jones”. Titles should not be recorded. If the last name has a suffix, put the last name, a space, and then the suffix as in “Snyder III”. Last name does not include abbreviations of academic achievement or profession, such as “M.D.”, “Ph.D.” etc.

(19) **Patient’s phone number** means the 10 digit phone number provided by the patient, without section separating characters like dashes, hyphens or slashes (i.e., “5051234567”).

(20) **Patient’s principle diagnosis code, present on admission; patient 2nd diagnosis code, present on admission; patient 3rd diagnosis code, present on admission; patient 4th diagnosis code, present on admission; patient 5th diagnosis code, present on admission; patient 6th diagnosis code, present on admission; patient 7th diagnosis code, present on admission; patient 8th diagnosis code, present on admission; patient 9th diagnosis code, present on admission; patient 10th diagnosis code, present on admission; patient 11th diagnosis code, present on admission; patient 12th diagnosis code, present on admission; patient 13th diagnosis code, present on admission; patient 14th diagnosis code, present on admission; patient 15th diagnosis code, present on admission; patient 16th diagnosis code, present on admission; patient 17th diagnosis code, present on admission; patient 18th diagnosis code, present on admission** means diagnosis was present at the time the order for inpatient admission occurs-conditions that develop during an outpatient encounter, including emergency

room, observation, or outpatient surgery are considered as present on admission.

(a) Y=yes.

(b) N=no.

(c) U=no information on the record.

(d) W-clinically undetermined.

(e) 1-exempt.

(21) **Patient principal procedure code, patient 2nd procedure code, patient 3rd procedure code, patient 4th procedure code, patient 5th procedure code, patient 6th procedure code** means the codes identifying the significant procedures, performed during the patient’s stay.

(22) **Patient race** means the classification(s) of a patient’s stated race to include one or multiple reported classifications, coded as shown below. When reporting multiple classifications do not use spaces or delimiters. For example, if a patient states that he or she is both American Indian and other the race field would be R1R9.

(a) R1-American Indian or Alaska Native.

(b) R2-Asian (including Asian Indian, Chinese, Filipino, Japanese, Korean, and Vietnamese).

(c) R3-Black or African American.

(d) R4-Native Hawaiian or Pacific Islander (including Chamorro and Samoan).

(e) R5-White.

(f) R6-declined.

(g) R7-unknown or unable to obtain.

(h) R9-other race.

(23) **Patient’s social security number** means the nine digit social security number provided by the patient, without section separating characters like dashes, hyphens or slashes (i.e., “123456789”).

(24) **Patient’s state** means the two-digit state code of the patient’s residence at the time of discharge.

(25) **Patient’s status** means the code indicating patient’s disposition at time of discharge. The codes are:

(a) 01-discharged to home or self care (routine discharge); (usage note: includes discharge to home; home on oxygen if DME only; any other DME only; group home; foster care; independent living and other residential care arrangements; outpatient programs, such as partial hospitalization of outpatient chemical dependency programs);

(b) 02-discharged/transferred to a short-term general hospital for inpatient care;

(c) 03-discharged/transferred to skilled nursing facility (SNF) with medicare certification in anticipation of skilled care; (usage note: medicare-indicates that the patient is discharged/transferred to a medicare certified nursing facility; for hospitals with an approved swing bed

arrangement, use code 61-swing bed; for reporting other discharges/transfers to nursing facilities see definitions for codes 04 and 64 in accordance with 7.1.27.7 NMAC);

(d) 04-discharged/transferred to a facility that provides custodial or supportive care; (usage note: includes intermediate care facilities (ICF) if specifically designated at the state level; also used to designate patients that are discharged/transferred to a nursing facility with neither medicare nor medicaid certification and for discharges/transfers to assisted living facilities);

(e) 05-discharged/transferred to a designated cancer center of children's hospital;

(f) 06-discharged/transferred to home under care of an organized home health service organization in anticipation of covered skilled care; (usage note: report this code when a patient is discharged/transferred to home with a written plan of care (tailored to the patient's medical needs) for home care services; not used for home health services provided by a DME supplier or from a home IV provider for home IV services);

(g) 07-left against medical advice or discontinued care;

(h) 08-reserved for national assignment by the NUBC;

(i) 09-admitted as an inpatient to this hospital; (usage note: this is for use only on medicare outpatient claims; applies only to those medicare outpatient services that begin greater than three days prior to admission and therefore should not be reported for inpatient discharges);

(j) 10-19 reserved for national assignment by the NUBC;

(k) 20-expired;

(l) 21-discharged/transferred to court/law enforcement (covers patients sent to jail, prison or other detention facilities);

(m) 22-29-reserved for national assignment by the NUBC;

(n) 30-still patient or expected to return for outpatient services; (usage note: used when patient is still within the same facility; typically used when billing for leave of absence days or interim bills);

(o) 31-39-reserved for national assignment by the NUBC;

(p) 40-expired at home (hospice claims only);

(q) 41-expired in a medical facility, such as a hospital, SNF, ICF, or freestanding hospice (hospice claims only);

(r) 42-expired-place unknown (hospice claims only);

(s) 43-discharged/transferred to a federal health care facility; (usage note: discharges and transfers to a government operated health care facility such as a department of defense hospital, a veteran's administration (VA) hospital or a VA nursing facility; to be used whenever the destination at discharge is a federal health care facility,

whether the patient lives there or not);

(t) 44-49-reserved for national assignment by the NUBC;

(u) 50-discharged/transferred to hospice-home;

(v) 51-discharged/transferred to hospice-medical facility (certified) providing hospice level of care;

(w) 52-60-reserved for national assignment by the NUBC;

(x) 61-discharged/transferred within this institution to a hospital based medicare approved swing bed; (usage note: medicare-used for reporting patients discharged/transferred to SNF level of care within the hospital's approved swing bed arrangement);

(y) 62-discharged/transferred to an IRF including rehabilitation distinct part units of a hospital;

(z) 63-discharged/transferred to a LTCH; (usage note: for hospitals that meet the medicare criteria for LTCH certification);

(aa) 64-discharged/transferred to a nursing facility certified under medicaid but not certified under medicare;

(bb) 65-discharged/transferred to a psychiatric hospital or psychiatric distinct part unit of a hospital;

(cc) 66-discharged/transferred to a critical access hospital (CAH);

(dd) 67-69 reserved for national assignment by the NUBC;

(ee) 70-discharge/transfer to another type of health care institution not defined elsewhere in the code list;

(ff) 71-99-reserved for national assignment by the NUBC.

(26) **Patient's street address** means the mailing address of the patient at the time of discharge including street name and number or post office box number or rural route number.

(27) **Patient's tribal affiliation** means the classification(s) of patient's stated New Mexico tribal affiliation, if stated race indicates American Indian. Up to five reported affiliations can be reported, coded as shown below. When reporting multiple affiliations do not use spaces or delimiters. For example, if a patient states that he or she has affiliations with both Acoma pueblo and the Navajo nation the tribal affiliation field would be T1T10:

(a) T1-Acoma pueblo;

(b) T2-Cochiti pueblo;

(c) T3-Isleta pueblo;

(d) T4-Jemez pueblo;

(e) T5-Jicarilla Apache nation;

(f) T6-Kewa/Santo Domingo pueblo;

(g) T7-Laguna pueblo;

(h) T8-Mescalero Apache nation;

(i) T9-Nambe pueblo;

(j) T10-Navajo nation;

(k) T11-Ohkay Owingeh pueblo;

(l) T12-Picuris pueblo;

(m) T13-Pojoaque pueblo;

(n) T14-San Felipe pueblo;

(o) T15-San Ildefonso pueblo;

(p) T16-Sandia pueblo;

(q) T17-Santa Ana pueblo;

(r) T18-Santa Clara pueblo;

(s) T19-Taos pueblo;

(t) T20-Tesuque pueblo;

(u) T21-Zia pueblo;

(v) T22-Zuni pueblo;

(w) T100-other tribal affiliation;

(x) T200-declined;

(y) T300-unknown.

(28) **Patient's zip code** means the zip code of the patient's residence at the time of discharge. Use either five or nine digits (e.g., 87501 or 875010968).

(29) **Permanent hospital inpatient discharge data** means hospital inpatient discharge data contained in a data set created by the division after submitting data the provider has either (1) reviewed and approved a division statistical report based on the data provider's patient discharges; or (2) been provided a 30-day period to review the division's statistical report.

(30) **Point of origin for admission or visit** means the source of referral for this admission.

(a) **Adults and pediatrics:** Source of admission codes for adults and pediatrics are:

(i) 1-non-health care facility point of origin-the patient was admitted to this facility upon the recommendation of his or her personal physician if other than a clinic physician or a health maintenance organization (HMO) physician (this includes patients coming from home, a physician's office, or workplace;

(ii) 2-clinic referral-the patient was admitted to this facility as a transfer from a freestanding or non-freestanding clinic;

(iii) 4-transfer from a hospital-the patient was admitted to this facility as a transfer from an acute care facility where he or she was an inpatient or outpatient (excludes transfers from hospital inpatient in the same facility);

(iv) 5-transfer from SNF or ICF-the patient was admitted to this facility as a transfer from a SNF or ICF where he or she was a resident;

(v) 6-transfer from another health care facility-the patient was admitted to this facility as a transfer from a health care facility not defined elsewhere in this code list (i.e., other than an acute care facility or skilled nursing facility);

(vi) 8-court/law enforcement-the patient was admitted to this facility upon the direction of a court of law, or upon a request of a law enforcement agency representative (includes transfers from incarceration facilities);

(vii) 9-information not available-the means by which the patient was referred to this facility is not known;

(viii) A-reserved for national assignment;

(ix) D-transfer from hospital inpatient in the same facility resulting in a separate claim to the payer-the patient was admitted to this facility as a transfer from hospital inpatient within this facility resulting in a separate claim to the payer;

(x) E-transfer from ambulatory surgery center-the patient was admitted to this facility from an ambulatory or same-day surgery center (does not include patients admitted from the same facilities' outpatient surgery department);

(xi) F-transfer from hospice and is under a hospice plan of care or enrolled in a hospice program-the patient was admitted to this facility as acute inpatient status and was receiving hospice care;

(xii) G-Z-reserved for national assignment.

(b) **Newborns:** Newborn codes must be used when the **type of admission** is code 4. The codes are:

(i) 5-born inside this facility-a baby born inside this facility;

(ii) 6-born outside of this facility-a baby born outside of this facility.

(31) **Primary payer category** means one of the following broad categories assigned by the data provider to the payment source identified in the primary payer identification name field:

(a) 1-**medicare** is the primary payer from which the provider might expect some payment;

(b) 2-**medicaid** is the primary payer from which the provider might expect some payment;

(c) 3-**other government (federal/state/local)** is the primary payer from which the provider might expect some payment (excluding department of corrections);

(d) 4-**department of corrections** is the primary payer from which the provider might expect some payment;

(e) 5-**private health insurance** is the primary payer from which the provider might expect some payment;

(f) 6-**blue cross/blue shield** is the primary payer from which the provider might expect some payment;

(g) 7-**managed care, unspecified** is the primary payer from which the provider might expect some payment (to be used only if one cannot distinguish public from private);

(h) 8-**no payment** from an organization, agency, program or private payer is listed as the primary payer;

(i) 9-**miscellaneous/other** primary payer source from which the provider might

expect some payment.

(32) **Primary payer identification name** means the name identifying the primary payer from which the provider might expect some payment for the reported service(s).

(33) **Primary payer type** means the type of primary payer as defined below from which the provider might expect some payment for the reported services(s):

(a) 1-**HMO**-health maintenance organization;

(b) 2-**other managed care**-includes provider service networks;

(c) 3-**indemnity plan**;

(d) 88-**unknown**.

(34) **Procedure code qualifier** means the revision number of the international classifications of disease diagnosis codes used to record the procedure represented by Paragraph (21) of Subsection P of 7.1.27.7 NMAC.

(a) 9-ICD-9-PCS, ninth revision required on claims through September 30, 2013.

(b) 0-ICD-10-PCS, 10th revision to take effect October 1, 2013 or such later date as required by the CMS.

(c) 1-ICD-11-PCS, 11th revision reservation for future reporting requirements.

(35) **Procedure date for patient's principal procedure code; procedure date for 2nd procedure code; procedure date for 3rd procedure code; procedure date for 4th procedure code; procedure date for 5th procedure code; procedure date for 6th procedure code** means the date of the procedure that is reported as it coincides with the procedure code that was performed (mmddyyyy).

(36) **Proprietary information** means confidential technical information, administrative information, or business methods that are the property of the data provider and are perceived to confer a competitive position in the health care market by not being openly known by competitors.

(37) **Provider zip code** means the zip code whose boundaries physically contain the facility where the reported service(s) were provided. Use either five or nine digits (i.e., 12345 or 123456789).

Q. All definitions that begin with the letter Q.

R. All definitions that begin with the letter R.

(1) **Requestor** means a person who makes a request for access to health information system data or reports pursuant to this rule.

(2) **Routine report** means a report that contains information of use to the general public that is issued by the division on its own initiative and not in response to a specific, individualized request.

(3) **1st revenue code, 2nd revenue code, 3rd revenue code, 4th revenue code, 5th revenue code, 6th revenue code, 7th revenue code, 8th revenue code, 9th revenue code, 10th revenue code, 11th revenue code, 12th revenue code, 13th revenue code, 14th revenue code, 15th revenue code, 16th revenue code, 17th revenue code, 18th revenue code, 19th revenue code, 20th revenue code, 21st revenue code, and 22nd revenue code** means the four-digit revenue codes that identify the specific accommodation, ancillary service or unique billing calculations, or arrangements made during the patient's stay.

(4) **1st revenue description, 2nd revenue description, 3rd revenue description, 4th revenue description, 5th revenue description, 6th revenue description, 7th revenue description, 8th revenue description, 9th revenue description, 10th revenue description, 11th revenue description, 12th revenue description, 13th revenue description, 14th revenue description, 15th revenue description, 16th revenue description, 17th revenue description, 18th revenue description, 19th revenue description, 20th revenue description, 21st revenue description, and 22nd revenue description** means the revenue standard abbreviated descriptions that identify the specific accommodation, ancillary service or unique billing calculations, or arrangements made during the patient's stay.

(5) **1st revenue line item charges, 2nd revenue line item charges, 3rd revenue line item charges, 4th revenue line item charges, 5th revenue line item charges, 6th revenue line item charges, 7th revenue line item charges, 8th revenue line item charges, 9th revenue line item charges, 10th revenue line item charges, 11th revenue line item charges, 12th revenue line item charges, 13th revenue line item charges, 14th revenue line item charges, 15th revenue line item charges, 16th revenue line item charges, 17th revenue line item charges, 18th revenue line item charges, 19th revenue line item charges, 20th revenue line item charges, 21st revenue line item charges, and 22nd revenue line item charges** means the revenue line item charges, rounded to the whole dollar, for the specific accommodation, ancillary service or unique billing calculations, or arrangements made during the patient's stay.

(6) **1st revenue non-covered charges, 2nd revenue non-covered charges, 3rd revenue non-covered charges, 4th revenue non-covered charges, 5th revenue non-covered charges, 6th revenue non-covered charges, 7th revenue non-covered charges, 8th revenue non-covered charges, 9th revenue non-covered charges, 10th revenue non-covered charges, 11th revenue non-covered charges, 12th revenue non-covered charges,**

13th revenue non-covered charges, 14th revenue non-covered charges, 15th revenue non-covered charges, 16th revenue non-covered charges, 17th revenue non-covered charges, 18th revenue non-covered charges, 19th revenue non-covered charges, 20th revenue non-covered charges, 21st revenue non-covered charges, and 22nd revenue non-covered charges means the revenue non-covered charges, rounded to the whole dollar, for the specific accommodation, ancillary service or unique billing calculations, or arrangements made during the patient's stay.

(7) **1st revenue service date, 2nd revenue service date, 3rd revenue service date, 4th revenue service date, 5th revenue service date, 6th revenue service date, 7th revenue service date, 8th revenue service date, 9th revenue service date, 10th revenue service date, 11th revenue service date, 12th revenue service date, 13th revenue service date, 14th revenue service date, 15th revenue service date, 16th revenue service date, 17th revenue service date, 18th revenue service date, 19th revenue service date, 20th revenue service date, 21st revenue service date, and 22nd revenue service date** means the revenue service dates that the specific accommodation, ancillary service or unique billing calculations, or arrangements occurred on.

(8) **1st revenue service units, 2nd revenue service units, 3rd revenue service units, 4th revenue service units, 5th revenue service units, 6th revenue service units, 7th revenue service units, 8th revenue service units, 9th revenue service units, 10th revenue service units, 11th revenue service units, 12th revenue service units, 13th revenue service units, 14th revenue service units, 15th revenue service units, 16th revenue service units, 17th revenue service units, 18th revenue service units, 19th revenue service units, 20th revenue service units, 21st revenue service units, and 22nd revenue service units** means the quantitative measure of services rendered by the revenue category to or for the patient to include items such as number of accommodation dates, miles, pints of blood, renal dialysis treatments, etc.

S. All definitions that begin with the letter S.

(1) **Secondary payer category** means one of the following broad categories assigned by the data provider to the payment source identified in the secondary payer identification name field:

(a) **1-medicare** is the secondary payer from which the provider might expect some payment;

(b) **2-medicaid** is the secondary payer from which the provider might expect some payment;

(c) **3-other government (federal/state/local)** is the secondary payer from which the provider might expect some payment (excluding department of corrections);

(d) **4-department of corrections** is the secondary payer from which the provider might expect some payment;

(e) **5-private health insurance** is the secondary payer from which the provider might expect some payment;

(f) **6-blue cross/blue shield** is the secondary payer from which the provider might expect some payment;

(g) **7-managed care, unspecified** is the secondary payer from which the provider might expect some payment (to be used only if one cannot distinguish public from private);

(h) **8-no payment** from an organization, agency, program, or private payer is listed as the secondary payer;

(i) **9-miscellaneous/other** secondary payer source from which the provider might expect some payment.

(2) **Secondary payer identification name** means the name identifying a secondary payer from which the provider might expect some payment for the reported service(s).

(3) **Secondary payer type** means the type of secondary payer as defined below from which the provider might expect some payment for the reported service(s):

(a) **1-HMO**-health maintenance organization;

(b) **2-other managed care**-includes provider service networks;

(c) **3-indemnity plan**;

(d) **88-unknown**.

(4) **Secretary** means the cabinet secretary of the department of health.

(5) **Sex of patient** means the sex of the patient as recorded at discharge. Enter the sex of the patient, coded as follows:

(a) F-female;

(b) M-male;

(c) U-unknown.

(6) **Skilled nursing facility or SNF** means a type of nursing home recognized by the medicare and medicaid systems as meeting long-term health care needs for individuals who the potential to function independently after a limited period of care.

(7) **State agency** means any agency, department, division, bureau, board, commission, institution, or other organization of a state government, including state

educational institutions and political subdivisions. "State agency" does not include any health care facility operated by a state agency.

T. All definitions that begin with the letter T.

(1) **Tertiary payer category** means one of the following broad categories assigned by the data provider to the payment source identified in the tertiary payer identification name field:

(a) **1-medicare** is the tertiary payer from which the provider might expect some payment;

(b) **2-medicaid** is the tertiary payer from which the provider might expect some payment;

(c) **3-other government (federal/state/local)** is the tertiary payer from which the provider might expect some payment (excluding the department of corrections);

(d) **4-department of corrections** is the tertiary payer from which the provider might expect some payment;

(e) **5-private health insurance** is the tertiary payer from which the provider might expect some payment;

(f) **6-blue cross/blue shield** is the tertiary payer from which the provider might expect some payment;

(g) **7-managed care, unspecified** is the tertiary payer from which the provider might expect some payment (to be used only if one cannot distinguish public from private);

(h) **8-no payment** from an organization, agency, program, or private payer is listed as the tertiary payer;

(i) **9-miscellaneous/other** tertiary payer source from which the provider might expect some payment.

(3) **Tertiary payer identification name** means the name identifying a tertiary payer from which the provider might expect some payment for the reported service(s).

(4) **Tertiary payer type** means the type of tertiary payer as defined below from which the provider might expect some payment for the reported service(s):

(a) **1-HMO**-health maintenance organization;

(b) **2-other managed care**-includes provider service networks;

(c) **3-indemnity plan**;

(d) **88-unknown**.

(5) **Total charges** means an 11 digit number rounded to the whole dollar for the total charges for all inpatient services reported. This is the sum of all revenue service line charges.

(6) **Traffic crash report number** means the six digit number of the traffic crash/accident report form.

(7) **Type of admission** means an inpatient code indicating the priority of the admission. Type of admission codes are:

(a) **1-emergency**-the patient

requires immediate medical intervention as a result of severe, life threatening or potentially disabling conditions; generally, the patient is admitted through the emergency room;

(b) 2-urgent-the patient requires immediate medical attention for the care and treatment of a physical or mental disorder; generally, the patient is admitted to the first available and suitable accommodation;

(c) 3-elective-the patient's condition permits adequate time to schedule the availability of a suitable accommodation;

(d) 4-newborn-a baby born within this facility; use of this code necessitates the use of special source of admission codes-see source of admission;

(e) 9-information not available.

(8) **Type of bill** means the specific type of bill code indicating the type of billing for inpatient services.

U. All definitions that begin with the letter U.

(1) **UB-04 manual** is the official NUBC data specifications manual for (© AHA) issued by the NUBC.

V. All definitions that begin with the letter V.

W. All definitions that begin with the letter W.

X. All definitions that begin with the letter X.

Y. All definitions that begin with the letter Y.

Z. All definitions that begin with the letter Z.

[7.1.27.7 NMAC - N, 12/31/2012]

7.1.27.8 STATUS OF DATA: All data and health information collected from data sources shall become the property of the department upon receipt.

[7.1.27.8 NMAC - N, 12/31/2012]

7.1.27.9 DATA REPORTING BY LICENSED NON-FEDERAL GENERAL AND SPECIALTY INPATIENT HEALTH CARE FACILITIES:

A. **Schedule for reporting:** Beginning with the first quarter of 2013 (January 1-March 31), all licensed non-federal general and specialty inpatient health care facilities in New Mexico shall submit the reporting period discharges to the division on a quarterly basis the data required by this rule, in accordance with the following schedule:

| Reporting period | Report due to the division (95% discharges) | Division returns integrity and validation errors | Final corrected report due to the division (100% discharges) |
|-----------------------|---|--|--|
| January 1-March 31 | May 31 | June 15 | June 30 |
| April 1-June 30 | August 30 | September 15 | September 30 |
| July 1-September 30 | November 30 | December 15 | December 31 |
| October 1-December 31 | February 28 of the following year | March 15 of the following year | March 31 of the following year |

B. **Pursuant to the electronic reporting requirements in 7.1.27.10 NMAC, submit the data as a fixed-width ASCII text (flat) file. Follow the record layout specifications, provided by the division, for field placement and lengths (field lengths are maximum values and shall contain blank spaces as fillers for values less than the maximum length).**

C. **Data required to be reported:** All licensed non-federal general and specialty inpatient health care facilities in New Mexico shall report to the division the following data elements, in the record layout provided by the division. Required data items:

- (1) New Mexico state license number, left justified;
- (2) medicare provider number, left justified;
- (3) provider zip code (five or nine digits), left justified;
- (4) admission hour (military time);
- (5) patient's admission date (mmddyyyy);
- (6) point of origin (1 to 9, a, d, e, and f);
- (7) type of admission (1 to 4, 9);
- (8) patient's ems ambulance run number, left justified;
- (9) traffic crash report number, left justified;
- (10) accident state (two-digit code), left justified;
- (11) patient's medical record number, left justified;
- (12) patient's medicaid id number;
- (13) patient's control number, left justified;
- (14) birth weight (grams);
- (15) attending physician NPI (assigned by medicare);
- (16) operating physician NPI (assigned by medicare);
- (17) discharge hour (military time);
- (18) patient's discharge date (mmddyyyy);
- (19) patient's status (01 to 99);
- (20) primary payer category (1 to 10, 88), right justified;
- (21) primary payer identification name, left justified;
- (22) primary payer type (1 to 3, 88), right justified;
- (23) secondary payer category (1 to 10, 88), right justified;
- (24) secondary payer identification name, left justified;

- (25) secondary payer type (1 to 3, 88), right justified;
- (26) tertiary payer category (1 to 10, 88), right justified;
- (27) tertiary payer identification name, left justified;
- (28) tertiary payer type (1 to 3, 88), right justified;
- (29) 1st condition code, left justified;
- (30) 2nd condition code, left justified;
- (31) 3rd condition code, left justified;
- (32) 4th condition code, left justified;
- (33) 5th condition code, left justified;
- (34) 6th condition code, left justified;
- (35) 7th condition code, left justified;
- (36) 8th condition code, left justified;
- (37) 9th condition code, left justified;
- (38) 10th condition code, left justified;
- (39) 11th condition code, left justified;
- (40) 1st revenue code, left justified;
- (41) 1st revenue code description, left justified;
- (42) 1st revenue code service date (mmddyyyy), left justified;
- (43) 1st revenue code service units, right justified;
- (44) 1st revenue code line item charges, right justified;
- (45) 1st revenue code non-covered charges, right justified;
- (46) 2nd revenue code, left justified;
- (47) 2nd revenue code description, left justified;
- (48) 2nd revenue code service date (mmddyyyy), left justified;
- (49) 2nd revenue code service units, right justified;
- (50) 2nd revenue code line item charges, right justified;
- (51) 2nd revenue code non-covered charges, right justified;
- (52) 3rd revenue code description, left justified;
- (53) 3rd revenue code service date (mmddyyyy), left justified;
- (54) 3rd revenue code service units, right justified;
- (55) 3rd revenue code line item charges, right justified;
- (56) 3rd revenue code non-covered charges, right justified;
- (57) 4th revenue code, left justified;
- (58) 4th revenue code description, left justified;
- (59) 4th revenue code service date (mmddyyyy), left justified;
- (60) 4th revenue code service units, right justified;
- (61) 4th revenue code line item charges, right justified;
- (62) 4th revenue code non-covered charges, right justified;
- (63) 5th revenue code, left justified;
- (64) 5th revenue code description, left justified;
- (65) 5th revenue code service date (mmddyyyy), left justified;
- (66) 5th revenue code service units, right justified;
- (67) 5th revenue code line item charges, right justified;
- (68) 5th revenue code non-covered charges, right justified;
- (69) 6th revenue code, left justified;
- (70) 6th revenue code description, left justified;
- (71) 6th revenue code service date (mmddyyyy), left justified;
- (72) 6th revenue code service units, right justified;
- (73) 6th revenue code line item charges, right justified;
- (74) 6th revenue code non-covered charges, right justified;
- (75) 7th revenue code, left justified;
- (76) 7th revenue code description, left justified;
- (77) 7th revenue code service date (mmddyyyy), left justified;
- (78) 7th revenue code service units, right justified;
- (79) 7th revenue code line item charges, right justified;
- (80) 7th revenue code non-covered charges, right justified;
- (81) 8th revenue code, left justified;
- (82) 8th revenue code description, left justified;
- (83) 8th revenue code service date (mmddyyyy), left justified;
- (84) 8th revenue code service units, right justified;
- (85) 8th revenue code line item charges, right justified;
- (86) 8th revenue code non-covered charges, right justified;
- (87) 9th revenue code, left justified;
- (88) 9th revenue code description, left justified;
- (89) 9th revenue code service date (mmddyyyy), left justified;
- (90) 9th revenue code service units, right justified;
- (91) 9th revenue code line item charges, right justified;

- (92) 9th revenue code non-covered charges, right justified;
- (93) 10th revenue code, left justified;
- (94) 10th revenue code description, left justified;
- (95) 10th revenue code service date (mmddyyyy), left justified;
- (96) 10th revenue code service units, right justified;
- (97) 10th revenue code line item charges, right justified;
- (98) 10th revenue code non-covered charges, right justified;
- (99) 11th revenue code, left justified;
- (100) 11th revenue code description, left justified;
- (101) 11th revenue code service date (mmddyyyy), left justified;
- (102) 11th revenue code service units, right justified;
- (103) 11th revenue code line item charges, right justified;
- (104) 11th revenue code non-covered charges, right justified;
- (105) 12th revenue code, left justified;
- (106) 12th revenue code description, left justified;
- (107) 12th revenue code service date (mmddyyyy), left justified;
- (108) 12th revenue code service units, right justified;
- (109) 12th revenue code line item charges, right justified;
- (110) 12th revenue code non-covered charges, right justified;
- (111) 13th revenue code, left justified;
- (112) 13th revenue code description, left justified;
- (113) 13th revenue code service date (mmddyyyy), left justified;
- (114) 13th revenue code service units, right justified;
- (115) 13th revenue code line item charges, right justified;
- (116) 13th revenue code non-covered charges, right justified;
- (117) 14th revenue code, left justified;
- (118) 14th revenue code description, left justified;
- (119) 14th revenue code service date (mmddyyyy), left justified;
- (120) 14th revenue code service units, right justified;
- (121) 14th revenue code line item charges, right justified;
- (122) 14th revenue code non-covered charges, right justified;
- (123) 15th revenue code, left justified;
- (124) 15th revenue code description, left justified;
- (125) 15th revenue code service date (mmddyyyy), left justified;
- (126) 15th revenue code service units, right justified;
- (127) 15th revenue code line item charges, right justified;
- (128) 15th revenue code non-covered charges, right justified;
- (129) 16th revenue code, left justified;
- (130) 16th revenue code description, left justified;
- (131) 16th revenue code service date (mmddyyyy), left justified;
- (132) 16th revenue code service units, right justified;
- (133) 16th revenue code line item charges, right justified;
- (134) 16th revenue code non-covered charges, right justified;
- (135) 17th revenue code, left justified;
- (136) 17th revenue code description, left justified;
- (137) 17th revenue code service date (mmddyyyy), left justified;
- (138) 17th revenue code service units, right justified;
- (139) 17th revenue code line item charges, right justified;
- (140) 17th revenue code non-covered charges, right justified;
- (141) 18th revenue code, left justified;
- (142) 18th revenue code description, left justified;
- (143) 18th revenue code service date (mmddyyyy), left justified;
- (144) 18th revenue code service units, right justified;
- (145) 18th revenue code line item charges, right justified;
- (146) 18th revenue code non-covered charges, right justified;
- (147) 19th revenue code, left justified;
- (148) 19th revenue code description, left justified;
- (149) 19th revenue code service date (mmddyyyy), left justified;
- (150) 19th revenue code service units, right justified;
- (151) 19th revenue code line item charges, right justified;
- (152) 19th revenue code non-covered charges, right justified;
- (153) 20th revenue code, left justified;
- (154) 20th revenue code description, left justified;
- (155) 20th revenue code service date (mmddyyyy), left justified;
- (156) 20th revenue code service units, right justified;
- (157) 20th revenue code line item charges, right justified;
- (158) 20th revenue code non-covered charges, right justified;

- (159) 21st revenue code, left justified;
- (160) 21st revenue code description, left justified;
- (161) 21st revenue code service date (mmddyyyy), left justified;
- (162) 21st revenue code service units, right justified;
- (163) 21st revenue code line item charges, right justified;
- (164) 21st revenue code non-covered charges, right justified;
- (165) 22nd revenue code, left justified;
- (166) 22nd revenue code description, left justified;
- (167) 22nd revenue code service date (mmddyyyy), left justified;
- (168) 22nd revenue code service units, right justified;
- (169) 22nd revenue code line item charges, right justified;
- (170) 22nd revenue code non-covered charges, right justified;
- (171) patient's last name, left justified;
- (172) patient's middle initial;
- (173) patient's social security number;
- (174) patient's street address, left justified;
- (175) patient's city, left justified;
- (176) patient's county, left justified;
- (177) patient's state, left justified;
- (178) patient's zip code (five or nine digits), left justified;
- (179) patient's date of birth (mmddyyyy);
- (180) patient's race-multiple (r1 to r7, r9);
- (181) patient's ethnicity (e1, e2, e6, e7);
- (182) patient's tribal affiliation-up to five (t1 to t22, t100, t200, t300);
- (183) sex of patient (m, f, u);
- (184) patient's phone number, left justified;
- (185) patient's admitting diagnosis code, left justified;
- (186) patient's principal diagnosis code, left justified;
- (187) patient's 2nd diagnosis code, left justified;
- (188) patient's 3rd diagnosis code, left justified;
- (189) patient's 4th diagnosis code, left justified;
- (190) patient's 5th diagnosis code, left justified;
- (191) patient's 6th diagnosis code, left justified;
- (192) patient's 7th diagnosis code, left justified;
- (193) patient's 8th diagnosis code, left justified;
- (194) patient's 9th diagnosis code, left justified;
- (195) patient's 10th diagnosis code, left justified;
- (196) patient's 11th diagnosis code, left justified;
- (197) patient's 12th diagnosis code, left justified;
- (198) patient's 13th diagnosis code, left justified;
- (199) patient's 14th diagnosis code, left justified;
- (200) patient's 15th diagnosis code, left justified;
- (201) patient's 16th diagnosis code, left justified;
- (202) patient's 17th diagnosis code, left justified;
- (203) patient's 18th diagnosis code, left justified;
- (204) patient's admitting diagnosis code qualifier (9, 0, 1), left justified;
- (205) patient's principal diagnosis code qualifier (9, 0, 1), left justified;
- (206) patient's 2nd diagnosis code qualifier (9, 0, 1), left justified;
- (207) patient's 3rd diagnosis code qualifier (9, 0, 1), left justified;
- (208) patient's 4th diagnosis code qualifier (9, 0, 1), left justified;
- (209) patient's 5th diagnosis code qualifier (9, 0, 1), left justified;
- (210) patient's 6th diagnosis code qualifier (9, 0, 1), left justified;
- (211) patient's 7th diagnosis code qualifier (9, 0, 1), left justified;
- (212) patient's 8th diagnosis code qualifier (9, 0, 1), left justified;
- (213) patient's 9th diagnosis code qualifier (9, 0, 1), left justified;
- (214) patient's 10th diagnosis code qualifier (9, 0, 1), left justified;
- (215) patient's 11th diagnosis code qualifier (9, 0, 1), left justified;
- (216) patient's 12th diagnosis code qualifier (9, 0, 1), left justified;
- (217) patient's 13th diagnosis code qualifier (9, 0, 1), left justified;
- (218) patient's 14th diagnosis code qualifier (9, 0, 1), left justified;
- (219) patient's 15th diagnosis code qualifier (9, 0, 1), left justified;
- (220) patient's 16th diagnosis code qualifier (9, 0, 1), left justified;
- (221) patient's 17th diagnosis code qualifier (9, 0, 1), left justified;
- (222) patient's 18th diagnosis code qualifier (9, 0, 1), left justified;
- (223) 1st e-code, left justified, (required);
- (224) 2nd e-code, left justified;
- (225) 3rd e-code, left justified;

- (226) patient's admitting diagnosis, present on admission, left justified;
 (227) patient's principal diagnosis, present on admission, left justified;
 (228) patient's 2nd diagnosis, present on admission, left justified ;
 (229) patient's 3rd diagnosis, present on admission, left justified ;
 (230) patient's 4th diagnosis, present on admission, left justified ;
 (231) patient's 5th diagnosis, present on admission, left justified ;
 (232) patient's 6th diagnosis, present on admission, left justified ;
 (233) patient's 7th diagnosis, present on admission, left justified ;
 (234) patient's 8th diagnosis, present on admission, left justified ;
 (235) patient's 9th diagnosis, present on admission, left justified ;
 (236) patient's 10th diagnosis, present on admission, left justified ;
 (237) patient's 11th diagnosis, present on admission, left justified ;
 (238) patient's 12th diagnosis, present on admission, left justified ;
 (239) patient's 13th diagnosis, present on admission, left justified ;
 (240) patient's 14th diagnosis, present on admission, left justified ;
 (241) patient's 15th diagnosis, present on admission, left justified ;
 (242) patient's 16th diagnosis, present on admission, left justified ;
 (243) patient's 17th diagnosis, present on admission, left justified ;
 (244) patient's 18th diagnosis, present on admission, left justified ;
 (245) patient's diagnosis related group (DRG) code ;
 (246) patient's principal procedure code, left justified;
 (247) patient's 2nd procedure code, left justified;
 (248) patient's 3rd procedure code, left justified;
 (249) patient's 4th procedure code, left justified;
 (250) patient's 5th procedure code, left justified;
 (251) patient's 6th procedure code, left justified;
 (252) patient's 2nd procedure code, left justified;
 (253) patient's 3rd procedure code, left justified;
 (254) patient's 4th procedure code, left justified;
 (255) patient's 5th procedure code, left justified;
 (256) patient's 6th procedure code, left justified;
 (257) patient's principal procedure code qualifier (9, 0, 1), left justified;
 (258) patient's 2nd procedure code qualifier (9, 0, 1), left justified;
 (259) patient's 3rd procedure code qualifier (9, 0, 1), left justified;
 (260) patient's 4th procedure code qualifier (9, 0, 1), left justified;
 (261) patient's 5th procedure code qualifier (9, 0, 1), left justified;
 (262) patient's 6th procedure code qualifier (9, 0, 1), left justified;
 (263) patient's 2nd procedure code qualifier (9, 0, 1), left justified;
 (264) patient's 3rd procedure code qualifier (9, 0, 1), left justified;
 (265) patient's 4th procedure code qualifier (9, 0, 1), left justified;
 (266) patient's 5th procedure code qualifier (9, 0, 1), left justified;
 (267) patient's 6th procedure code qualifier (9, 0, 1), left justified;

D. Data reporting requirements for New Mexico human services department's medicaid system: The New Mexico human service department's medicaid system shall provide all data listed by cooperative agreement between the division and the human services department, pursuant to the reporting schedule contained in Subsection A of 7.1.27.10 NMAC.

E. Data reporting requirements for the medicare (part A) fiscal intermediary: The medicare (part A) fiscal intermediary shall provide all data mutually agreed upon in accordance with law between the division and the fiscal intermediary, pursuant to the reporting schedule contained in Subsection A of 7.1.27.9 NMAC.

F. Annual financial statements: All licensed non-federal general and specialty inpatient health care facilities shall submit annual audited financial statements to the division. If the owners of such facilities obtain one audit covering more than one facility, combined annual audited financial statements may be submitted in compliance with this section. Facilities reporting in combined annual audited financial statements must also submit annual unaudited, individual facility financial statements to the division. These reports shall be submitted no later than the end of the calendar year following the statement year.

[7.1.27.9 NMAC - N, 12/31/2012]

7.1.27.10 ELECTRONIC REPORTING REQUIREMENTS: Starting with 2012 data, all data providers shall submit the required quarterly discharge data pursuant to the reporting schedule contained in Subsection A of 7.1.27.9 NMAC and all final corrected reports, for the full year's worth of data, are due no later than March 31 of the following year. Data providers shall submit data by electronic media, which includes CD, DVD, or direct electronic transmission by encrypted e-mail or secure file transmission protocol (SFTP), in

an ASCII file format, per the most current record layout and instruction provided by the division. Data providers shall label all media and data files with the following information: type of data, hospital name and license number, year, file name, point of contact and telephone number, and mail data to "New Mexico department of health epidemiology and response division, attn: division, 1190 St. Francis Drive, Santa Fe, NM 87502." Any data transmitted by mail or overnight delivery is the responsibility of the data provider until it is acknowledged as received by the division. Therefore, all data transmitted by third party mail provider will be sent using a tracking mechanism (e.g., fedex tracking website) or be certified for acknowledgement (e.g., certified postal mail requiring a signature for delivery).

[7.1.27.10 NMAC - N, 12/31/2012]

7.1.27.11 REPORTING EXEMPTIONS: Upon written application to the division, the division may grant a health care facility a temporary exemption, not to exceed two reporting quarters, from the schedule required by Subsection A of 7.1.27.9 NMAC. Temporary exemption from reporting does not excuse the health care facility from reporting the requested data items for activity that occurred during the exempted period. Upon resumption of the regular reporting schedule the health care facility shall promptly report data for the exempted period.

[7.1.27.11 NMAC - N, 12/31/2012]

7.1.27.12 PENALTIES FOR REPORTING VIOLATION: Failure to comply with any of the reporting requirements in this rule may result in injunctive relief and a civil penalty not to exceed \$1,000 per violation, as provided by the HIS Act.

[7.1.27.12 NMAC - N, 12/31/2012]

7.1.27.13 GENERAL PROVISIONS ON ACCESS TO THE HEALTH INFORMATION SYSTEM DATA:

A. Reporting: In accordance with Subsections 24-14A-3 (D) (6), 24-14A-4.3 & 24-14A-6 (D) of the HIS Act, data may be reported routinely to authorized federal, state, and local public agencies. Record-level data shall be reported to the agency for healthcare research and quality (AHRQ) for incorporation into the healthcare cost and utilization project (HCUP) databases as part of the federal-state-industry partnership.

B. Access requirements: Data and reports based on the HIS may be obtained only in accordance with the requirements of the HIS Act and this rule. Any request for information that would not be contained in routine reports will require

completion of a data request form available on the division's website or by contacting the division.

C. Evaluation of requests:

In addition to other requirements stated in this rule, all requests for HIS data and reports, other than routine reports, shall be evaluated by the division and shall satisfy the following criteria for approval.

(1) The specific intended use of the data shall comport with the purposes of the HIS Act, as stated in 24-14A-3A and rules promulgated pursuant to the act, including use of data to assist in:

(a) the performance of health planning, policy making functions, and research conducted for the benefit of the public;

(b) informed health care decision making by consumers;

(c) surveillance for the control of disease and conditions of public health significance as required by Public Health Act, Subsection 24-1-3(C) NMSA 1978;

(d) administration, monitoring, and evaluation of a statewide health plan.

(2) The request shall be consistent with the responsibilities of the division in accomplishing the priorities of the HIS.

(3) The request is for data that are either:

(a) in a routine report previously published by the division, or

(b) aggregate data in or reports based on a subset or portion of the HIS database that is relevant to the individual's stated purpose upon approval of the request by the division, or

(c) record-level data, such that an individual patient or healthcare professional cannot be identified, pursuant to the HIS Act, to federal, state, and local public agencies, and upon approval of the request by the division.

D. Request procedures:

All requests for data shall be made pursuant to the requirements of 7.1.27.14 NMAC.

E. Fees: Fees for access to data and reports shall be paid pursuant to the requirements of 7.1.27.18 NMAC.

F. Restrictions on access to sensitive data: The division shall have the authority to deny access to information from the HIS database where use of the information, as determined by the division, could result in violation of a patient's privacy.

G. Compliance with other laws: The division shall ensure that any access to data that is subject to restrictions on use pursuant to state, federal, or tribal law or regulation, or any other legal agreement, complies with those restrictions.

H. Disclaimer: The division shall include a disclaimer in all HIS data and reports released pursuant to this rule stating that the accuracy of the original

data is the responsibility of the submitting data provider and that the division assumes no responsibility for any use made of or conclusions drawn from the data.

I. Agency contractors:

(1) A state or federal agency that receives HIS data or reports under an agreement with the division pursuant to 7.1.27.15 NMAC, 7.1.27.16 NMAC, and 7.1.27.17 NMAC shall be solely responsible for fulfillment of the agreement, including responsibility for the actions of any subcontractor engaged to perform services that require access to HIS data or reports.

(2) No state or federal agency shall subcontract any portion of services to be performed under an agreement with the division without prior written approval of the division.

(3) A state or federal agency subcontractor that is provided access to HIS data or reports shall be subject to the full provisions of the HIS Act, and this rule, including 7.1.27.15 NMAC, 7.1.27.16 NMAC, and 7.1.27.17.

J. Public data: The restrictions that apply to the release of data do not apply when the data provider is a government agency and the data provided to the HIS otherwise would be considered public data in accordance with the Public Records Act, Sections 14-3-1 to 14-3-23, NMSA 1978, and the Open Meetings Act, Sections 10-15-1 to 10-15-4, NMSA 1978.

K. Proprietary and confidential information:

(1) Proprietary information and patient confidential information shall not be routinely disclosed in or as part of a public health information report by the division.

(2) A data provider that objects on proprietary grounds to the potential release in a public health information report, or a record level data disclosure, of its reported data or information derived from its reported data shall submit to the division a written request to exempt its data from such disclosures. By the end of each fiscal year (June 30th) data providers must notify, in writing, the division regarding data items that they deem proprietary. Application for an exemption must be addressed by a representative of the data provider to the division.

L. Final determination:

(1) The division shall prepare a recommended written decision in the format required by Subsection 39-3-1.1 NMSA 1978. The recommended written decision shall be approved or disapproved by the department division director or designee within 10 days or as expeditiously as possible after the issuance of the division's written recommendation.

(2) The decision by the department division director or designee is subject to review by the secretary at the secretary's

discretion and is the final determination for purpose of judicial review.

(3) The department shall issue a final decision that includes an order granting or denying relief. The final decision may incorporate the division's recommended decision or the department may render any other final decision supported by law. The final decision shall include a statement of the factual and legal basis for the decision.

[7.1.27.13 NMAC - N, 12/31/2012]

7.1.27.14 PROCEDURES FOR REQUESTS OF THE HIS DATA:

A. Requests for public and previously-prepared routine reports:

Requests for copies of public and routine reports produced by the division for public use shall be made either in writing or by e-mail to the division. Fees for these reports shall be paid in accordance with 7.1.27.18 NMAC.

B. Requests for previously-prepared, non-routine reports:

Requests for copies of previously-prepared, non-routine reports shall be made in writing or by e-mail to the division. These reports shall be made available pursuant to the requirements of this rule. Fees for these reports shall be paid in accordance with 7.1.27.18 NMAC.

C. Individualized requests: Requests for not previously prepared, non-routine reports, or for data contained in the HIS database shall be made in writing to the division by specifying the following information on a request form provided by the division.

(1) Date of request.

(2) Name, address, and organizational affiliation.

(3) Specific data or analysis requested.

(4) Specific intended use of the data, including proposed analytical or research methodology, and expected outcomes of analysis, together with an acknowledgment that the data will not be used in violation of 7.1.27.19 NMAC and 7.1.27.20 NMAC.

(5) Desired date by which the information is needed, allowing a minimum of two weeks to process the request.

(6) For requests for data, the names and positions of individuals who will have access to the data if the request is granted.

(7) For requests for data, the requestor's specific plans for protecting these data and use of the data in accordance with the requirements of the HIS Act, and this rule.

(8) Any additional information the division may request.

D. Review of requests for data: The division shall conduct a preliminary review of requests made for HIS data or reports and may require the requestor

to submit supplemental information to achieve a final project request. As required by this rule, the division will make the determination on whether to grant the request. Requestors shall be notified of whether the request meets the criteria for approval within a reasonable period of time from the initial date of the request. The division shall make reasonable efforts to review requests expeditiously within available resources.

E. Provision of data: The division shall prepare data or reports for approved requests within a reasonable period of time given the nature of the request, making reasonable efforts to prepare the information expeditiously within available resources.

F. Fee estimate: If a request for data or reports made pursuant to 7.1.27.14 NMAC is approved, the division shall prepare a preliminary estimate of the fee required for preparing the data or report, in accordance with 7.1.27.18 NMAC. This estimate, which shall not serve as a guarantee of final charges, shall be included with the notification of approval or disapproval provided pursuant to Subsection D of 7.1.27.14 NMAC. If the requestor agrees to pay the fee, the division shall proceed with preparing the data or report.

[7.1.27.14 NMAC - N, 12/31/2012]

7.1.27.15 ACCESS TO ROUTINE AND PUBLISHED REPORTS: The division shall release reports to the public on a periodic schedule as determined by the division and in accordance with the HIS Act.

[7.1.27.15 NMAC - N, 12/31/2012]

7.1.27.16 ACCESS TO AGGREGATE DATA AND REPORTS: Individuals: Pursuant to the requirements of 7.1.27.13 NMAC, any person may obtain access to aggregate data in or reports based on the subset or portion of the HIS database that is relevant to the individual's stated purpose upon approval of the request by the division.

[7.1.27.16 NMAC - N, 12/31/2012]

7.1.27.17 ACCESS TO DE-IDENTIFIED RECORD-LEVEL DATA:

A. Disclosure authorization: Pursuant to the requirements of the HIS Act and 45 CFR 164.512, New Mexico state agencies or political subdivisions, and federal agencies authorized to collect, analyze, or disseminate health information, may obtain access to record level data in or records based upon the subset or portion of the record level data that is relevant to the organization's or agency's stated purpose, upon approval of the request by the director. The director may require such agency or organization

to agree to specific confidentiality and data use requirements prior to the release of the data or reports. Federal agencies may obtain the information only if the agency agrees to fully protect its confidentiality as provided by state and federal law. No other persons or entities shall have access to data in, or non-aggregate analytical reports based on the record level data.

B. Protection of identity: Any data or report that is provided from the HIS database shall be configured in a manner that precludes actual or potential identification of individual patients, as defined in 45 CFR Subsection 164.514(e), or health care providers unless the division determines that disclosure of identifiable hospital information is necessary for a state, tribal, or federal agency's or local political subdivision's authorized use, and that the disclosure complies with state and federal privacy and confidentiality laws, rules, and regulations.

C. Deletion of data: The requestor shall delete the HIS data file upon completion of the approved research and shall not retain any copies of HIS data files. The requestor must inform the division annually of the status of the work being done, the expected date of HIS dataset deletion, description of how HIS data files are stored, and a cumulative listing of how the HIS dataset has been used as well as any publications or presentations that were informed or created using the HIS data file (unless otherwise agreed to in writing).

[7.1.27.17 NMAC - N, 12/31/2012]

7.1.27.18 FEES FOR DATA AND REPORTS:

A. Fees for routine reports:

(1) **Generally:** The fees for copies of available routine reports produced for public use shall be as follows:

(a) single copies of any consumer health information reports or HIS annual reports shall be provided free of charge upon request; and

(b) all other reports shall be provided for \$10.00 per report.

(2) **Data providers:** Data providers may receive one free copy of the division's routine reports upon request.

B. Previously-prepared reports: The fee for copies of available previously-prepared, non-routine reports provided to persons other than the original requestor for whom the report was prepared shall be \$20.00 per report.

C. Fees for data and non-routine reports: The fee for preparing data and non-routine reports that have not been previously prepared shall be charged at the hourly rate of the analyst(s) preparing the data or report, as follows:

(1) data providers shall be charged

a rate of \$50.00 per analyst hour;

(2) state agencies shall be charged a rate of \$75.00 per analyst hour; and

(3) all others shall be charged a rate of \$100.00 per analyst hour.

D. Electronic media reports: Fees for reports made available on electronic media may include charges for the cost of the magnetic tape, diskette, CD-ROM, or other electronic media, in addition to the fees required by this section.

E. Waiver or reduction of fees:

(1) **Standard for waiver or reduction:** The division may reduce or waive the fee for routine reports, data, and non-routine reports that have not been previously prepared when the division determines that the requestor's proposed use of the information would be of value to the division in fulfilling its statutory mandates to a degree equal to or greater than the fee reduction or waiver.

(2) **Payment upon failure to perform:** When a fee waiver or reduction has been granted and the research for which the fee was waived or reduced is not completed, or the product for which the fee was waived or reduced is not delivered to the division, the full fee shall be assessed in accordance with Subsection C of 7.1.27.18 NMAC.

F. Statement of fees: The division shall prepare a statement of the fee for requests made pursuant to Subsection C of 7.1.27.14 NMAC and provide it to the requestor with the data or report. The fee must be paid no later than 30 days after receipt of the data or report.

[7.1.27.18 NMAC - N, 12/31/2012]

7.1.27.19 OBLIGATIONS UPON RECEIPT OF DATA:

A. Specific requirements: Requestors and any individuals who are permitted access to HIS data or reports through approval of a request made pursuant to Subsection C of 7.1.27.14 NMAC shall.

(1) Limit use of the information to the purposes stated on the request form.

(2) Give full credit to the division in any published or unpublished reports using HIS information unless otherwise agreed to in writing.

(3) Include a disclaimer in any published or unpublished reports using HIS information which states that the accuracy of the original data is the responsibility of the submitting data provider and that the division assumes no responsibility for any use made of or conclusions drawn from the data unless otherwise agreed to in writing.

(4) Provide the division with a copy of any reports, papers, posters or other publication (electronic or otherwise) resulting from access to the HIS database unless otherwise agreed to in writing.

B. **Prior approval:** The division shall review and approve in advance of distribution any report or analysis produced using data from the HIS database to any person beyond those specified in the request made pursuant to Subsection C of 7.1.27.14 NMAC unless otherwise agreed to in writing. Reports or analysis of this nature shall not be released if disapproved by the division.

[7.1.27.19 NMAC - N, 12/31/2012]

7.1.27.20 REDISCLOSURE OF DATA: Requestors who are permitted access to aggregate data from non-routine reports, as well as record-level data, (as described in 7.1.27.16 NMAC and 7.1.27.17 NMAC of this rule) shall not (unless otherwise agreed to in writing):

A. provide the data or portion of it to any persons other than those identified in the request form; or

B. share, release, or otherwise give any or all of the information contained in the HIS dataset to any person or institution not listed on the data request form; or

C. resell any portion of the data or other information gained as a result of obtaining access to the data.

[7.1.27.20 NMAC - N, 12/31/2012]

7.1.27.21 REPORTS AVAILABLE THROUGH THE STATE LIBRARY DEPOSITORY SYSTEM: Paper copies of all public use routine reports produced by the division shall be available to the public through the state library depository system.

[7.1.27.21 NMAC - N, 12/31/2012]

7.1.27.22 PENALTIES FOR RULE VIOLATION:

A. **Division sanctions:** A requestor who violates the requirements of this rule may be subject to any or all of the following sanctions, as determined by the division.

(1) Temporary or permanent denial of access to HIS data or reports.

(2) Termination of current access.

(3) Mandated immediate return, without duplication, of HIS data or reports provided by the division.

B. **Other penalties:** A requestor who violates the requirements of this rule or the HIS Act, may be subject to sanctions provided in applicable state, federal, or tribal laws or regulations, including but not limited to injunctive relief and civil penalties of up to \$1,000 per violation.

[7.1.27.22 NMAC - N, 12/31/2012]

HISTORY OF 7.1.27 NMAC: [RESERVED]

NEW MEXICO DEPARTMENT OF HEALTH

TITLE 7 HEALTH CHAPTER 27 EMERGENCY MEDICAL SERVICES PART 11 SUPPLEMENTAL LICENSING PROVISIONS

7.27.11.1 ISSUING AGENCY: New Mexico Department of Health, Epidemiology and Response Division, Emergency Medical Systems Bureau.
[7.27.11.1 NMAC - Rp, 7.27.11.1 NMAC, 12/31/2012]

7.27.11.2 SCOPE: These rules apply to New Mexico emergency medical services, including the service directors and medical directors of those services; approved New Mexico EMS training programs and graduates of approved New Mexico EMS training programs; New Mexico licensed EMS personnel including those previously licensed; persons trained, certified or licensed in another state or territory seeking to acquire licensure in New Mexico; EMS licensing commission; national registry of emergency medical technicians; and any other entity associated with the licensing of emergency medical services personnel in New Mexico.

[7.27.11.2 NMAC - Rp, 7.27.11.2 NMAC, 12/31/2012]

7.27.11.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the following statutory authorities: 1) the New Mexico Department of Health Act, Subsection E of Section 9-7-6 NMSA 1978, which authorizes the secretary of the department of health to "make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions," and; 2) the Emergency Medical Services Act, NMSA 1978, Section 24-10B-4 ("Bureau; duties").

[7.27.11.3 NMAC - Rp, 7.27.11.3 NMAC, 12/31/2012]

7.27.11.4 DURATION: Permanent.

[7.27.11.4 NMAC - Rp, 7.27.11.4 NMAC, 12/31/2012]

7.27.11.5 EFFECTIVE DATE: December 31, 2012, unless a later date is cited at the end of a section.

[7.27.11.5 NMAC - Rp, 7.27.11.5 NMAC, 12/31/2012]

7.27.11.6 OBJECTIVE: These rules are intended to supplement the emergency medical services licensure requirements for emergency medical

services personnel, to provide supplemental and additional standards for the licensure of emergency medical dispatchers, emergency medical dispatch-instructors, emergency medical services first responders and emergency medical technicians, and to assist in the provision of a comprehensive system of emergency medical services in the state of New Mexico.

[7.27.11.6 NMAC - Rp, 7.27.11.6 NMAC, 12/31/2012]

7.27.11.7 DEFINITIONS:
[Refer to 7.27.2.7 NMAC]

7.27.11.8 SCOPES OF PRACTICE FOR LICENSED EMERGENCY MEDICAL SERVICES PERSONNEL:

A. Medical director means a physician functioning as the service EMS medical director as defined and described in 7.27.3 NMAC, Medical Direction for Emergency Medical Services. Medical control means supervision provided by or under the direction of a physician.

B. Prior to approving a new skill, technique, medication, or procedure, it shall be documented by the service director, medical director, or approved EMS training institution that the EMS provider has been appropriately trained to perform those new skills, techniques, medications, or procedures.

C. Service medical director approved: All service medical director approved skills, techniques, medications, or procedures are considered advanced life support. Prior to utilizing any skill, technique, medication or procedure designated as service medical director approved, it shall be documented by the service director, medical director, or approved EMS training institution that the EMS provider has been appropriately trained to administer the medications or perform the skills, techniques, medications or procedures. Additionally, each EMS provider must have a signed authorization from the service's medical director on file at the EMS service's headquarters or administrative offices.

D. Any device in an EMS agency's treatment guideline/protocol designed and utilized to facilitate successful completion of a skill or other treatment modality, including but not limited to CPR devices, intraosseous placement devices, and positive pressure ventilation devices, must be approved by the service medical director.

E. Wilderness protocols. The following skills shall only be used by providers who have a current wilderness certification from a bureau approved wilderness caregiver course, who are functioning in a wilderness environment as a wilderness provider (an environment

in which time to a hospital is expected to exceed two hours, except in the case of an anaphylactic reaction, in which no minimum transport time is required), and are authorized by their medical director to provide the treatment:

- (1) minor wound cleaning and management;
- (2) cessation of CPR;
- (3) field clearance of the cervical-spine;
- (4) reduction of dislocations resulting from indirect force of the patella, digit, and anterior shoulder.

F. Utilization of pharmacological agents for the primary purpose of sedation, induction, or muscle relaxation to facilitate placement of an advanced airway requires medical direction committee special skills approval.

G. Licensed emergency medical dispatcher (EMD).

(1) Medical direction is required for all items in the EMD scope of practice.

(2) The following allowable skills may be performed by EMDs who are licensed by the EMS bureau and functioning with an EMS bureau certified New Mexico emergency medical dispatch agency utilizing protocols and any EMD priority reference system approved by the EMS bureau and service medical director.

(a) Process calls for medical assistance in a standardized manner, eliciting required information for evaluating, advising, and treating sick or injured individuals, and dispatching an appropriate EMS response.

(b) Provide pre-arrival instructions to the patient through the caller when possible and appropriate to do so while functioning in compliance with an emergency medical dispatch priority reference system (EMDPRS).

H. EMS first responders (EMSFR):

(1) The following allowed drugs may be administered and skills and procedures may be performed without medical direction:

- (a) basic airway management;
- (b) use of basic adjunctive airway equipment;
- (c) suctioning;
- (d) cardiopulmonary resuscitation, according to current ECC guidelines;
- (e) obstructed airway management;
- (f) bleeding control via direct pressure;
- (g) spine immobilization;
- (h) splinting (medical direction required for femoral traction splinting);
- (i) scene assessment, triage, scene safety;
- (j) use of statewide EMS communications system;
- (k) emergency childbirth;

(l) glucometry;
(m) oxygen;
(n) other non-invasive procedures as taught in first responder courses adhering to DOT curricula.

(2) The following require service medical director approval:

(a) allowable skills:
(i) mechanical positive pressure ventilation;

(ii) femoral traction splinting;
(iii) application and use of semi-automatic defibrillators, including cardiac rhythm acquisition for ALS caregiver interpretation or transmission to a care facility; this includes multi-lead documentation;

(iv) insertion of laryngeal and supraglottic airway devices (examples: king airway, LMA), excluding multi-lumen airways);

(v) acupressure;
(b) administration of approved medications via the following routes:

(i) nebulized inhalation;
(ii) subcutaneous;
(iii) intramuscular;
(iv) oral (PO);

(c) allowable drugs:
(i) oral glucose preparations;

(ii) aspirin PO for adults with suspected cardiac chest pain;

(iii) IM autoinjection of the following agents for treatment of chemical or nerve agent exposure: atropine, pralidoxime;

(iv) albuterol (including isomers) via inhaled administration;

(v) ipratropium via inhaled administration, in combination with or after albuterol administration;

(vi) epinephrine via auto-injection device;

(d) patient's own medication that may be administered: bronchodilators using pre-measured or metered dose inhalation device.

I. E M T - B A S I C (EMT-B):

(1) The following allowed drugs may be administered and skills and procedures may be performed without medical direction:

(a) basic airway management;
(b) use of basic adjunctive airway equipment;

(c) suctioning;
(d) cardiopulmonary resuscitation, according to current ECC guidelines;

(e) obstructed airway management;

(f) bleeding control;
(g) spine immobilization;

(h) splinting;
(i) scene assessment, triage, scene safety;

(j) use of statewide EMS communications system;

(k) childbirth (imminent delivery);

(l) glucometry;
(m) oxygen;

(n) other non-invasive procedures as taught in EMT-B courses adhering to DOT curricula;

(o) wound management.

(2) The following require service medical director approval:

(a) allowable skills:
(i) mechanical positive pressure ventilation;

(ii) use of multi-lumen, supraglottic, and laryngeal airway devices (examples: PTLA, combi-tube, king airway, LMA) to include gastric suctioning;

(iii) pneumatic anti-shock garment;

(iv) application and use of semi-automatic defibrillators, including cardiac rhythm acquisition for ALS caregiver interpretation or transmission to a care facility; this includes multi-lead documentation;

(v) acupressure;

(vi) transport of patients with nasogastric tubes, urinary catheters, heparin/saline locks, PEG tubes, or vascular access devices intended for outpatient use;

(b) administration of approved medications via the following routes:

(i) nebulized inhalation;

(ii) subcutaneous;

(iii) intramuscular;

(iv) intranasal;

(v) oral (PO);

(vi) intradermal;

(c) allowable drugs:
(i) oral glucose preparations;

(ii) aspirin PO for adults with suspected cardiac chest pain;

(iii) activated charcoal PO;

(iv) acetaminophen PO in pediatric patients with fever;

(v) IM autoinjection of the following agents for treatment of chemical and/or nerve agent exposure: atropine, pralidoxime;

(vi) albuterol (including isomers), via inhaled administration;

(vii) ipratropium, via inhaled administration, in combination with or after albuterol administration;

(viii) epinephrine via auto-injection device;

(ix) administration of naloxone by SQ, IM, or IN route;

(x) administration of epinephrine, 1:1000, no single dose greater than 0.3 ml, subcutaneous or intramuscular injection with a pre-measured syringe or 0.3 ml TB syringe for anaphylaxis or status asthmaticus refractory to other treatments;

(d) patient's own medication that may be administered:

(i) bronchodilators using pre-measured or metered dose inhalation device;

(ii) sublingual nitroglycerin for unrelieved chest pain, with on line medical control only;

(iii) situations may arise involving patients with uncommon conditions requiring specific out of hospital administered medications or procedures; family members or the designated caregiver trained and knowledgeable of the special needs of the patient should be recognized as the expert regarding the care of the patient; EMS can offer assistance in airway management appropriate to their level of licensure, and administer the patient's prescribed medications where appropriate only if the medication is in the EMS provider's scope of practice; EMS services are not expected to provide the prescribed medications for these special needs patients.

(3) Immunizations and biologicals: Administration of immunizations, vaccines, biologicals, and TB skin testing is authorized under the following circumstances:

(a) to the general public as part of a department of health initiative or emergency response, utilizing department of health protocols; the administration of immunizations is to be under the supervision of a physician, nurse, or other authorized health provider;

(b) TB skin tests may be applied and interpreted if the licensed provider has successfully completed required department of health training;

(c) in the event of a disaster or emergency, the state EMS medical director or chief medical officer of the department of health may temporarily authorize the administration of pharmaceuticals or tests not listed above.

J. EMT**INTERMEDIATE (EMT-I):**

(1) The following allowed drugs may be administered and skills and procedures may be performed without medical direction:

(a) basic airway management;
(b) use of basic adjunctive airway equipment;
(c) suctioning;

(d) cardiopulmonary resuscitation, according to ECC guidelines;

(e) obstructed airway management;

(f) bleeding control;

(g) spine immobilization;

(h) splinting;

(i) scene assessment, triage, scene safety;

(j) use of statewide EMS communications system;

(k) childbirth (imminent delivery);

(l) glucometry;

(m) oxygen;

(n) wound management.

(2) The following require service medical director approval:

(a) allowable skills:

(i) mechanical positive pressure ventilation;

(ii) use of multi-lumen, supraglottic, and laryngeal airway devices (examples: PTLA, combi-tube, king airway, LMA) to include gastric suctioning;

(iii) pneumatic anti-shock garment;

(iv) application and use of semi-automatic defibrillators, including cardiac rhythm acquisition for ALS caregiver interpretation or transmission to a care facility; this includes multi-lead documentation;

(v) acupressure;

(vi) transport of patients with nasogastric tubes, urinary catheters, heparin/saline locks, PEG tubes, or vascular access devices intended for outpatient use;

(vii) peripheral venous puncture/access;

(viii) blood drawing;

(ix) pediatric

intraosseous tibial access;

(x) adult intraosseous

access;

(b) administration of approved medications via the following routes:

(i) intravenous;

(ii) intranasal;

(iii) nebulized

inhalation;

(iv) sublingual;

(v) intradermal;

(vi) intraosseous;

(vii) endotracheal (for administration of epinephrine only, under the direct supervision of an EMT-paramedic, or if the EMS service has an approved special skill for endotracheal intubation);

(viii) oral (PO);

(ix) intramuscular;

(x) subcutaneous;

(c) allowable drugs:

(i) oral glucose preparations;

(ii) aspirin PO for adults with suspected cardiac chest pain;

(iii) activated charcoal PO;

(iv) acetaminophen PO in pediatric patients with fever;

(v) IM autoinjection of the following agents for treatment of chemical or nerve agent exposure: atropine, pralidoxime;

(vi) albuterol (including isomers) via inhaled administration;

(vii) ipratropium, via inhaled administration in combination with or after albuterol administration;

(viii) naloxone;

(ix) I.V. fluid therapy (except blood or blood products);

(x) dextrose;

(xi) epinephrine via auto-injection device;

(xii) epinephrine (1:1000), SQ or IM for anaphylaxis and known asthmatics in severe respiratory distress (no single dose greater than 0.3 cc);

(xiii) epinephrine (1:10,000) in pulseless cardiac arrest for both adult and pediatric patients; epinephrine may be administered via the endotracheal tube in accordance with ACLS and PALS guidelines;

(xiv) nitroglycerin (sublingual) for chest pain associated with suspected acute coronary syndromes; must have intravenous access established prior to administration or approval of online medical control if IV access is unavailable;

(xv) morphine, fentanyl, or dilaudid for use in pain control with approval of on-line medical control;

(xvi) diphenhydramine for allergic reactions or dystonic reactions;

(xvii) glucagon, to treat hypoglycemia in diabetic patients when intravenous access is not obtainable;

(xviii) anti-emetic agents, for use as an anti-emetic only;

(xix) methylprednisolone for reactive airway disease/acute asthma exacerbation;

(xx)

hydroxycobalamine;

(xxi) lidocaine (2%, preservative and epinephrine free for IV use) for administration into the intraosseous space on pain responsive adult patients while receiving intraosseous fluids or medications;

(d) patient's own medication that may be administered:

(i) bronchodilators using pre-measured or metered dose inhalation device;

(ii) sublingual nitroglycerin for unrelieved chest pain; must have intravenous access established prior to administration or approval of online medical control if IV access is unavailable;

(iii) glucagon;

(iv) situations may arise involving patients with uncommon conditions requiring specific out of hospital administered medications or procedures; family members or the designated caregiver trained and knowledgeable of the special needs of the patient should be recognized as the expert regarding the care of the patient; EMS can offer assistance in airway management appropriate to their level of licensure, IV access, and the administration of the patient's prescribed medications where appropriate only if the medication is in the EMS provider's scope of practice;

online (direct contact) medical control communication must be established with the medical control physician approving the intervention; EMS services are not expected to provide the prescribed medications for these special needs patients.

(e) drugs allowed for monitoring during transport: monitoring IV solutions that contain potassium during transport (not to exceed 20 mEq/1000cc or more than 10 mEq/hour);

(f) immunizations and biologicals: administration of immunizations, vaccines, biologicals, and TB skin testing is authorized under the following circumstances:

(i) to the general public as part of a department of health initiative or emergency response, utilizing department of health protocols; the administration of immunizations is to be under the supervision of a physician, nurse, or other authorized health provider;

(ii) administer vaccines to EMS and public safety personnel;

(iii) TB skin tests may be applied and interpreted if the licensed provider has successfully completed required department of health training;

(iv) in the event of a disaster or emergency, the state EMS medical director or chief medical officer of the department of health may temporarily authorize the administration of pharmaceuticals or tests not listed above.

K. EMT-PARAMEDIC (EMT-P):

(1) The following allowed drugs may be administered and skills and procedures may be performed without medical direction:

- (a)** basic airway management;
- (b)** use of basic adjunctive airway equipment;
- (c)** suctioning;
- (d)** cardiopulmonary resuscitation, according to current ECC guidelines;
- (e)** obstructed airway management;
- (f)** bleeding control;
- (g)** spine immobilization;
- (h)** splinting;
- (i)** scene assessment, triage, scene safety;
- (j)** use of statewide EMS communications system;
- (k)** childbirth (imminent delivery);
- (l)** glucometry;
- (m)** oxygen;
- (n)** wound management.

(2) The following require service medical director approval:

- (a) allowable skills:**
 - (i)** mechanical positive pressure ventilation;
 - (ii)** use of multi-lumen, supraglottic, and laryngeal airway devices (examples: PTLA, combi-tube, king airway,

LMA) to include gastric suctioning;

(iii) pneumatic anti-shock garment;

(iv) transport of patients with nasogastric tubes, urinary catheters, heparin/saline locks, PEG tubes, or vascular access devices intended for outpatient use;

(v) application and use of semi-automatic defibrillators;

(vi) acupressure;

(vii) peripheral venous puncture/access;

(viii) blood drawing;

(ix) I.V. fluid therapy;

(x) direct laryngoscopy;

(xi) endotracheal intubation;

(xii) thoracic decompression (needle thoracostomy);

(xiii) surgical cricothyroidotomy;

(xiv) insertion of nasogastric tubes;

(xv) cardioversion and manual defibrillation;

(xvi) external cardiac pacing;

(xvii) cardiac monitoring;

(xviii) use of infusion pumps;

(xix) initiation of blood and blood products with on-line medical control;

(xx) intraosseous access;

(b) administration of approved medications via the following routes:

(i) intravenous;

(ii) intranasal;

(iii) nebulized inhalation;

(iv) sublingual;

(v) intradermal;

(vi) intraosseous;

(vii) endotracheal;

(viii) oral (PO);

(ix) intramuscular;

(x) topical;

(xi) rectal;

(xii) IV drip;

(xiii) subcutaneous;

(c) allowable drugs:

(i) acetaminophen;

(ii) activated charcoal;

(iii) adenosine;

(iv) albuterol (including isomers);

(v) amiodarone;

(vi) aspirin;

(vii) atropine sulfate;

(viii) benzodiazepines;

(ix) calcium preparations;

(x) corticosteroids;

(xi) dextrose;

(xii) diphenhydramine;

(xiii) dopamine hydrochloride;

(xiv) epinephrine;

(xv) furosemide;

(xvi) glucagon;

(xvii) hydroxycobalamin;

(xviii) ipratropium;

(xix) lidocaine;

(xx) magnesium sulfate;

(xxi) naloxone;

(xxii) narcotic analgesics;

(xxiii) nitroglycerin;

(xxiv) oral glucose preparations;

(xxv) oxytocin;

(xxvi) phenylephrine nasal spray;

(xxvii) pralidoxime, IM auto-injection for treatment of chemical and nerve agent exposure;

(xxviii) anti-emetic agents, for use as an anti-emetic only;

(xxix) sodium bicarbonate;

(xxx) thiamine;

(xxxi) topical anesthetic ophthalmic solutions;

(xxxii) vasopressin;

(xxxiii) intravenous fluids.

(3) Drugs allowed for monitoring in transport (requires an infusion pump when given by continuous infusion unless otherwise specified):

(a) potassium (no infusion pump needed if concentration not greater than 20mEq/1000cc;

(b) anticoagulation type blood modifying agents (such as fibrolytic drugs, heparin, glycoprotein IIb-IIIa inhibitors/antagonists);

(c) procainamide;

(d) mannitol;

(e) blood and blood products (no pump required);

(f) aminophylline;

(g) antibiotics and other anti-infective agents;

(h) dobutamine;

(i) sodium nitroprusside;

(j) insulin;

(k) terbutaline;

(l) norepinephrine;

(m) octreotide;

(n) nutritional supplements;

(o) beta blockers;

(p) calcium channel blockers

(q) nesiritide;

(r) propofol in patients that are intubated prior to transport;

(s) proton pump inhibitors and H2 antagonists;

(t) crotalidae polyvalent immune fab (ovine) (“crofab”) crofab may be monitored during inter-facility transport

provided the physician initiated cirofab infusion has been running for a minimum of 30 minutes prior to the paramedic initiating the transfer and assuming responsibility for patient care.

(4) Immunizations and biologicals: administration of immunizations, vaccines, biologicals, and TB skin testing is authorized under the following circumstances:

(a) to the general public as part of a department of health initiative or emergency response, utilizing department of health protocols; the administration of immunizations is to be under the supervision of a physician, nurse, or other authorized health provider;

(b) administer vaccines to EMS and public safety personnel;

(c) TB skin tests may be applied and interpreted if the licensed provider has successfully completed required department of health training;

(d) in the event of a disaster or emergency, the state EMS medical director or chief medical officer of the department of health may temporarily authorize the administration of other pharmaceuticals or tests not listed above.

(5) Skills approved for monitoring in transport:

(a) internal cardiac pacing;

(b) chest tubes.

(6) Medications for administration during patient transfer:

(a) retavase (second dose only);

(b) protamine sulfate;

(c) non-depolarizing neuromuscular blocking agents in patients that are intubated prior to transport;

(d) acetylcysteine.

(7) Patient's own medication that may be administered:

(a) epoprostenol sodium;

(b) bronchodilators using pre-measured or metered dose inhalation device;

(c) sublingual nitroglycerin for unrelieved chest pain; must have intravenous access established prior to administration;

(d) glucagon;

(e) situations may arise involving patients with uncommon conditions requiring specific out of hospital administered medications or procedures; family members or the designated caregiver trained and knowledgeable of the special needs of the patient should be recognized as the expert regarding the care of the patient; EMS can offer assistance in airway management appropriate to their level of licensure, IV access, and the administration of the patient's prescribed medications where appropriate only if the medication is in the EMS provider's scope of practice; online (direct contact) medical control communication must be established with the medical control physician approving the

intervention; EMS services are not expected to provide the prescribed medications for these special needs patients.

[7.27.11.8 NMAC - Rp, 7.27.11.8 NMAC, 12/31/2012]

7.27.11.9 APPROVED TRAINING PROGRAMS: "Approved emergency medical services training program" means a New Mexico emergency medical services training program that is sponsored by a post-secondary educational institution, is accredited by the national accrediting organization for emergency medical services or active in the accreditation process, and is approved by the joint organization on education (JOE) and participates in the joint organization on education. Currently, there are five approved EMS training programs.

A. Emergency medical services academy. University of New Mexico, [2700 Yale SE., Albuquerque, New Mexico 87106, Tel: 505-272-5757]. The EMS academy is designated as the lead training agency for providers in New Mexico as stated in Section 24-10B-12 NMSA 1978. The EMS academy teaches formal EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

B. Dona Ana branch community college. New Mexico state university, [Box 30001, Las Cruces, NM 88003-0001, Tel: 505-527-7530]. Dona Ana branch community college teaches formal EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

C. Eastern New Mexico university. EMS program, [Box 6000, Roswell, NM 88202-6000, Tel: 505-624-7000]. The eastern New Mexico university teaches formal EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

D. Santa Fe community college. EMS program, [6401 Richards Ave., Santa Fe, NM 87508-4887, Tel: 505-428-1000]. Santa Fe community college teaches formal EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

E. Central New Mexico community college. EMS program, [5600 Eagle Rock Ave. NE, Albuquerque, NM 87113, Tel: 505-224-5200]. Central New Mexico community college teaches formal EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

[7.27.11.9 NMAC - Rp, 7.27.11.9 NMAC, 12/31/2012]

7.27.11.10 SPECIAL SKILLS APPLICATION AND REPORTING

PROCEDURES:

A. Purpose: Special skills are those skills, procedures, and medications that are requested by an EMS service to enhance emergency treatment capabilities beyond the normal scope of practice, as defined in the Emergency Medical Services Act. Use the enclosed procedures for application, reporting and renewal for special skills. Applications are reviewed and approved or disapproved by the medical direction committee, and once approved, become a legally recognized addition to the service capabilities.

B. General: All levels of EMS personnel, including licensed EMS first responders and all levels of licensed EMTs are eligible for special skills consideration for any procedure, skill or medication.

C. Application procedure: The EMS service medical director, or his designee, shall coordinate with the EMS service director, and shall apply for special skills to the EMS medical direction committee.

D. Application document: The application document for a special skill must be tailored to the level of the request. While the degree of detail in each section may vary to match the nature of the skill requested, all applications should include the following elements, in order:

(1) application cover page: titled to state the requested special skill, date of application, name of service, service director name and medical director name;

(2) contact information page: must include address and contact information for the service, service director and medical director;

(3) letters of support: must include individual letters of support from the service director and medical director; additional letters of support from the local medical community or evidence of notification of the local medical community may be required; the need for letters of notification and support from the local medical community and who provides the letters must be adjusted to match the nature of the special skill requested;

(4) service description: provide a concise description of the EMS service; this includes such items as basic call demographics relevant to the applicant, level of licensure of providers and names and locations of the primary receiving medical facilities;

(5) description of the special skill: provide a description of the procedure, medication or requested skill. Include information on risks, benefits, indications and contraindications;

(6) justification and statement of need: provide a statement explaining why the special skill is needed; this should include a description of the current medical

intervention or alternative practice to the special skill and a risk or benefit analysis that supports the special skill requested; the estimated number of potential interventions per year, other relevant statistical data and a statement indicating the level of current scientific information/studies to support the requested special skill; the level of scientific justification can be adjusted to match the level of the special skill requested;

(7) protocol: provide a copy of the treatment protocol; include other operational protocols relevant to the special skill, if applicable;

(8) training: provide a training syllabus; this must include learning objectives and the training hours for initial and continuing education; this section should also include a description of the instructors, how training will be completed, and a description of the method used to initially evaluate the skill;

(9) QA/QI program: provide a description of the QA/QI process for the special skill, including frequency of evaluation, names and qualifications of the personnel involved in the process; include a copy of the evaluation tool or forms that will be used, if applicable; and

(10) the application and all supporting documentation shall be submitted to the EMS bureau, attn: state EMS training coordinator.

E. Applicants may involve the EMS regional offices when preparing a special skill request and include a letter evidencing regional review. Applicants shall forward a copy of their application to their EMS regional office when completed.

F. Upon receipt, the state EMS medical director and state EMS training coordinator will review the application. The service will be notified if the application is found to be incomplete or to contain significant errors.

G. Applications must be received at the bureau at least 45 days prior to the next regularly scheduled medical direction committee meeting to be placed on the agenda of that meeting for consideration by the medical direction committee.

H. The medical direction committee shall take action on all special skills applications on the agenda at their regularly scheduled meeting. The medical direction committee may take the following actions on the application: approved with limitations or restrictions, denied or tabled with a request for a formal presentation or additional information by the requesting service medical director or their designee.

I. The medical direction committee may give an approval subject to specific conditions, limitations or restrictions. This may include a written and practical examination.

J. Within 10 working

days following the decision of the medical direction committee, the state EMS training coordinator shall provide a written response to the applicant regarding the action of the medical direction committee.

K. Special skills may not be utilized until receipt of the special skill approval letter from the bureau. Any specific conditions or limitations will be evidenced in the approval letter from the bureau.

L. Monitoring: It is expected that EMS services with approved special skills will continuously comply with the requirements of their application and approval letter. This includes, but is not limited to, such items as training curricula, approved instructors, quality assurance, protocols and data collection. Any changes to the approved application shall be sent to the state EMS training coordinator for concurrence/coordination with the medical direction committee.

M. The medical direction committee may immediately suspend or revoke special skill privileges for an individual or service that loses medical direction, or fails to comply with the stated requirements, or for any other reason to protect the health and welfare of the people of New Mexico.

N. If a new medical director assumes control of a service with an active special skill program, the bureau shall receive a letter of support from the new medical director within 30 days or the special skill approval may be withdrawn.

O. The service shall maintain a current list of all providers trained and approved to utilize the special skill. This list must be provided to the bureau upon request.

P. Reporting: The service shall provide to the state EMS training coordinator periodic written special skill reports. During the first year, the report shall be due semi-annually, occurring on June 1 and December 1. Subsequent reports shall be due annually on June 1.

Q. Report document: The written special skill report shall include the following minimum elements:

(1) report cover page: titled to state the special skill reported, date, name of service, service director and medical director;

(2) contact information page: shall include address and contact information for the service, service director and medical director;

(3) letters of support: must include individual letters of continued support from the service director and service medical director;

(4) statistics and outcome data: provide data on the utilization and patient outcomes involving the special skill; do not include patient identifiers; all adverse

outcomes related to the special skill must be reported;

(5) continuing education: provide evidence of the continuing education program and refresher program;

(6) personnel list: provide a list of all personnel authorized to perform the special skill;

(7) QA/QI program: provide evidence of the ongoing QA/QI program;

(8) renewal: during a regularly scheduled meeting, the medical direction committee shall review all ongoing individual special skills programs on their three year anniversary and make a determination on renewal;

(9) if the medical direction committee determines not to provide automatic renewal on an ongoing special skill program, the state EMS training coordinator shall provide a written notification to the service director and the service medical director within 10 working days; and

(10) the special skills program will be placed on the agenda of the next, or subsequent, regularly scheduled meeting of the medical direction committee and final determination regarding renewal will be made.

R. Special skills programs will remain active until a final determination regarding renewal has been made.

S. Special skills application:

(1) general section;

(2) EMS service name;

(3) address;

(4) service chief/director;

(5) contact phone number;

(6) physician medical director;

(7) physician/medical director

contact phone number;

(8) special skill proposed;

(9) level of licensure necessary for special skill;

(10) estimated number of personnel to be trained;

(11) estimated date of initial training;

(12) training/quality assurance;

(13) describe or identify the curriculum, including learning objectives, training hours, etc.;

(14) please identify the lead instructor and provide a brief summary of their qualifications or attach a resume;

(15) resumes required for new instructors;

(16) if training/experience is required, provide a letter of commitment from the supporting institution;

(17) describe or attach a proposed continuing education plan;

(18) attach a description of quality assurance plan, including periodic case reviews and ongoing problems;

(19) identification and steps for

remedial action if necessary;

(20) signatures; person completing the application, service chief/service director and medical director;

(21) submit 10 copies of the application in its entirety to: EMS bureau, state EMS training coordinator, [1301 Siler Rd., Building F, Santa Fe, NM 87507];

(22) submit one copy to the regional office.

[7.27.11.10 NMAC - Rp, 7.27.2.10 NMAC, 12/31/2012]

7.27.11.11 LICENSING APPLICATION:

A. Section I- initial application for licensure: General:

To apply for licensure as an emergency medical dispatcher (EMD), EMD-instructor, EMS first responder, EMT-basic, EMT-intermediate, or EMT-paramedic, the licensure application form shall be used. The instructions for this form are included in the application packet, which is available at the EMS bureau. The EMS levels currently authorized for licensure in New Mexico are emergency medical dispatcher (EMD), EMD-instructor, EMS first responder, EMT-basic, EMT-intermediate and EMT-paramedic. State examinations are not required for licensure of EMD or EMD-instructor.

B. Registration for training and licensure application:

(1) **Purpose:** The form has been developed by the EMS bureau as part of the statewide EMS information management system. It serves three primary purposes towards applying for licensure. These are:

(a) to register in-state candidates for training with a New Mexico approved EMS training program and the EMS bureau, thus establishing an EMS candidate record at the beginning of EMS instruction; or,

(b) for use by former EMS personnel whose licensure has expired within the past two (2) years to re-enter the EMS field at the same level; or

(c) for use by out-of-state candidates to apply for testing or licensure.

(2) This form is used to establish a person's record in the EMS registry as a candidate for licensure. Normally, for in-state EMT courses, the form is completed during the course, with the assistance of the course instructor. It is used by the approved EMS training program and the EMS bureau to register persons for training and establish them as a licensure candidate, respectively.

(3) To request a complete licensure application package, including the licensure application form, call the EMS bureau at [505-476-8200 or write the EMS bureau at: EMS bureau, attn: operations section, 1301 Siler Rd., Building F, Santa Fe, New Mexico 87507].

(4) A package will be sent to

applicant in the mail containing all forms required.

(5) Original forms will only be accepted at the EMS bureau, as an optical scanner scans these forms.

C. Test request application form:

(1) **Purpose:** This form is used to apply for a state examination site. It is used by EMS course graduates who have already completed the registration for training and licensure application form and who are listed as a candidate in the New Mexico registry of EMS personnel. EMS course graduates will have already completed the registration for training or licensure application during their course. If, for some reason, the application was not filled out, call the bureau and an application will be mailed out.

(2) In all cases of licensure, the registration for training or licensure application is required to be scanned into the bureau's computer system prior to the test request application form.

(3) Only original forms will be accepted at the EMS bureau. To request a complete test request application package, please contact the EMS bureau.

[7.27.11.11 NMAC - Rp, 7.27.2.11 NMAC, 12/31/2012]

7.27.11.12 EMS PERSONNEL JOB DESCRIPTIONS:

A. **Introduction:** The bureau is providing the following general position description for the New Mexico EMS provider positions for first responder, EMT-basic, EMT-intermediate, and EMT-paramedic. It is the ultimate responsibility of an employer to define specific job descriptions within each EMS service.

B. Qualifications:

(1) successfully complete a recognized training course from an approved EMS training institution;

(2) possess a valid course completion certificate, and accomplish all state licensure examination application requirements;

(3) additionally, applicants shall meet all established requirements for initial licensing as identified by the current EMS licensure regulations;

(4) a copy of these regulations is available through the EMS bureau;

(5) generally, the knowledge and skills required demonstrate the need for a high school education or equivalent;

(6) ability to communicate verbally; via telephone and radio equipment;

(7) ability to lift, carry, and balance up to 125 pounds (250 pounds with assistance);

(8) ability to interpret written, oral, and diagnostic form instructions;

(9) ability to use good judgment and to remain calm in high-stress situations;

(10) ability to work effectively in an environment with loud noises and flashing lights;

(11) ability to function efficiently throughout an entire work shift;

(12) ability to calculate weight and volume ratios and read small English print, both under life threatening time constraints;

(13) ability to read and understand English language manuals and road maps;

(14) accurately discern street signs and address numbers;

(15) ability to interview patient, family members, and bystanders;

(16) ability to document, in writing, all relevant information in a prescribed format;

(17) ability to converse orally and in written form in English with coworkers and hospital staff as to status of patient;

(18) good manual dexterity, with ability to perform all tasks related to the highest quality of patient care;

(19) ability to assume a variety of postural positions to carry out emergency and non-emergency patient care, including light extrication; from crawling, kneeling, squatting, twisting, turning, bending, to climbing stairs and ladders, and the ability to withstand varied environmental conditions such as extreme heat, cold, and moisture; and

(20) ability to work in low light, confined spaces and other dangerous environments.

C. Competency areas:

(1) **Licensed EMS first responder:** Must demonstrate competency handling emergencies utilizing all basic life support equipment and skills in accordance with all behavioral objectives of the approved New Mexico curriculum of first responder, to include the ability to demonstrate competency for all skills and procedures currently approved for the first responder, as identified by the current scope of practice document.

(2) **Emergency medical technician-basic:** Must demonstrate competency handling emergencies utilizing all basic life support equipment and skills in accordance with all behavioral objectives of the approved New Mexico curriculum of EMT-basic, and to include the ability to demonstrate competency for all skills and procedures currently approved for the EMT-basic, as identified by the current scope of practice document.

(3) **Emergency medical technician-intermediate:** Must demonstrate competency handling emergencies utilizing all basic life support and intermediate life support equipment and skills in accordance with all behavioral objectives of the approved New Mexico curriculum of EMT-intermediate, and to include the ability to demonstrate competency for all skills and

procedures currently approved for the EMT-intermediate, as identified by the current scope of practice document.

(4) Emergency medical technician-paramedic: Must demonstrate competency handling emergencies utilizing all basic life support and advanced life support equipment and skills in accordance with all behavioral objectives of an approved New Mexico curriculum of EMT-paramedic, and to include the ability to demonstrate competency for all skills and procedures currently approved for the EMT-paramedic, as identified by the current scope of practice document.

D. Description of tasks for all EMS levels:

(1) Receives call from dispatcher, responds verbally to emergency calls, reads maps, may drive emergency vehicle to emergency site, uses most expeditious route, and observes traffic ordinances and regulations.

(2) Determines nature and extent of illness or injury, takes pulse, blood pressure, visually observes changes in skin color, auscultate breath sounds, makes determination regarding patient status, establishes priority for emergency care, may administer intravenous drugs or fluid replacement as authorized by level of licensure and scope of practice.

(3) May use equipment and other devices and procedures as authorized by level of licensure and scope of practice.

(4) Assists in lifting, carrying, and transporting patient to an ambulance and to a medical facility.

(5) Reassures patients and bystanders and searches for medical identification emblem to aid in care.

(6) Extricates patient from entrapment, assesses extent of injury, uses prescribed techniques and appliances, radio dispatcher for additional assistance or services, provides light rescue service if required and trained, provides additional emergency care following service established protocols.

(7) Complies with regulations in handling deceased, notifies authorities, arranges for protection of property and evidence at scene.

(8) Determines appropriate facility to which patient will be transported, report nature and extent of injuries or illness to the facility, asks for direction from hospital physician or emergency department staff.

(9) Observes patient in route and administers care as directed by physician or service-established protocols.

(10) Identifies diagnostic signs that require communication with facility.

(11) Assists in removing patient/s from ambulance and into emergency facility.

(12) Reports verbally, and in writing, observations about and care of

patient at the scene, en-route to facility, and to the receiving facility.

(13) Provides assistance to emergency department staff as required.

(14) Replaces supplies, sends used supplies for sterilization, checks all equipment for future readiness, maintains ambulance in operable condition, ensures ambulance cleanliness and orderliness of equipment and supplies, decontaminates vehicle interior, determines vehicle readiness by checking oil, gas, water in battery and radiator, and tire pressure, maintains familiarity with all specialized equipment.

[7.27.11.12 NMAC - Rp, 7.27.2.12 NMAC, 12/31/2012]

HISTORY OF 7.27.11 NMAC:
[RESERVED]

History of Repealed Material:
7.27.11 NMAC, Supplemental Licensing Provisions - Repealed effective 12/31/2012.

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.510 NMAC, Sections 11, 13, 14 and 15, effective January 1, 2013.

8.200.510.11 COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA): The CSRA standard varies based on when the applicant/recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal Medicaid application. If institutionalization began:

(A) Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CSRA is \$60,000.

(B) On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.

(C) On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.

(D) On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.

(E) On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.

(F) On or after January 1, 1994, the state minimum is \$31,290 and the federal maximum CSRA is \$72,660.

(G) On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.

(H) On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.

(I) On or after January 1,

1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.

(J) On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.

(K) On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.

(L) On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.

(M) On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.

(N) On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.

(O) On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.

(P) On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.

(Q) On or after January 1, 2005, the state minimum is \$31,290 and the federal maximum CSRA is \$95,100.

(R) On or after January 1, 2006, the state minimum is \$31,290 and the federal maximum CSRA is \$99,540.

(S) On or after January 1, 2007, the state minimum is \$31,290 and the federal maximum CSRA is \$101,640.

(T) On or after January 1, 2008, the state minimum is \$31,290 and the federal maximum CSRA is \$104,400.

(U) On or after January 1, 2009, the state minimum is \$31,290 and the federal maximum CSRA is \$109,560.

(V) On or after January 1, 2010, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

(W) On or after January 1, 2011, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

(X) On or after January 1, 2012, the state minimum is \$31,290 and the federal maximum CSRA is \$113,640.

(Y) On or after January 1, 2013, the state minimum is \$31,290 and the federal maximum CSRA is \$115,920.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.11 NMAC - Rn, 8 NMAC 4.MAD.510.1 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08; A, 1-1-09; A, 1-15-10; A, 1-1-11; A, 1-1-12; A, 1-1-13]

[Continued on page 1116]

8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS: Costs of care are based on the date of application registration.

| <u>DATE</u> | <u>AVERAGE COST PER MONTH</u> |
|--|-------------------------------|
| A. July 1, 1988 - Dec. 31, 1989 | \$ 1,726 per month |
| B. Jan. 1, 1990 - Dec. 31, 1991 | \$ 2,004 per month |
| C. Jan. 1, 1992 - Dec. 31, 1992 | \$ 2,217 per month |
| D. Effective July 1, 1993, for application register on or after Jan. 1, 1993 | \$ 2,377 per month |
| E. Jan. 1, 1994 - Dec. 31, 1994 | \$2,513 per month |
| F. Jan. 1, 1995 - Dec. 31, 1995 | \$2,592 per month |
| G. Jan. 1, 1996 - Dec. 31, 1996 | \$2,738 per month |
| H. Jan. 1, 1997 - Dec. 31, 1997 | \$2,889 per month |
| I. Jan. 1, 1998 - Dec 31, 1998 | \$3,119 per month |
| J. Jan. 1, 1999 - Dec. 31, 1999 | \$3,429 per month |
| K. Jan. 1, 2000 - Dec. 31, 2000 | \$3,494 per month |
| L. Jan. 1, 2001 - Dec. 31, 2001 | \$3,550 per month |
| M. Jan. 1, 2002 - Dec. 31, 2002 | \$3,643 per month |
| N. Jan. 1, 2003 - Dec. 31, 2003 | \$4,188 per month |
| O. Jan. 1, 2004 - Dec. 31, 2004 | \$3,899 per month |
| P. Jan. 1, 2005 - Dec. 31, 2005 | \$4,277 per month |
| Q. Jan. 1, 2006 - Dec. 31, 2006 | \$4,541 per month |
| R. Jan. 1, 2007 - Dec. 31, 2007 | \$4,551 per month |
| S. Jan. 1, 2008 - Dec. 31, 2008 | \$4,821 per month |
| T. Jan. 1, 2009 - Dec. 31, 2009 | \$5,037 per month |
| U. Jan. 1, 2010 - Dec. 31, 2010 | \$5,269 per month |
| V. Jan. 1, 2011 - Dec.31, 2011 | \$5,774 per month |
| W. Jan. 1, 2012 - Dec 31, 2012 | \$6,015 per month |
| X. Jan 1, 2013 | \$6,291 per month |

[Any fraction of a month remaining when this calculation is completed is dropped.]

[1-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 7-1-00; 8.200.510.13 NMAC - Rn, 8 NMAC 4.MAD.510.3 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-15-10; A, 1-1-11; A, 1-1-12; A, 1-1-13]

8.200.510.14 RESOURCE AMOUNTS FOR SUPPLEMENTAL SECURITY INCOME (SSI) RELATED MEDICARE SAVINGS PROGRAMS (QMB, SLIMB/Q11 AND QD): The following resource standards are inclusive of the \$1,500 per person burial exclusion:

- A. individual [~~\$8,440~~] \$8,580 and
- B. couple [~~\$13,410~~] \$13,620.

[8.200.510.14 NMAC - N, 1-1-01; A, 1-1-02; 8.200.510.14 NMAC - N, 7-15-10; A, 1-1-11; A, 1-1-12; A, 1-1-13]

8.200.510.15 EXCESS HOME EQUITY AMOUNT FOR LONG-TERM CARE SERVICES:

| | |
|------------------------------|-----------|
| A. Jan.2013 | \$802,000 |
| [A:] B. Jan.2012 | \$786,000 |
| [B:] C. Jan. 2011 | \$758,000 |
| [C:] D. Jan. 2010 | \$750,000 |

[8.200.510.15 NMAC - N, 1-11-11; A, 1-1-12; A, 1-1-13]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.520 NMAC, Sections 12, 13, 15, 16, and 20, effective January 1, 2013.

8.200.520.12 COLA DISREGARD COMPUTATION

| <u>Current amt/cost of living</u> | <u>Benefit period</u> |
|---|--|
| Current Title II amount= <u>1.017</u> | Benefit before [1/12] <u>1/13</u> |
| <u>Benefit before 1/13</u> = <u>1.037</u> | <u>Benefit before 1/12</u> |
| <u>Benefit before 1/12</u> = <u>0</u> | Benefit before 1/11 |
| <u>Benefit before 1/11</u> = [1.058] <u>0</u> | Benefit before 1/10 |
| <u>Benefit before 1/10</u> = <u>1.058</u> | Benefit before 1/09 |
| <u>Benefit before 1/09</u> = <u>1.023</u> | Benefit before 1/08 |

| | |
|---------------------------------------|---------------------|
| <u>Benefit before 1/08 =</u> 1.033 | Benefit before 1/07 |
| <u>Benefit before 1/07 =</u> 1.041 | Benefit before 1/06 |
| <u>Benefit before 1/06 =</u> 1.027 | Benefit before 1/05 |
| <u>Benefit before 1/05 =</u> 1.021 | Benefit before 1/04 |
| <u>Benefit before 1/04 =</u> 1.014 | Benefit before 1/03 |
| <u>Benefit before 1/03 =</u> 1.026 | Benefit before 1/02 |
| <u>Benefit before 1/02 =</u> 1.035 | Benefit before 1/01 |
| <u>Benefit before 1/01 =</u> 1.025 | Benefit before 1/00 |
| <u>Benefit before 1/00 =</u> 1.013 | Benefit before 1/99 |
| <u>Benefit before 1/99 =</u> 1.021 | Benefit before 1/98 |
| <u>Benefit before 1/98 =</u> 1.029 | Benefit before 1/97 |
| <u>Benefit before 1/97 =</u> 1.026 | Benefit before 1/96 |
| <u>Benefit before 1/96 =</u> 1.028 | Benefit before 1/95 |
| <u>Benefit before 1/95 =</u> 1.026 | Benefit before 1/94 |
| <u>Benefit before 1/94 =</u> 1.030 | Benefit before 1/93 |
| <u>Benefit before 1/93 =</u> 1.037 | Benefit before 1/92 |
| <u>Benefit before 1/92 =</u> 1.054 | Benefit before 1/91 |
| <u>Benefit before 1/91 =</u> 1.047 | Benefit before 1/90 |
| <u>Benefit before 1/90 =</u> 1.040 | Benefit before 1/89 |
| <u>Benefit before 1/89 =</u> 1.042 | Benefit before 1/88 |
| <u>Benefit before 1/88 =</u> 1.013 | Benefit before 1/87 |
| <u>Benefit before 1/87 =</u> 1.031 | Benefit before 1/86 |
| <u>Benefit before 1/86 =</u> 1.035 | Benefit before 1/85 |
| <u>Benefit before 1/85 =</u> 1.035 | Benefit before 1/84 |
| <u>Benefit before 1/84 =</u> 1.074 | Benefit before 7/82 |
| <u>Benefit before 7/82 =</u> 1.112 | Benefit before 7/81 |
| <u>Benefit before 7/81 =</u> 1.143 | Benefit before 7/80 |
| <u>Benefit before 7/80 =</u> 1.099 | Benefit before 7/79 |
| <u>Benefit before 7/79 =</u> 1.065 | Benefit before 7/78 |
| <u>Benefit before 7/78 =</u> 1.059 | Benefit before 7/77 |

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.12 NMAC - Rn, 8 NMAC 4.MAD.520.6 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-15-10; A, 1-1-11; A, 1-1-12; A, 1-1-13]

8.200.520.13 FEDERAL BENEFIT RATES

| YEAR | Individual | Inst. | Indiv. | Couple | Inst. | Couple |
|------|------------|-------|--------|--------|-------|--------|
| | FBR | FBR | VTR | FBR | FBR | VTR |

| | | | | | | |
|--------------|-------|------|----------|---------|------|----------|
| 1/89 to 1/90 | \$368 | \$30 | \$122.66 | \$553 | \$60 | \$184.33 |
| 1/90 to 1/91 | \$386 | \$30 | \$128.66 | \$579 | \$60 | \$193.00 |
| 1/91 to 1/92 | \$407 | \$30 | \$135.66 | \$610 | \$60 | \$203.33 |
| 1/92 to 1/93 | \$422 | \$30 | \$140.66 | \$633 | \$60 | \$211.00 |
| 1/93 to 1/94 | \$434 | \$30 | \$144.66 | \$652 | \$60 | \$217.33 |
| 1/94 to 1/95 | \$446 | \$30 | \$148.66 | \$669 | \$60 | \$223.00 |
| 1/95 to 1/96 | \$458 | \$30 | \$152.66 | \$687 | \$60 | \$229.00 |
| 1/96 to 1/97 | \$470 | \$30 | \$156.66 | \$705 | \$60 | \$235.00 |
| 1/97 to 1/98 | \$484 | \$30 | \$161.33 | \$726 | \$60 | \$242.00 |
| 1/98 to 1/99 | \$494 | \$30 | \$164.66 | \$741 | \$60 | \$247.00 |
| 1/99 to 1/00 | \$500 | \$30 | \$166.66 | \$751 | \$60 | \$250.33 |
| 1/00 to 1/01 | \$512 | \$30 | \$170.66 | \$769 | \$60 | \$256.33 |
| 1/01 to 1/02 | \$530 | \$30 | \$176.66 | \$796 | \$60 | \$265.33 |
| 1/02 to 1/03 | \$545 | \$30 | \$181.66 | \$817 | \$60 | \$272.33 |
| 1/03 to 1/04 | \$552 | \$30 | \$184.00 | \$829 | \$60 | \$276.33 |
| 1/04 to 1/05 | \$564 | \$30 | \$188 | \$846 | \$60 | \$282.00 |
| 1/05 to 1/06 | \$579 | \$30 | \$193 | \$869 | \$60 | \$289.66 |
| 1/06 to 1/07 | \$603 | \$30 | \$201 | \$904 | \$60 | \$301.33 |
| 1/07 to 1/08 | \$623 | \$30 | \$207.66 | \$934 | \$60 | \$311.33 |
| 1/08 to 1/09 | \$637 | \$30 | \$212.33 | \$956 | \$60 | \$318.66 |
| 1/09 to 1/10 | \$674 | \$30 | \$224.66 | \$1,011 | \$60 | \$337 |
| 1/10 to 1/11 | \$674 | \$30 | \$224.66 | \$1,011 | \$60 | \$337 |
| 1/11 to 1/12 | \$674 | \$30 | \$224.66 | \$1,011 | \$60 | \$337 |
| 1/12 to 1/13 | \$698 | \$30 | \$232.66 | \$1,048 | \$60 | \$349.33 |
| 1/13 to 1/14 | \$710 | \$30 | \$237 | \$1,066 | \$60 | \$355 |

Ineligible child deeming allocation: \$350.00

Part B premium is \$99.90 per month.

VTR (value of one third reduction) is used when an individual or couple lives in the household of another and receives food and shelter from the household or when the individual or couple is living in their own household but receiving support and maintenance from others.

The SSI resource standard is \$2000 for an individual and \$3000 for a couple.

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.13 NMAC - Rn, 8 NMAC 4.MAD.520.7 & A, 1-1-01; A, 1-01-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-15-10; A, 1-1-11; A, 4-1-11; A, 1-1-12; A, 1-1-13]

8.200.520.15 SSI LIVING ARRANGEMENTS

A. Individual living in his/her own household who own or rent

Payment amount: [~~\$698~~] \$710 Individual
 [~~\$1,048~~] \$1,066 Couple

B. **Individual receiving support and maintenance payments:** For an individual or couple living his/her own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).

Payment amount: [~~\$689 - \$232.66 = \$456.34~~] \$710 - \$237 = \$473 Individual
 [~~\$1,048 - \$349.33 = \$698.67~~] \$1,066 - \$355 = \$711 Couple

C. **Individual or couple living household of another:** For an individual or couple living in another person's household and not contributing his/her pro-rata share of household expenses, subtract the VTR.

Payment amount: [~~\$689 - \$232.66 = \$456.34~~] \$710 - \$237 = \$473 Individual
 [~~\$1,048 - \$349.33 = \$698.67~~] \$1,066 - \$355 = \$711 Couple

D. Child living in home with his/her parent(s)

Payment amount: [~~\$698~~] \$710

E. Individual in institution

Payment amount: \$30.00

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.15 NMAC - Rn, 8 NMAC 4.MAD.520.9 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-1-12; A, 1-1-13]

8.200.520.16 MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID AND HOME AND COMMUNITY BASED WAIVER CATEGORIES: [Effective January 1, 2012, the maximum countable monthly income standard for institutional care medicaid and the home and community based waiver categories is \$2,094.] Effective January 1, 2013, the maximum countable monthly income standard for institutional care medicaid and the home and community based waiver categories is \$2,310.

[4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 4-1-99; 8.200.520.16 NMAC - Rn, 8 NMAC 4.MAD.520.10 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-1-11; A, 1-1-12; A, 1-1-13]

8.200.520.20 COVERED QUARTER INCOME STANDARD:
DATE CALENDAR QUARTER AMOUNT

| DATE | CALENDAR QUARTER AMOUNT |
|-----------------------|------------------------------|
| Jan 2013 - Dec. 2013 | \$1,160 per calendar quarter |
| Jan 2012 - Dec. 2012 | \$1,130 per calendar quarter |
| Jan. 2011 - Dec. 2011 | \$1,120 per calendar quarter |
| Jan. 2010 - Dec. 2010 | \$1,120 per calendar quarter |
| Jan. 2009 - Dec. 2009 | \$1,090 per calendar quarter |
| Jan. 2008 - Dec. 2008 | \$1,050 per calendar quarter |
| Jan. 2007 - Dec. 2007 | \$1,000 per calendar quarter |
| Jan. 2006 - Dec. 2006 | \$970 per calendar quarter |
| Jan. 2005 - Dec. 2005 | \$920 per calendar quarter |
| Jan. 2004 - Dec. 2004 | \$900 per calendar quarter |
| Jan. 2003 - Dec. 2003 | \$890 per calendar quarter |
| Jan. 2002 - Dec. 2002 | \$870 per calendar quarter |

[8.200.520.20 NMAC - Rn, 8.200.510.14 NMAC & A, 1-1-02; A, 4-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-15-10; A, 2-26-10; A, 1-1-11; A, 1-1-12; A, 1-1-13]

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 30 ANIMALS AND ANIMAL INDUSTRY GENERAL PROVISIONS
PART 8 USE OF LIVESTOCK DRUGS AND BIOLOGICALS

21.30.8.1 ISSUING AGENCY: New Mexico Livestock Board.
 [21.30.8.1 NMAC - N, 12/31/2012]

21.30.8.2 SCOPE: All manufacturers, importers, distributors and users of livestock drugs and biologicals, including all serums, vaccines and other biologicals intended for administration, injection or use to or upon livestock, and including virulent blood or living virus of any disease affecting livestock.
 [21.30.8.2 NMAC - N, 12/31/2012]

21.30.8.3 STATUTORY AUTHORITY: Section 77-2-7 NMSA 1978.
 [21.30.8.3 NMAC - N, 12/31/2012]

21.30.8.4 DURATION: Permanent.
 [21.30.8.4 NMAC - N, 12/31/2012]

21.30.8.5 EFFECTIVE DATE: December 31, 2012, unless a later date is cited at the end of a section.
 [21.30.8.5 NMAC - N, 12/31/2012]

21.30.8.6 OBJECTIVE: To protect livestock in New Mexico against disease and to safeguard and promote therapeutic and efficacious livestock drugs and biologicals.
 [21.30.8.6 NMAC - N, 12/31/2012]

21.30.8.7 DEFINITIONS:

A. "Board" means the New Mexico livestock board.
 B. "Livestock" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids, and farmed cervidae.
 [21.30.8.7 NMAC - N, 12/31/2012]

21.30.8.8 MANUFACTURER REGISTRATION REQUIREMENTS:

A. Permit required: No person, firm, corporation or company shall import into New Mexico, distribute, administer or use within New Mexico or manufacture within New Mexico, any livestock drugs and biologicals, including all serums, vaccines and other biologicals intended for administration, injection or use to or upon livestock, and including virulent blood or living virus of any disease affecting livestock, unless the manufacturer of the livestock drugs or biologicals has first obtained a permit from the state veterinarian of the New Mexico livestock board.

B. Application required: Any manufacturer who wishes to import into New Mexico, distribute, administer or use within New Mexico or to manufacture within New Mexico, any livestock drugs or biologicals, as provided in paragraph A, must first make a timely and proper application to the state veterinarian of the New Mexico livestock board requesting permission to do so.

C. Application form: A letter requesting permission or registration must include the name, address and primary contact telephone number of the applicant. The correspondence must also provide product name and description and protocol and labeling information. The livestock board may charge a fee for the registration permit, including a renewal fee, in an amount not to exceed \$100 pursuant to Subsection K of Section 77-2-7.

D. Approval authority: The authority to approve and to issue a permit rests with the state veterinarian of the New Mexico livestock board.

E. Duration of permit: Permits must be renewed by renewal application made annually to the state veterinarian.

F. Conditions of approval: In order to receive approval, the drugs or biologicals must first be approved by the proper federal approval authority, either the USDA, EPA or FDA, or by a state's approval authority for conditional use drugs or biologics. The drugs or biologicals must be used, injected or administered according to the protocols, conditions for use and other restrictions established by the manufacturer and the federal approval authority respecting each drug or biological. The state veterinarian may establish other conditions as he determines necessary to safeguard New Mexico's livestock and may disallow importation, distribution and use within New Mexico of drugs or biologicals if the state veterinarian determines that the use of those drugs or biologicals would undermine or threaten the board's ability to protect the health and safety of New Mexico's livestock, subject to board review if contested.

G. Investigational drugs: Investigational drugs and biologicals intended for livestock use are also subject to the prior approval and permitting requirements of this rule.

H. Fees:

(1) The same fees apply to initial registration permits and to renewed permits.

(2) For products with unrestricted licenses, the fee of each manufacturer is \$50.00 for the first product and \$25.00 for each similar product.

(3) For products with conditional use licenses, the fee for each manufacturer is \$75.00 for each product.

(4) For unlicensed, investigational

use products the fee for each manufacturer is \$100.00 for each product.

[21.30.8.8 NMAC - N, 12/31/2012]

HISTORY OF 21.30.8 NMAC:
[RESERVED]

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING CHAPTER 35 LIVESTOCK MARKETING PART 6 ANIMAL ENTERPRISE PROTECTION

21.35.6.1 ISSUING AGENCY:
New Mexico Livestock Board.
[21.35.6.1 NMAC - N, 12/31/2012]

21.35.6.2 SCOPE: The protections accorded by these regulations extend to livestock enterprises in the State of New Mexico.
[21.35.6.2 NMAC - N, 12/31/2012]

21.35.6.3 STATUTORY AUTHORITY: Sections 77-2-1, 77-2-7, 77-2-22 and such other regulatory authority as provided in Chapter 77 NMSA 1978. Additional authority is the federal Animal Enterprise Terrorism Act, 18 U.S.C. Section 43 and decisional authority under that penal statute and its predecessor Animal Enterprise Protection Act. See *United States v. Fullmer*, 584 F.3d 132 (3d Cir.), cert denied, *Kjonaas v. United States*, 2011 U.S. LEXIS 1930 (2011); *United States v. Buddenberg*, 2009 U.S. Dist. LEXIS 100477 (N.D. Cal. 2009).
[21.35.6.3 NMAC - N, 12/31/2012]

21.35.6.4 DURATION: Permanent.
[21.35.6.4 NMAC - N, 12/31/2012]

21.35.6.5 EFFECTIVE DATE: December 31, 2012, unless a later date is cited at the end of a section.
[21.35.6.5 NMAC - N, 12/31/2012]

21.35.6.6 OBJECTIVE: To afford livestock animal enterprises in New Mexico protection against animal enterprise terrorism. These regulations do not, nor could they, undermine or detract in any manner from the force and effect of federal law, which provides protection to animal enterprises under 18 U.S.C. Section 43, together with any other applicable federal penal laws, such as stalking, conspiracy, and the use of telecommunications devices to abuse, threaten and harass. These regulations do not, nor could they, undermine or detract in any manner from the force and effect of applicable state law.

[21.35.6.6 NMAC - N, 12/31/2012]

21.35.6.7 DEFINITIONS:

A. "Animal" means livestock including cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids and farmed cervidae.

B. "Board" means the New Mexico livestock board.

C. "Immediate family member" means the spouse, parent, brother or sister, child or person to whom he stands in loco parentis, or any other person living in his household and related to him by blood or marriage.

D. "Livestock animal enterprise" means a commercial or academic enterprise that uses or sells livestock animals or livestock animal products for profit, food or fiber production, agriculture, education, research, testing, breeding; rodeo or other lawful competitive animal event; or a fair or similar event intended to advance agricultural arts and sciences. The term "livestock animal enterprise" also includes persons, firms and entities licensed by the New Mexico livestock board, including licensed horse rescues, licensed meat dealers, licensed slaughterers, and licensed livestock auction markets.

E. "Serious bodily injury" means injury posing a substantial risk of death; extreme physical pain; protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

[21.35.6.7 NMAC - N, 12/31/2012]

21.35.6.8 PROHIBITION AGAINST FORCE, VIOLENCE AND THREATS INVOLVING LIVESTOCK ANIMAL ENTERPRISES:

A. Whoever, for the purpose of damaging or interfering with the operations of a livestock animal enterprise, and in connection with such purpose:

(1) intentionally damages any real or personal property, intentionally causes to suffer or contributes to the suffering or prolonged suffering of any livestock animal or intentionally causes the loss of any real or personal property (including livestock animals or records) used by a livestock animal enterprise, or any real or personal property of a person or entity having a connection to, relationship with, or transactions with a livestock animal enterprise;

(2) intentionally places a person in reasonable fear of the death of, or serious bodily injury to, that person, a member of the immediate family of that person, or a spouse or intimate partner of that person by conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation; or

(3) violates the criminal laws of this state, including, without limitation, the

criminal trespass statute at NMSA 1978, Section 30-28-1; the harassment and stalking statutes at NMSA 1978, Sections 30-3A-2, -3 and -3.1; and the computer abuse statute at NMSA 1978, Section 30-45-4; shall be punished as provided in NMSA 1978, Section 77-2-22 (providing a misdemeanor penalty, unless otherwise provided by law, for persons who violate board rules).

B. Exemption for government: These regulations do not apply to governmental conduct, state or federal. Law enforcement and regulatory activities of the New Mexico livestock board and its inspectors, of the USDA, of other peace officers and prosecutorial; officers are not impaired or affected by these regulations.

[21.35.6.8 NMAC - N, 12/31/2012]

HISTORY OF 21.35.6 NMAC:
[RESERVED]

NEW MEXICO BOARD OF NURSING

This is an amendment to 16.12.3 NMAC, Sections 7, 8, 9, 10, 11, 12 and 14, effective 1-14-13.

16.12.3.7 [DEFINITIONS:] DEFINITIONS:

A. [~~"Accreditation", recognition of an institution of learning by a board recognized national nursing organization as maintaining prescribed standards requisite for its graduates to gain admission to other reputable institutions of higher learning or achieve credentials for professional practice.~~] "Application", form provided by the BON to any potential nursing program to be used as the first process in opening a new program.

B. "Approval", official or formal consent, confirmation or sanction.

C. "Associate degree program", a formalized program of study, usually organized for completion within a two-year academic period, which prepares graduates for an associate degree in nursing and eligibility to take the national examination for registered nurses. The program is conducted as an integral department or division within a college or university.

D. "Baccalaureate degree program", a formalized program of study, usually organized for completion within a four-year academic period, which prepares graduates for a degree in nursing and eligibility to take the national licensing examination for registered nursing. The program is conducted as an integral department or division within a university or college.

E. "Board", New Mexico board of nursing.

F. “Clinical facilities”, institutions which are established for the delivery of nursing care services (hospital, extended care facilities, nursing homes, medical clinics, public health facilities, physician’s offices, out-patient clinics, etc.).

G. “Clinical preceptors”, nurses who have demonstrated competencies related to the area of assigned clinical teaching responsibilities and will serve as a role model and educator to the student.

[G:] H. “Clock/contact hour”, unit of measurement used by educational institutions to determine work load.

[H:] I. “Curriculum”, a course of study which is offered within a particular program.

[I:] J. “Director”, the nurse educator (regardless of the official title assigned by any specific institution [administrator, dean, coordinator, chairperson, etc.];) who is delegated the administrative responsibility and authority for the direction of the basic educational program in nursing. An “administrator” shall be considered synonymous with “director” unless the institution has divided up authority between a program “director” and an administrator.

[J:] K. “Educational institution”, an institution within the educational system which is organized and accredited for teaching and study (university, high school, post-secondary, approved area vocational institution).

[K:] L. “Involuntary closure”, mandatory closure by the board for failure of a program to meet the minimum requirements as established by the board.

[L:] M. “Must”, a requirement.

[M:] N. “National licensure examination”, examination for licensure as provided by the national council of state boards of nursing.

O. “National nursing accreditation”, recognition of an institution of learning by a board recognized national nursing organization as maintaining prescribed standards requisite for its graduates to gain admission to other reputable institutions of higher learning or achieve credentials for professional practice.

[N:] P. “Parent institution”, an institution within the educational system which is organized and accredited for teaching and study (university, college, high school).

[O:] Q. “Practical nurse program”, a formalized program, which prepares a graduate for a diploma or certificate and eligibility to take the national licensure examination for practical nursing. The program is conducted as an integral part of an educational institution.

[P:] R. “Pre-licensure program”, nursing education program that prepares an individual for the national

licensing examination for registered nursing or practical nursing.

[Q:] S. “Program”, the curriculum and all of the activities/functions that take place which are necessary to fulfill the purpose of nursing education.

[R:] T. “Recommendations”, statements which should guide programs of nursing in the development and direction of the program but which are not mandatory.

[S:] U. “Regulation and policies”, statements governing practice of the board of nursing in the approval of a program of nursing.

[T:] V. “Requirements”, conditions which any program of nursing shall meet to obtain approval.

[U:] W. “Supervision of part-time faculty without msn”, initial verification of instructor’s knowledge and skills in supervision of students in clinical settings, followed by periodic observation, direction and evaluation of instructor’s knowledge and skills related to supervision of students in clinical settings.

[V:] X. “Shall”, mandatory; a requirement.

[W:] Y. “Should”, a suggestion or recommendation; not a requirement.

[1-1-98; 16.12.3.7 NMAC - Rn & A, 16 NMAC 12.3.7, 7-30-01; A, 2-17-06; A, 1-14-13]

16.12.3.8 TYPES OF APPROVAL:

A. Initial approval.

(1) Initial approval shall be granted as outlined in numbers 16.12.3.11 NMAC “requirements for the establishment of new programs [or re-opening programs²²] and 16.12.3.12 NMAC “minimum standards for nursing programs” of these rules. Initial approval is valid from the time granted through the graduation of the first nursing class.

(2) The program shall have initial approval prior to recruiting and enrolling students into the nursing program.

(3) Immediately preceding graduation of the first nursing class, [a self-evaluation report of compliance with the “minimum standards for nursing programs” shall be submitted to the board and] an approval site visit shall be made by representatives of the board to determine compliance with “minimum standards for nursing programs” and for consideration of continued approval.

B. Full approval.

~~[(1) Programs that are not nationally accredited:]~~

~~[(a) (1) Full approval status shall be granted after the board verifies through a site visit that the “minimum standards for nursing programs” have been met.~~

~~[(b) (2) Full approval for a continuing period not to exceed [eight (8)]~~

~~ten (10) years, shall be granted to nursing education programs if, in the opinion of the board, the program continues to demonstrate compliance with minimum standards for nursing programs.~~

~~[(2) (3) [Nationally accredited programs:] National nursing accreditation.~~

~~(a) All currently board approved nursing programs shall achieve national nursing accreditation by January 1, 2018.~~

~~(b) New programs shall be required to achieve national nursing accreditation by two years after the graduation of the first cohort.~~

~~(c) Programs that do not meet or maintain this requirement will be placed on conditional approval.~~

~~[(a) (d) Programs which have received accreditation from a board-recognized national nursing accreditation agency shall file evidence of initial accreditation with the board, and [therefore] thereafter shall file notice of any change in program accreditation status and report from accrediting agency’s board of review; the board shall grant approval based upon evidence of such accreditation.~~

~~[(b) (e) Programs holding approval based upon national accreditation are also responsible for complying with “minimum standards for nursing programs”.~~

~~[(c) (f) Full approval for a continuing period not to exceed ten (10) years, shall be granted to nursing programs with full national nursing accreditation.~~

C. Conditional approval.

~~(1) The nursing education program [may] shall be placed on conditional approval not to exceed two years when there is evidence of substantial non-compliance with the “minimum standards for nursing programs” as specified in these rules.~~

~~[(a) (2) When on conditional approval status, the board of nursing may direct the program to cease admissions.~~

~~[(b) A closure plan which includes date of closure, provisions that will be made for students to complete their nursing education, and the location of the permanently stored program records will be submitted to the board six months after the program is placed on a conditional approval.]~~

~~[(2) (3) The following situations are cause for review [and/or] or a site visit by the board to determine if the minimum standards for nursing programs are being met:~~

~~(a) complaints relating to violations of the “minimum standards for nursing programs”;~~

~~(b) denial, withdrawal or change of program accreditation status by a board-recognized national nursing [accreditations] accreditation agency or general academic accreditation agency;~~

~~(c) failure to obtain board approval of changes that require approval of the board~~

under "program changes";

(d) providing false or misleading information to students or the public concerning the nursing program;

(e) violation of the rules [or policies] 16.12.3 NMAC;

(f) continuous disruptions in retaining a qualified director or faculty, resulting in disorganization and breakdown of supervision and teaching of students;

(g) non-compliance with the program's stated philosophy, objectives, policies, and curriculum resulting in unsatisfactory faculty/student achievement;

(h) failure to provide clinical experiences necessary to meet the objectives of the nursing program;

(i) less than a passing rate of 80% of first time writers of the national licensing examination;

(i) when a program fails to maintain a passing rate of 80% of first time writers for one year, a letter will be sent to the program notifying them that they are not in compliance with the rules and to provide the board with an assessment of possible problem areas within six (6) months;

(ii) when a program fails to maintain a passing rate of 80% of first time writers for two consecutive years, a report addressing areas of concern with a plan for corrective action will be submitted to the board within [6] six (6) months and an evaluation visit may be required.

~~[(iii) when a program fails to maintain a passing rate of 80% of first time writers for one year and then achieves the passing rate the second year and then fails to maintain the passing rate the third year, an assessment of possible problem areas will be done within 6 months and an evaluation visit may be conducted;~~

~~[(iv) when a program fails to maintain a passing rate of 80% of first time writers for three consecutive years, the program may be placed on conditional approval and an evaluation visit will be required.]~~

~~[(3)]~~ (4) Conditional approval is not renewable. Failure to correct deficiencies within the designated time period will result in withdrawal of approval and involuntary closure of the program by the board. Full approval status shall be granted after the board verifies through a site visit that correction of deficiencies have occurred within the designated time period.

~~[(4)]~~ (5) The board may deny approval or withdraw approval of a nursing education program that does not meet the "minimum standards for nursing programs." [1-1-98; 16.12.3.8 NMAC - Rn & A, 16 NMAC 12.3.8, 7-30-01; A, 1-2-04; A, 2-17-06; A, 1-14-13]

16.12.3.9 TYPES OF BOARD VISITS TO NURSING PROGRAMS:

A. Approval visit - visits made to programs of nursing by ~~[representatives of the]~~ board representative(s) for the sole purpose of granting board approval.

B. Evaluation visit - visits made to programs of nursing by board representative(s), at the request of the board, for the purpose of evaluating a program's progress and approval status.

C. Consultation visit - visits made to programs of nursing by the board representative(s), at the request of the program of nursing or educational institution. Requests to the board for consultation must be made, in writing, to the executive director of the board of nursing. Consultation visits are made at the expense of the program of nursing or educational institution.

D. Survey visit - may be done at the discretion of the board during any national accreditation visit.

[1-1-98; 16.12.3.9 NMAC - Rn & A, 16 NMAC 12.3.9, 7-30-01; A, 1-14-13]

16.12.3.10 GENERAL REQUIREMENTS:

A. Prior to the end of the approval period, a site visit shall be made by board representatives ~~[of the board of nursing]~~ to all nursing education programs not nationally accredited or an evaluative visit may be conducted at the discretion of the board with any nursing program, as needed.

B. Representatives of the parent institution and nursing program shall be notified, in writing, regarding the approval status of the program.

C. A report of any official visit, made by board representative(s) ~~[of the board]~~, shall be provided to the program of nursing and officials of the institution.

D. In the event that deficiencies are found, the board shall designate a reasonable time period to correct the deficiencies.

E. An annual report which includes information regarding compliance with 16.12.3.12 NMAC, *minimum standards for nursing programs* shall be submitted to the board by the nursing education program. ~~[The national accreditation report may serve as the annual report in the year in which the nursing program is scheduled for an NEN visit.]~~

[1-1-98; 16.12.3.10 NMAC - Rn, 16 NMAC 12.3.10, 7-30-01; A, 2-17-06; A, 1-14-13]

16.12.3.11 REQUIREMENTS FOR THE ESTABLISHMENT OF NEW NURSING PROGRAMS [OR REOPENING PROGRAMS]:

A. All programs not previously approved by the board ~~[and programs that are reopening]~~ are required to be approved by the board under the

procedures prescribed in this section. ~~[Applications]~~ Feasibility studies, proposals, and initial approvals shall be considered during a regularly scheduled board meeting.

B. Any institution considering the establishment of a pre-licensure nursing education program ~~[or the reopening of a pre-licensure nursing education program]~~ shall submit, ~~[in writing,]~~ a [statement] letter of intent, [and] the resume and transcripts of the nursing program administrator, complete application form and feasibility study, at least twelve (12) months in advance of the proposed opening date. ~~[The application shall be prepared by a qualified nurse educator as specified in the "minimum standards for nursing programs" and shall contain the following:]~~ The application, feasibility study and program proposal shall be prepared by a qualified nurse educator.

~~[(1) Rationale for establishing the program and details of the type of program planned, length of the program, and probable opening date;~~

~~[(2) Philosophy and objectives of the parent institution;~~

~~[(3) Chapter or articles of incorporation authorizing the institution to conduct a program of nursing;~~

~~[(4) Evidence of national or regional accreditation of the parent institution;~~

~~[(5) Verification of approval of the proposed nursing education program by the highest governing body of the parent institution;~~

~~[(6) Relationship of the proposed nursing program to the parent institution;~~

~~[(7) A completed feasibility form and feasibility study to include: (1) documentation of the need/demand for a new nursing program; (2) nursing manpower needs in the state and region; and (3) impact on other nursing education programs;~~

~~[(8) Documentation of the geographic region to support the program in relation to: (1) availability of the proposed number of faculty and director; (2) source and number of potential students; (3) proposed clinical facilities detailing accessibility and documenting the plan for clinical facility use to provide educationally sound experiences. The effect on other schools utilizing the facility must also be documented;~~

~~[(9) Documentation of the parent institution to support the program in relation to: (1) plans for providing adequate support services including library audio/visual resources, classrooms, laboratory, offices, secretaries, and counseling; and (2) evidence of financial resources for planning, implementing and continuing the program;~~

~~[(10) Tentative timetable for planning and implementing the entire program;]~~

(1) The letter of intent shall state the parent institution's intention of opening

a nursing program and verify approval of the proposed program by the highest governing body of the institution.

(2) The completed application shall include attached evidence of national or regional accreditation of the parent institution.

(3) The feasibility study shall contain the following:

(a) rationale for the establishment of the nursing program;

(b) documentation of the need/demand for a new nursing program;

(c) nursing manpower needs in the state and region;

(d) impact on other nursing education programs in the state;

(e) definition of the target region from which the student population will be drawn;

(f) availability of the proposed number of faculty and director; and

(g) proposed clinical facilities detailing accessibility and documenting the plan for clinical facility use to provide educationally sound experiences. The effect on other nursing programs utilizing the facility must also be documented.

C. The ~~[application]~~ feasibility study must be approved by the board before the proposal is submitted.

D. The proposal shall be submitted at least six (6) months prior to the proposed opening date. The board of nursing shall approve the proposal upon submission of evidence that verifies the following:

(1) compliance with "minimum standards for nursing programs;"

(2) documentation of the parent institution to support the program in relation to:

(a) plans for providing adequate support services including library audio/visual resources; classrooms, laboratory, offices, secretaries, and counseling; and

(b) evidence of financial resources for planning, implementing and continuing the program;

(3) tentative timetable for planning and implementing the entire program;

~~[(2)]~~ (4) appointment of a qualified nurse director, as specified in the "minimum standards for nursing programs," to be active full-time in the position six (6) months prior to the starting date;

~~[(3)]~~ (5) evidence of a sufficient number of qualified faculty, as specified in "minimum standards for nursing programs"; faculty shall be active in their positions no later than two months before the start of the first class [of each term].

~~[(4)]~~ additional evidence as required in the criteria for proposals.]

E. Requirements for ~~[Final]~~ approval.

~~[(1)]~~ A survey of the institutional or clinical facilities may be done at the

discretion of the board to amplify and verify information on the application and proposal.]

~~[(2)]~~ (1) Following approval of the proposal, arrangements will be made for the initial approval visit [to include a review of the proposed educational program and clinical facilities, by representatives of the board] for the purpose of verifying compliance with the minimum standards for nursing programs. A written report of the visit will be submitted to the board and to the institution.

~~[(3)]~~ (2) The board shall advise the institution, in writing, regarding the approval/disapproval of the [application] feasibility study, proposal, initial approval status, and may include specific [recommendations and requests for additional information and reports] requirements that must be met during the approval period.

~~[(4)]~~ (3) The board of nursing may deny approval to a program that does not meet the "minimum standards for nursing programs."

[1-1-98; 16.12.3.11 NMAC - Rn & A, 16 NMAC 12.3.11, 7-30-01; A, 1-14-13]

16.12.3.12 M I N I M U M STANDARDS FOR ~~[NURSNG]~~ NURSING PROGRAMS:

A. Administration and organization.

(1) The nursing education program shall be an integral part of [a accredited] an institution [recognized by the US department of education and authorized] of higher education that is authorized by this state to confer credentials in nursing and that is also accredited by an accreditation agency recognized by the US department of education.

(2) The nursing program shall obtain national nursing accreditation within two years of the first graduating class.

~~[(2)]~~ (3) The nursing programs shall have status comparable with other academic units. There shall be an organizational chart which identifies the relationships, within and between the program and other administrative areas of the parent institution.

~~[(3)]~~ (4) The administration of the parent institution shall provide adequate financial support for the nursing program.

~~[(4)]~~ (5) The parent institution shall designate a qualified, nursing director who is licensed to practice as a registered nurse in New Mexico or in a compact state. The nursing program director shall have responsibility and authority comparable with the administrative position including but not limited to development, implementation, evaluation, administration and organization of the nursing program.

~~[(5)]~~ Faculty, administration and students shall have the opportunity to participate in the governance of the nursing

program and the parent institution.]

(6) The nursing program shall have specific written policies available to students and the public regarding, but not limited to, admission, readmission, transfer, advanced placement, progression, graduation, withdrawal, dismissal, student rights and responsibilities, grievances, health and safety.

(7) The nursing program shall provide accurate, complete and appropriate information to all students and prospective students about the program including, but not limited to:

(a) nature of the program, including course sequence, prerequisites, co-requisites and academic standards;

(b) length of the program;

(c) current cost of the program;

(d) transferability of credits to other public and private educational institutions in NM;

(e) program teaching methods and supporting technology;

(f) current standing and any change in regional or national institutional accreditation status and national nursing accreditation status and board approval status.

(8) Faculty and students shall participate in program planning, implementation, evaluation and continuous improvement.

B. Curriculum.

(1) The mission of the nursing unit shall be consistent with that of the parent institution.

(2) [The curriculum shall be developed, implemented, controlled and evaluated by the faculty within the framework of the mission, goals and outcomes of the nursing program.] A nursing program shall develop and implement a curriculum that includes level objectives, course objectives, measurable learning outcomes for each course that:

(a) reflect its mission and goals;

(b) are logically consistent between and within courses;

(c) are designed so that the students who complete the program will have the knowledge and skills necessary to function in accordance with the definition and scope of practice specified in NM Nurse Practice Act.

(3) The curriculum shall extend over a period of time sufficient to provide essential, sequenced learning experiences which enable a student to develop nursing competence and shall evidence an organized pattern of instruction consistent with principles of learning and educational practice.

(4) Clinical experience shall provide opportunities for application of theory and for achievement of the stated objectives in a client care setting, and

shall include clinical learning experience to develop nursing skills required for safe practice. Student/faculty ratio in the clinical setting shall be based upon the level of students, the acuity level of the clients, the characteristics of the practice setting and shall not exceed 8:1. Clinical evaluation tools for evaluation of students progress, performance and learning experiences shall be stated in measurable terms directly related to course objectives.

(5) The curriculum shall provide instruction in the discipline of nursing [appropriate to the RN or PN level,] across the lifespan and include content relevant to national and local health care needs. Support courses shall be an integral part of the nursing curriculum.

(6) [A plan for curriculum and program evaluation shall be in place.] The nursing program shall implement a comprehensive, systematic plan for ongoing evaluation that is based on program outcomes and incorporates continuous improvement.

[C. Students: There shall be written policy statements consistent with those of the parent institutions which shall be made available to the student. Students shall be provided with opportunities to participate in the development and revisions of policies and procedures related to students including but not limited to philosophy, objectives, clinical sites, learning experiences, and evaluation of the program.]

[D.] C. Faculty requirements.

(1) The [director] administrator of the nursing program and all nursing program faculty shall hold current licenses to practice as registered nurses in New Mexico or in a compact state.

(2) [Beginning on January 1, 2002, all new nursing program directors and nursing faculty must meet the following requirements:] The nurse administrator shall hold at least one graduate degree in nursing and shall have experience in nursing practice, nursing education, curriculum and nursing administration.

[(a) the director shall hold a graduate degree in nursing:

(i) preferably have three years of full time teaching experience in a nursing program and;

(ii) (a) A formal plan will be in place which will include an orientation to college administration and nursing program development, [and] implementation and evaluation.

(b) Nursing faculty who teach full-time shall hold a graduate degree in nursing; faculty without a graduate degree may be employed for one year and then are required to complete a graduate degree within the next five years, an educational contract with evidence of progression will be submitted with program annual report.

(c) Nursing faculty who teach part

time shall hold a minimum of a bachelors degree in nursing; faculty without a BSN may be employed for one year and then are required to complete a BSN completion program or msn program within 5 years, an educational contract with evidence of progression will be submitted with program annual report.

(i) [a master's prepared faculty shall supervise part-time faculty without msn;] Part time faculty without a graduate degree in nursing shall report to a master's prepared faculty and evidence of routine supervision shall be documented.

(ii) Part-time faculty shall be oriented to the curriculum, and provided with instruction in didactic and clinical teaching [skills] strategies.

(3) Clinical preceptors are licensed as a nurse at or above the educational level for which the student is preparing.

(4) Personnel policies for nursing faculty shall be the same as those in effect for other faculty with the exception of:

(a) at least 80% of the [director's] administrator assignment [should] shall be [administrative] spent in administration of the nursing program; additional administrative time should be given when preparing for accreditation, curriculum revision and other [such] administrative related activities;

(b) nursing faculty workload shall be calculated by teaching clock/contact hour;

(c) evidence of full time and part time faculty evaluation shall be in place.

(5) A nursing program shall maintain current and accurate faculty and student records.

(6) The nursing program will retain a qualified director and a sufficient number of qualified faculty to meet the outcomes and purposes of the nursing education program.

[E.] D. Resources: The parent institution shall provide sufficient resources, services and facilities to operate the nursing program.

E. The nursing education program will maintain a passing rate of 80% or above of first time writers of the national licensing exam.

[1-1-98; 16.12.3.12 NMAC - Rn & A, 16 NMAC 12.3.12, 7-30-01; A, 12-31-01; A, 1-2-04; A, 6-01-04; A, 2-17-06; A, 1-14-13]

16.12.3.14 REQUIREMENTS FOR CLOSURE OF APPROVED NURSING PROGRAMS: Upon voluntary or involuntary closure, the school shall:

A. notify the board of the closure date of the program;

B. make provision for students to complete their nursing education;

C. notify the board of the location of the permanently stored program records; [and]

D. discontinue admissions;

and

E. a contingency closure plan which includes date of closure, provisions that will be made for students to complete their nursing education and the location of the permanently stored program records will be submitted to the board six (6) months after the program is placed on a conditional approval.

[1-1-98; 16.12.3.14 NMAC - Rn, 16 NMAC 12.3.14, 7-30-01; A, 1-14-13]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 17.7.3 NMAC, Section 9, effective December 31, 2012.

17.7.3.9 INTEGRATED RESOURCE PLANS FOR ELECTRIC UTILITIES: Public utilities supplying electric service to customers shall file an IRP, along with an action plan, with the commission every three years.

A. Initial filings. Utilities with greater than 200,000 New Mexico retail customers shall file 15 months after the effective date of this rule. Utilities with less than 200,000 New Mexico retail customers shall file 27 months after the effective date of this rule. An original and fourteen copies of the IRP shall be filed with the commission.

B. Contents of IRP for electric utilities. The IRP submitted by an electric utility shall contain the utility's New Mexico jurisdictional:

(1) description of existing electric supply-side and demand-side resources;

(2) current load forecast as described in this rule;

(3) load and resources table;

(4) identification of resource options;

(5) description of the resource and fuel diversity;

(6) identification of critical facilities susceptible to supply-source or other failures;

[(5)] (7) determination of the most cost effective resource portfolio and alternative portfolios;

[(6)] (8) description of public advisory process;

[(7)] (9) action plan; and

[(8)] (10) other information that the utility finds may aid the commission in reviewing the utility's planning processes.

C. Description of existing resources. The utility's description of its existing resources used to serve its jurisdictional retail load at the time the IRP is filed shall include:

(1) name(s) and location(s) of utility-owned generation facilities;

(2) rated capacity of utility-owned generation facilities;

(3) fuel type, heat rates, annual capacity factors and availability factors projected for utility-owned generation facilities over the planning period;

(4) cost information, including capital costs, fixed and variable operating and maintenance costs, fuel costs, and purchased power costs;

(5) existing generation facilities' expected retirement dates;

(6) amount of capacity obtained or to be obtained through existing purchased power contracts or agreements relied upon by the utility, including the fuel type, if known, and contract duration;

(7) estimated in-service dates for utility-owned generation facilities for which a certificate of public convenience and necessity (CCN) has been granted but which are not in-service;

(8) amount of capacity and, if applicable, energy, provided annually to the utility pursuant to wheeling agreements and the duration of such wheeling agreements;

(9) description of existing demand-side resources, including (1) demand-side resources deployed at the time the IRP is filed; and (2) demand-side resources approved by the commission, but not yet deployed at the time the IRP is filed; information provided concerning existing demand-side resources shall include, at a minimum, the expected remaining useful life of each demand-side resource and the energy savings and reductions in peak demand, as appropriate, made by the demand-side resource;

(10) reserve margin and reserve reliability requirements (e.g. FERC, power pool, etc.) with which the utility must comply and the methodology used to calculate its reserve margin;

(11) existing transmission capabilities:

(a) the utility shall report its existing, and under-construction, transmission facilities of 115 kV and above, including associated switching stations and terminal facilities; the utility shall specifically identify the location and extent of transfer capability limitations on its transmission network that may affect the future siting of supply-side resources;

(b) the utility shall describe all transmission planning or coordination groups to which it is a party, including state and regional transmission groups, transmission companies, and coordinating councils with which the utility may be associated;

(12) environmental impacts of existing supply-side resources:

(a) the utility shall provide the percentage of kilowatt-hours generated by each fuel used by the utility on its existing system, for the latest year for which such

information is available;

(b) to the extent feasible, for each existing supply-side resource on its system, the utility shall present emission rates (expressed in pounds emitted per kilowatt-hour generated) of criteria pollutants as well as carbon dioxide and mercury;

(c) to the extent feasible, for each existing supply-side resource on its system, the utility shall present the water consumption rate; and

(13) a summary of back-up fuel capabilities and options.

D. Current load forecast.

(1) The utility shall provide a load forecast for each year of the planning period; the load forecast shall incorporate the following information and projections:

(a) annual sales of energy and coincident peak demand on a system-wide basis, by customer class, and disaggregated among commission jurisdictional sales, FERC jurisdictional sales, and sales subject to the jurisdiction of other states;

(b) annual coincident peak system losses and the allocation of such losses to the transmission and distribution components of the system;

(c) weather normalization adjustments;

(d) assumptions for economic and demographic factors relied on in load forecasting;

(e) expected capacity and energy impacts of existing and proposed demand-side resources; and

(f) typical historic day or week load patterns on a system-wide basis for each major customer class.

(2) The utility shall develop base-case, high-growth and low-growth forecasts, or an alternative forecast that provides an assessment of uncertainty (e.g., probabilistic techniques).

(3) Required detail.

(a) The utility shall explain how the demand-side savings attributable to actions other than the utility-sponsored demand-side resources for each major customer class are accounted for in the utility's load forecast and the effect, as appropriate, on its load forecast of the utility-sponsored demand-side resources on each major customer class.

(b) The utility shall compare the annual forecast of coincident peak demand and energy sales made by the utility to the actual coincident peak demand and energy sales experienced by the utility for the four years preceding the year in which the plan under consideration is filed. In addition, the utility shall compare the annual forecast in its most recently filed resource plan to the annual forecast in the current resource plan. In its initial IRP filing, the utility shall provide information demonstrating how well its forecasts during the preceding four years predicted demand.

(c) The utility shall explain and document the assumptions, methodologies, and any other inputs upon which it relied to develop its load forecast.

E. Load and resources table. The utility shall provide a load and resources table of its existing loads and resources at the time of its IRP filing. The load and resources table, to the extent practical, shall contain the appropriate components from the load forecast. Resources shall include:

(1) utility-owned generation;

(2) existing and future contracted-for purchased power including qualifying facility purchases;

(3) purchases through net metering programs, as appropriate;

(4) demand-side resources, as appropriate; and

(5) other resources relied upon by the utility, such as pooling, wheeling, or coordination agreements effective at the time the plan is filed.

F. Identification of resource options.

(1) In identifying additional resource options, the utility shall consider all feasible supply-side and demand-side resources. The utility shall describe in its plan those resources it evaluated for selection to its portfolio and the assumptions and methodologies used in evaluating its resource options, including, as applicable: life expectancy of the resources, the recognition of whether the resource is replacing/adding capacity or energy, dispatchability, lead-time requirements, flexibility and efficiency of the resource.

(2) For supply-side resource options, the utility shall identify the assumptions actually used for capital costs, fixed and variable operating and maintenance costs, fuel costs forecast by year, and purchased power demand and energy charges forecast by year, fuel type, heat rates, annual capacity factors, availability factors and, to the extent feasible, emission rates (expressed in pounds emitted per kilowatt-hour generated) of criteria pollutants as well as carbon dioxide and mercury.

(3) The utility shall describe its existing rates and tariffs that incorporate load management or load shifting concepts. The utility shall also describe how changes in rate design might assist in meeting, delaying or avoiding the need for new capacity.

G. Determination of the most cost effective resource portfolio and alternative portfolios.

(1) To identify the most cost-effective resource portfolio, utilities shall evaluate all feasible supply and demand-side resource options on a consistent and comparable basis, and take into consideration risk and uncertainty (including but not limited to financial, competitive,

reliability, operational, fuel supply, price volatility and anticipated environmental regulation). The utility shall evaluate the cost of each resource through its projected life with a life-cycle or similar analysis. The utility shall also consider and describe ways to mitigate ratepayer risk.

(2) Each electric utility shall ~~discuss~~ provide a summary of how the following factors were considered in, or affected, the development of resource portfolios:

(a) load management and energy efficiency requirements;

(b) renewable energy portfolio requirements;

(c) existing and anticipated environmental laws and regulations, and, if determined by the commission, the standardized cost of carbon emissions;

(d) fuel diversity;

(e) susceptibility to fuel interdependencies;

~~(f)~~ (f) transmission constraints; and

~~(g)~~ (g) system reliability and planning reserve margin requirements.

(3) Alternative portfolios. In addition to the detailed description of what the utility determines to be the most cost-effective resource portfolio, the utility shall develop a reasonable number of alternative portfolios by altering risk assumptions and other parameters developed by the utility and the public advisory process.

H. Public advisory process. Public input is critical to the development and implementation of integrated resource planning in New Mexico. A utility shall incorporate a public advisory process in the development of its IRP. At least one year prior to the filing date of its IRP, a utility shall initiate a public advisory process to develop its IRP. The purpose of this process shall be to receive public input, solicit public commentary concerning resource planning and related resource acquisition issues. This process shall be administered as follows.

(1) The utility shall initiate the process by providing notice at least 30 days prior to the first scheduled meeting to the commission, interveners in its most recent general rate case, and participants in its most recent renewable energy, energy efficiency and IRP proceedings; the utility shall at the same time, also publish this notice in a newspaper of general circulation in every county which it serves and in the utility's billing inserts; this notice shall consist of:

(a) a brief description of the IRP process;

(b) time, date and location of the first meeting;

(c) a statement that interested individuals should notify the utility of their interest in participating in the process, and

(d) utility contact information.

(2) Upon receipt of the initial notice, the commission may designate a facilitator to assist the participants with dispute resolution.

(3) The utility or its designee shall chair the public participation process, schedule meetings, and develop agendas for these meetings. With adequate notice to the utility, participants shall be allowed to place items on the agenda of public participation process meetings.

(4) Meetings held as part of the public participation process shall be noticed and scheduled on a regular basis and shall be open to members of the public who shall be heard and their input considered as part of the public participation process. Upon request, the utility shall provide an executive summary containing a non-technical description of its most recent IRP.

(5) The purposes of the public participation process are for the utility to provide information to, and receive and consider input from, the public regarding the development of its IRP. Topics to be discussed as part of the public participation process include, but are not limited to, the utility's load forecast; evaluation of existing supply- and demand-side resources; the assessment of need for additional resources; identification of resource options; modeling and risk assumptions and the cost and general attributes of potential additional resources; and development of the most cost-effective portfolio of resources for the utility's IRP.

(6) In its initial IRP advisory process, the utility and participants shall explore a procedure to coordinate the IRP process with renewable energy procurement plans and energy efficiency and load management program proposals. Any proposed procedure shall be designed to conserve commission, participant and utility resources and shall indicate what, if any, variances may be needed to effectuate the proposed procedure.

I. Action plan.

(1) The utility's action plan shall detail the specific actions the utility will take to implement the integrated resource plan spanning a four-year period following the filing of the utility's IRP. The action plan will include a status report of the specific actions contained in the previous action plan.

(2) An action plan does not replace or supplant any requirements for applications for approval of resource additions set forth in New Mexico law or commission regulations. [17.7.3.9 NMAC - N, 4-16-07; A, 12-31-12]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 17.7.4 NMAC, Sections 10 and 11, effective December 31, 2012.

17.7.4.10 CONTENTS OF THE GAS UTILITY IRP: The contents of the IRP submitted by a utility providing natural gas retail service in New Mexico shall contain the utility's jurisdictional:

A. current load forecast;

B. description of existing portfolio of resources;

C. summary of foreseeable resource needs for the planning period;

D. anticipated resources to be added during the planning period and the evaluation of various options that could reasonably be added to the utility's resource portfolio;

E. a summary description of natural gas supply sources and delivery systems;

F. a summary identification of critical facilities susceptible to supply-source or other failures;

~~(E)~~ **G.** description of the public advisory process; and

~~(F)~~ **H.** other information that may aid the commission in reviewing the utility's planning processes.

[17.7.4.10 NMAC - N, 4-16-07; A, 12-31-12]

17.7.4.11 EVALUATION OF NATURAL GAS RESOURCES:

A. The utility shall evaluate the ability of its natural gas resources to provide adequate redundancy of supply and of delivery systems.

B. The utility shall evaluate, as appropriate, renewable energy, energy efficiency, load management and conventional supply-side resources on a consistent and comparable basis and take into consideration risk and uncertainty of energy supply, price volatility and costs of anticipated environmental regulations in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers. The evaluation shall be based on a present-value analysis of revenue requirements and shall include discussion of any economic, risk, environmental, and reliability analyses.

[17.7.4.11 NMAC - N, 4-16-07; A, 12-31-12]

**NEW MEXICO
PUBLIC REGULATION
COMMISSION**

This is an amendment to 17.9.560 NMAC, Section 15, effective December 31, 2012.

17.9.560.15 STANDARDS OF QUALITY OF SERVICES:

A. Standard frequency.

The standard frequency for alternating current distribution systems shall be 60 cycles per second. The frequency shall be maintained within limits which will permit the satisfactory operation of customers' clocks connected to the system.

B. Voltage limits.

Each utility shall adopt and file with the commission standard nominal service voltages and for each of the several areas into which its distribution system or systems may be divided.

(1) The variations of the voltage for the various classes of service, voltage spread, and extreme tolerable voltage limits shall be in accordance with the publication EEI No. R-6, NEMA No. 117, ANSI standard C-84.1, or voltage levels on rural distribution systems REA bulletin No. 169.4.

(2) For service rendered to public utilities and others for resale, the nominal voltage spread and extreme tolerable voltage limits shall be as mutually agreed upon by the parties concerned. These limitations do not apply to special contracts in which the customer specifically agrees to accept service with unregulated voltage.

(3) Exceptions to voltage requirements. Voltage outside the limits specified will not be considered a violation when the variations:

- (a) arise from the action of the elements,
- (b) are infrequent fluctuations not exceeding five minutes' duration,
- (c) arise from service interruptions,
- (d) arise from temporary separation of parts of the system from the main system,
- (e) are from causes beyond the control of the utility.

C. Voltage surveys and records.

(1) Each utility shall make a reasonable number of voltage measurements using recording voltmeters or minimum/maximum voltmeters to determine if voltages are in compliance with the requirements as stated in Subsection B of 17.9.560.15 NMAC.

(2) Voltage measurements shall be made at the customer's point of metering and at other pertinent locations on the utility system.

(3) All voltmeter records obtained under (1) and (2) above shall be retained

by the utility in accordance with 17.3.310 NMAC and shall be available for inspection by the commission's representatives. Notations on each record shall indicate the following:

- (a) the location where the voltage was taken,
- (b) the time and date of the test, and
- (c) the results of the comparison with an indicating voltmeter.

D. Equipment for voltage measurements.

- (1) Working instruments.
 - (a) Each utility shall have at least two (2) indicating voltmeters with a stated accuracy within $\pm 3.0\%$ of full scale.
 - (b) Each utility shall have at least two (2) portable recording voltmeters with a stated accuracy within $\pm 3.0\%$ of full scale.

(2) Working instruments shall be checked periodically (see Paragraph (2) of Subsection E. of 17.9.560.14 NMAC) by comparison with a standard in a meter shop.

(3) Extreme care shall be exercised in the handling of instruments to assure that their accuracy is not disturbed.

E. Interruptions of service. Each utility shall make reasonable efforts to avoid interruptions of service, but when interruptions occur service shall be reestablished within the shortest time practicable consistent with safety.

(1) Each utility shall keep records of interruptions of service on its primary distribution circuits and shall make an analysis of the records for the purpose of determining steps to be taken to prevent recurrence of such interruptions. Such records should include the following information concerning the interruptions:

- (a) cause;
- (b) date and time; and
- (c) duration.

(2) The log for each unattended substation must show interruptions which require attention to restore service with the estimated time of interruption.

(3) Planned interruptions shall be made at a time that will not cause unreasonable inconvenience to customers and shall be preceded, if feasible, by adequate notice to those who will be affected.

(4) ~~[Each utility shall provide upon request of the commission information regarding any interruption of service.]~~ Each utility shall report the following information.

(a) A major interruption of service is defined as an unscheduled interruption of service of more than 30 minutes in duration, affecting:

- (i) more than 10% of a utility's New Mexico jurisdictional load or more than 100 MW of its New Mexico jurisdictional load, whichever is less; or
- (ii) substantially all of a New Mexico municipality or county; or

(iii) any of the utility's customers of at least 1 MW (based on the most recent demand billing information on the date of the major interruption).

(b) Within two (2) hours of the commencement of a major interruption of service (or no later than 9:00 AM the following business day for outages occurring after 4:00 PM or on a weekend), the utility division of the commission shall be notified telephonically, by facsimile or by e-mail of the occurrence with a brief description of the occurrence.

(c) Within three (3) business days a written report shall be filed with the records division of the commission. The written report shall contain the pertinent information on the outage including, but not limited to, time of occurrence, duration, cause, facilities affected, MW of load lost, MWH of lost sales, estimated number of consumers affected, municipalities and counties wholly or partially interrupted, and actions taken by the utility to correct and prevent recurrence of the outage.

(d) Utilities that submit reports of an interruption to any coordinating council, regional transmission group or other industry review shall concurrently submit copies to the records division of the commission, including any engineering reports associated with an interruption. Each utility shall provide to commission staff all information requested by staff that is reasonably needed to assess the situation.

(5) Each utility shall identify critical customers, including facilities that require electricity to perform essential life-health-safety services, including other utility services such as natural gas compression, to establish priority of service and to minimize curtailments to these customers.

(6) Each utility shall identify an emergency coordinator to act as a single point of contact between designated emergency personnel in each community served by the utility in the event of a system emergency.

F. Curtailment of service plan. Each utility shall have in place a plan for curtailment of service that may need to be instituted to maintain system reliability and integrity. Each plan shall be consistent with applicable NERC and other reliability standards. The plan shall identify various levels of curtailment and conditions that an electric utility must experience for each level as well as specifying the type of actions the utility must undertake to contain or reverse a potential emergency. Each plan must also prescribe the minimum documentation required at each level. The plan must also include information dissemination to customers, the public and governmental entities. Each utility will periodically review and update the plan and will submit a copy of the most current plan version to the records division of the commission as a

company rule pursuant to 17.9.210 NMAC. [6-30-88; 17.9.560.15 NMAC - Rn, NMPSC 560.45-560.49 & A, 6-15-05; A, 12-31-12]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 17.10.650 NMAC, Sections 7 and 14, effective December 31, 2012.

17.10.650.7 DEFINITIONS: When used in 17.10.650 NMAC unless otherwise specified the following definitions will apply:

A. BTU means British thermal unit;

B. check flow means a flow between twenty percent (20%) and fifty percent (50%) of the meter's rated capacity;

C. commission means the New Mexico public regulation commission;

D. cubic foot of gas shall have the following meanings:

(1) when gas is supplied and metered to customers at the pressure (as defined in Subsection B of 17.10.650.14 NMAC) normally used for domestic customers' appliances and no other basis of measurement is provided for by special contract or in the utility's rules on file with the commission, a cubic foot of gas shall be that quantity of gas which at the temperature and pressure existing in the meter occupies one (1) cubic foot;

(2) when gas is supplied to customers at other than the pressure in (1) above, the utility shall specify in its rules or special contract the base for measurement of a cubic foot of gas (see Paragraph (2) of Subsection C of 17.10.650.9 NMAC); unless otherwise stated a cubic foot of gas shall be that quantity of gas which at temperature of 60 degrees F. and a pressure of 14.73 psia occupies one (1) cubic foot; and

(3) the standard cubic foot of gas for testing the gas itself for heating value shall be that quantity of gas saturated with water vapor which at a temperature of 60 degrees F. and a pressure of 30 inches of mercury occupies one (1) cubic foot; (temperature of mercury = 60 degrees F.; acceleration due to gravity = 32.17 ft. per second; density = 13.595 grams per cubic centimeter;) other bases may be used by the utility and customer when provided for by special contract;

E. customer means any person, firm, association, corporation, or any agency of the federal, state, or local government being supplied with and responsible for payment for gas service by a gas utility;

F. delivery point means

that point at which the system of the seller connects into the system of the buyer regardless of the location of the meter unless otherwise specified by written contract;

G. filed rule means rules and regulations filed by a utility with the commission in compliance with 17.1.210 NMAC which have been made effective either through commission approval thereof or by operation of law;

H. full rated flow means a flow of one hundred percent (100%) of the rated capacity of a meter;

I. gas plant means all facilities owned by a gas utility for the production, storage, transmission, and distribution of gas;

J. LP-gas means liquefied petroleum gas;

K. main means a gas pipe owned, operated, or maintained by a utility which is used for the transmission or distribution of gas, but does not include "service pipe;"

L. meter, without other qualification, means any device or instrument which a utility uses to measure a quantity of gas;

M. premises means a piece of land or real estate, including buildings and other appurtenances thereon;

N. psia means pounds per square inch, absolute;

O. psig means pounds per square inch, gauge;

P. service pipe means the pipe that runs between a main or a transmission line and a customer's property line;

Q. special contract means a written agreement between a utility and a customer to establish a rate and/or conditions of utility service that due to size or load characteristics, or both, differ from those established for general classes of service;

R. system emergency means an unplanned situation in which a utility's system or a segment of its system is in imminent danger of failure and implementation of normal curtailment or interruption procedures would not rectify the condition;

~~[R-]~~ **S. therm** means the unit of heat that is equal to 100,000 British thermal units;

~~[S-]~~ **T. utility and gas utility** shall have the meaning given for "public utility" or "utility" in the New Mexico Public Utility Act, Section 62-3-3 NMSA 1978;

~~[F-]~~ **U.** W.C. means water column;

~~[U-]~~ **V. yard line** means the pipe that runs across a customer's property from the property line to the point of consumption. [6-30-88; 17.10.650.7 NMAC - Rn, NMPSC 650.7 & A, 6-15-05; A, 12-31-12]

17.10.650.14 STANDARDS OF QUALITY SERVICE:

A. Purity requirements.

All gas supplied to customers shall be substantially free from impurities which may cause corrosion of mains or piping or form corrosive or harmful fumes when burned in a properly designed and adjusted burner.

B. Pressure limits.

The standard pressure of gas supplied by any gas utility to domestic or commercial customers as measured on the customer's side of any such customer's meter shall not be less than four (4) inches nor more than fourteen (14) inches of water pressure. In the case of customers who require higher pressure than the standard established for domestic and commercial service, the utility may supply gas at the desired pressure, and the volume of such gas shall be computed on the basis of a filed rule or special contract covering gas supplied to customers at other than standard pressure. (See Paragraph (2) of Subsection K of 17.10.650.7 NMAC.)

C. Pressure surveys and records.

(1) Each utility shall make a sufficient number of pressure measurements on its mains and at the customer's meter so that it will have substantially accurate knowledge of the pressure in the low, intermediate, and high pressure system in each district, division, or community served by its distribution mains.

(2) All pressure records obtained under this section shall be retained in accordance with 17.3.310 NMAC and shall be available for inspection by the commission's representatives. Notations on each record shall indicate the following:

(a) the location where the pressure check was made, and

(b) the time and date of the check.

D. Standards for pressure measurements.

(1) Secondary standards. Each utility shall own or have access to a dead weight tester, which must be maintained in an accurate condition.

(2) Working standards. Each utility must own or have access to water manometers, mercury manometers, laboratory quality indicating pressure gauges, and field type dead weight pressure gauges as necessary for the proper testing of the indicating and recording pressure gauges used in determining the pressure on the utility's system.

(3) Working standards must be checked periodically (see Paragraph (3) of Subsection C of 17.10.650.13 NMAC) by comparison with a secondary standard.

E. Heating value.

(1) Manufactured and mixed gas. The average heating value on any one day of manufactured gas and mixed gas including liquefied petroleum gas mixed with air but

excluding natural gas when mixed with manufactured or liquefied petroleum gas for peak shaving or emergency purposes shall not exceed or fall below the standard heating value specified by the utility (see Paragraph (1) of Subsection C of 17.10.650.9 NMAC) by more than five percent (5%).

(2) Natural and liquefied petroleum gas. The heating value of natural gas and undiluted, commercially pure liquefied petroleum gas as determined in accordance with Subsection F of 17.10.650.14 NMAC shall not exceed or fall below the standard heating value (see Paragraph (1) of Subsection C of 17.10.650.9 NMAC) by more than five percent (5%).

(3) Adjustment of customers' appliances. Necessary adjustments of customers' appliances must be made by the utility without charge whenever the monthly average heating value of manufactured or mixed gas or natural gas or liquefied petroleum gas sold subject to thermal adjustment is more than five percent (5%) above or below the standard heating value for two successive months or whenever the heating value of natural gas or liquefied petroleum gas not sold subject to thermal adjustment is shown by two successive tests made in accordance with Paragraph (3) of Subsection F of 17.10.650.14 NMAC to be more than five percent (5%) above or below the standard heating value.

F. Heating value determination and records.

(1) Calorimeters used for the determination of the heating value of the gas sold shall be of a type acceptable to the commission.

(a) The calorimetric equipment shall be installed in a suitably located testing station acceptable to the commission and subject to its inspection.

(b) The accuracy of all calorimeters as well as the method of making heating value tests shall be acceptable to the commission. Recording calorimeters shall be tested with a standard gas at least once a year.

(c) Heating value test records shall be preserved in accordance with 17.3.310 NMAC.

(2) The utility shall determine the heating value of manufactured and mixed gas at least once daily and shall make the test during the period of the highest daily peak demands.

(3) Except for gas sold subject to thermal adjustment (to which the provisions of (2) above shall be applicable), the utility shall determine the heating value of natural gas and liquefied petroleum gas at least quarterly, provided that whenever any such quarterly test or subsequent test provided for herein indicates a heating value which is above or below the standard heating value by more than five percent (5%), another

determination of the heating value shall be made no more than thirty (30) days thereafter.

(4) Whenever a special contract between a utility and a customer makes specific provisions for the time and manner of determination of the heating value of the gas delivered to such customer, no additional or other determinations of the heating value of such gas need be made pursuant to the foregoing provisions of this section.

G. Interruptions of service.

(1) Each utility shall keep records of interruptions of service to fifty (50) or more of its customers on any of its distribution systems and shall make an analysis of the records for the purpose of determining steps to be taken to prevent recurrence of such interruptions. Such records should include the following information concerning the interruptions:

- (a) cause,
- (b) date and time, and
- (c) duration.

(2) Planned interruptions shall be made at a time that will not cause unreasonable inconvenience to customers and shall be preceded by adequate notice to those who will be affected.

(3) Each utility shall notify the utility division of the commission by ~~telephone or telegraph~~ facsimile or e-mail and confirm by letter to the records division of the commission of any interruption to the service of a major portion of any single distribution system. Each utility shall provide to commission staff all information requested by staff that is reasonably needed to assess the situation.

(4) Each utility shall identify critical customers, including facilities that require natural gas to perform essential life-health-safety services, including other utility services such as electrical generating stations, to establish priority of service and to minimize curtailments to these customers.

(5) Each utility shall identify an emergency coordinator to act as a single point of contact between designated emergency personnel in each community served by the utility in the event of a system emergency.

H. Curtailment of service plan.

Each utility shall have in place a plan for curtailment of service for system emergencies. Each plan shall be consistent with applicable national and other reliability and safety standards. The plan shall identify various levels of curtailment and conditions that a gas utility must experience for each level as well as specifying the type of actions the utility must undertake to contain or reverse a potential emergency. Each plan must also prescribe the minimum documentation required at each level. The plan must also include information dissemination to customers, the public and

governmental entities. Each utility will periodically review and update the plan and will submit a copy of the most current plan version to the records division of the commission as a company rule pursuant to 17.9.210 NMAC.

[6-30-88; 17.10.650.14 NMAC - Rn, NMPSC 650.37-650.43, 6-15-05; A, 12-31-12]

NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.1 NMAC, Section 7, effective January 1, 2013. In 15.2.1 NMAC, Section 7, Subsections A through D and Subsections F through Z were not published as there were no changes.

15.2.1.7 DEFINITIONS:

E. DEFINITIONS BEGINNING WITH THE LETTER "E":

(1) "Entry" is: a horse eligible for and entered in a race; two or more horses entered in the same race, which have common ties of ownership, lease or training (see "coupled entry").

(2) "Equipment" as applied to a horse, means [whip;] riding crop, blinkers, tongue strap, muzzle, hood, nose band, bit, shadow roll, martingale, breast plate, bandage, boot, plates, flipping halter and all other paraphernalia common or otherwise which might be used on or attached to a horse while racing.

(3) "Exhibition race" is a race for which a purse is offered but no wagering is permitted.

(4) "Exotic wagering" means all wagering other than on win, place or show, through pari-mutuel wagering;

(5) "Expired ticket" is an outstanding ticket, which was not presented for redemption within the required time period for which it was issued.

(6) "Export" means to send a live audiovisual broadcast of a horse race in the process of being run at a horse racetrack from the originating horse racetrack to another location.

[15.2.1.7 NMAC - Rp, 15 NMAC 2.1.7, 03/15/2001; A, 02/14/2002; A, 08/30/2007; A, 12/1/2010; A, 01/01/2013]

NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.2 NMAC, Section 8, effective 01/01/2013. In 15.2.2 NMAC, Section 8, Subsection A through L, and Subsection N through W were not published as there were no changes

15.2.2.8 ASSOCIATIONS:

M. E Q U I N E AMBULANCE

(1) An association shall provide ~~[an equine ambulance]~~ a minimum of two properly equipped ambulances staffed by trained personnel on association grounds on each day that the racetrack is open for racing or training.

(2) The ~~[ambulance]~~ ambulances must be properly ventilated and kept at an entrance to the racing strip when not in use.

(3) The ~~[ambulance]~~ ambulances must be a covered vehicle that is low to the ground and large enough to accommodate a horse in distress. The ~~[ambulance]~~ ambulances must be able to navigate on the racetrack during all weather conditions; transport a horse off the association grounds.

(4) The ~~[ambulance]~~ ambulances must be equipped with large, portable screens to shield a horse from public view; ramps to facilitate loading a horse; adequate means of loading a horse that is down; a rear door and a door on each side; a padded interior; a movable partition to initially provide more room to load a horse and to later restrict a horse's movement; a shielded area for the person who is attending to the horse; an adequate area for the storage of water and veterinary drugs and equipment.

(5) An association may not conduct a race unless ~~[an]~~ a minimum of one equine ambulance or an official veterinarian-approved substitute is readily available.

(6) The ~~[equine ambulance]~~ properly equipped equine ambulances, its supplies and attendants and the operating procedures for the ~~[equine ambulance]~~ properly equipped ambulances must be approved by the official veterinarian.

[15.2.2.8 NMAC - Rp, 15 NMAC 2.2.8, 03/15/2001; A, 08/30/2001; A, 11/14/2002; A, 08/30/2007; A, 01/01/2013]

NEW MEXICO RACING COMMISSION

This is an amendment to 15.2.4 NMAC, Section 8, effective 01/01/2013.

15.2.4.8 CLAIMING RACES: A. G E N E R A L PROVISIONS:

(1) A person entering a horse in a claiming race warrants that the title to said horse is free and clear of any existing claim or lien, either as security interest mortgage, bill of sale, or lien of any kind; unless before entering such horse, the written consent of the holder of the claim or lien has been filed with the stewards and the racing secretary and its entry approved by the stewards. A transfer of ownership arising from a recognized claiming race will terminate any existing prior lease for that horse.

(2) A filly or mare that has been bred is ineligible to enter into a claiming race unless a licensed veterinarian's certificate dated at least 25 days after the last breeding of that mare is on file with racing secretary's office stating that the mare or filly is not in foal. However, an in-foal filly or mare shall be eligible to enter into a claiming race if the following conditions are fulfilled:

(a) full disclosure of such fact is on file with the racing secretary and such information is posted in his/her office;

(b) the stallion service certificate has been deposited with the racing secretary's office (although all information obtained on such certificate shall remain confidential);

(c) all payments due for the service in question and for any live progeny resulting from that service are paid in full;

(d) the release of the stallion service certificate to the successful claimant at the time of claim is guaranteed.

(3) The stewards may set aside and order recession of a claim for any horse from a claiming race run in this jurisdiction upon a showing that any party to the claim committed a prohibited action, as specified in ~~[Subsection-D]~~ Subsection E of 15.2.4 NMAC with respect to the making of the claim, or that the owner of the horse at the time of entry in the claiming race failed to comply with any requirement of these rules regarding claiming races. Should the stewards order a recession of a claim, they may also, in their discretion, make a further order for the costs of maintenance and care of the horse as they may deem appropriate.

B. CLAIMING OPTION ENTRY:

(1) At the time of entry into a claiming race, the owner may opt to declare a horse ineligible to be claimed provided:

(a) the horse has been laid off and has not started for a minimum of 120 days since its last race, and;

(b) the horse is entered for a claiming price equal to or greater than the price at which it last started.

(2) Failure to declare the horse ineligible at the time of entry may not be remedied.

(3) Ineligibility shall apply only to the first start following each such layoff.

C. CLAIMING OF HORSES:

(1) Any horse entered in a claiming race that is not present in the paddock at least 10 minutes to post will be scratched.

~~(1)~~ (2) Any horse in a race for claiming may not wear into the paddock anything it will not race in except for a blanket, rain sheet or halter and lead shank for control.

~~(2)~~ (3) Any horse starting in a claiming race is subject to be claimed for its entered price by any: licensed owner; holder of a valid claim certificate; licensed authorized agent acting on behalf of an eligible claimant.

~~(3)~~ (4) Every horse claimed shall race for the account of the original owner, but title to the horse shall be transferred to the claimant from the time the horse enters the track to the post. The successful claimant shall become the owner of the horse regardless of whether it is alive or dead, sound or unsound, or injured during the race or after it.

D. C L A I M CERTIFICATE:

(1) An applicant for a claim certificate shall submit to the commission: an application for an owner's license and the required fee; the name of a licensed trainer, or person eligible to be a licensed trainer, who will assume the care and responsibility for any horse claimed.

(2) The stewards shall issue a claim certificate upon satisfactory evidence that the applicant is eligible for an owner's license.

(3) The claim certificate shall expire 30 days after the date of issuance, or upon the claim of a horse, or upon issuance or denial of an owner's license, whichever comes first.

(4) A claim certificate may be renewed by the stewards during the same year.

E. PROHIBITIONS:

(1) A person shall not claim a horse in which the person has a financial or beneficial interest as an owner or trainer.

(2) A person shall not cause another person to claim a horse for the purpose of obtaining or retaining an undisclosed financial or beneficial interest in the horse.

(3) A person shall not enter into an agreement for the purpose of preventing another person from obtaining a horse in a claiming race.

(4) A person shall not claim a

horse, or enter into any agreement to have a horse claimed, on behalf of an ineligible or undisclosed person.

F. PROCEDURE FOR CLAIMING:

(1) To make a valid claim for a horse, an eligible person shall:

(a) have on deposit with the horsemen's bookkeeper an amount equal to the amount of the claim, plus all transfer fees and applicable taxes; and for all quarter horse claims shall also have on deposit in their horsemen's account all fees for a rush transfer, not to exceed \$100.00, prior to entering;

(b) complete a written claim including information that the claimant holds a current valid license on a form furnished by the association and approved by the commission;

(c) identify the horse to be claimed by the spelling of its name on the certificate of registration or as spelled on the official program;

(d) place the completed claim form inside a sealed envelope furnished by the association and approved by the commission;

(e) have the time of day that the claim is entered recorded on the envelope;

(f) have the envelope deposited in the claim box no later than 10 minutes prior to post time of the race for which the claim is entered.

(2) After a claim has been deposited in the claim box, it is irrevocable and shall not be withdrawn from the claim box.

(3) Officials and employees of the association shall not provide any information as to the filing of claims until after the horses have entered the track to post.

(4) If more than one claim is filed on a horse, the successful claim shall be determined by lot conducted by the stewards or their representatives.

(5) Notwithstanding any designation of sex or age appearing in the racing program or in any racing publication, the claimant of a horse shall be solely responsible for the determination of the sex or age of any horse claimed.

G. TRANSFER OF CLAIMED HORSES:

(1) Upon successful claim, the stewards shall issue, upon forms approved by the commission, an authorization of transfer of the horse from the original owner to the claimant. Copies of the transfer authorization shall be forwarded to and maintained by the stewards and the racing secretary. Upon notification by the stewards, the horsemen's bookkeeper shall immediately debit the claimant's account for the claiming price, applicable taxes and transfer fees.

(2) A person shall not refuse to

deliver a properly claimed horse to the successful claimant.

(3) Transfer of possession of a claimed horse shall take place immediately after the race has been run unless otherwise directed by the stewards. If the horse is required to be taken to the testbarn for post-race testing, the original trainer or his/her representative shall maintain physical custody of the claimed horse and shall observe the testing procedure and sign the test sample tag. The successful claimant or his/her representative shall also accompany the horse to the testbarn.

(4) When a horse is claimed out of a claiming race, the horse's engagements are transferred, with the horse, to the claimant.

(5) Ownership interest in any horse claimed from a race shall not be resold or transferred for 30 days after such horse was claimed, except by claim from a subsequent race.

(6) A claimed horse shall not race elsewhere, except within state, or out of state stake races for a period of thirty days (30) or the end of the meet, whichever occurs first.

(7) A claimed horse shall not remain in the same stable or under the control or management of its former owner. [15.2.4.8 NMAC - Rp, 15 NMAC 2.4.8, 03/15/2001; A, 10/31/2006; A, 06/15/2009; A, 06/30/2009; A, 01/01/2013]

the owner or trainer. Any horse which is in a race or on the also-eligible list may not be sold or transferred until that obligation is completed, except with permission of the stewards.

(3) Numbered races printed in the condition book shall have preference over extra races. Should any race fail to draw seven (7) separate wagering interests, it may be called off.

(4) An entry must be in writing, by telephone, electronically or facsimile machine to the racing secretary. The entry must be confirmed in writing should the stewards or the racing secretary so request.

(5) The person making an entry shall clearly designate the horse so entered.

(6) No alteration may be made in any entry after the closing of entries, but an error may be corrected with permission of the stewards.

(7) No horse may be entered in more than one race (with the exception of stakes races) to be run on the same day at the same track on which pari-mutuel wagering is conducted. If a horse is entered in more than one stakes race to be run on the same day, at the time of draw, the trainer must declare which race the horse will run in.

(8) No horse may be entered to run at two different tracks on the same day on which pari-mutuel wagering is conducted.

~~(8)~~ (9) Any permitted medication must be declared on the original entry at each race meet. No further declaration will be required at that meet unless there is a change.

~~(9)~~ (10) Any approved change of equipment must be declared at time of entry. Any changes after that time must be approved by the stewards.

[15.2.5.8 NMAC - Rp, 15 NMAC 2.5.8, 03/15/2001; A, 05/15/2001; A, 11/15/2001; A, 12/14/2001; A, 03/31/2003; A, 05/30/2003; A, 06/13/2003; A, 09/29/2006; A, 10/31/2006; A, 01/01/2013]

NEW MEXICO RACING COMMISSION

Explanatory Paragraph: This is an amendment to 15.2.5 NMAC, Sections 8, 10 and 11, effective 01/01/2013. In 15.2.5.8 NMAC, Subsection A and Subsections C through I were not published as there were no changes. In 15.2.5.10 NMAC, Subsections B through E were not published as there were not changes. In 15.2.5.11 NMAC, Subsections B through D were not published as there were no changes.

15.2.5.8 ENTRIES AND NOMINATIONS:

B. PROCEDURE:

(1) Entries and nominations shall be made with the racing secretary and shall not be considered until received by the racing secretary, who shall maintain a record of time of receipt of them for a period of one year.

(2) An entry shall be in the name of the horse's licensed owner and made by the owner, trainer or a licensed designee of

15.2.5.10 WEIGHTS: A. ALLOWANCES:

(1) Weight allowance including apprentice allowances must be claimed at time of entry and shall not be waived after the posting of entries, except by consent of the stewards.

(2) A horse shall start with only the allowance of weight to which it is entitled at time of starting, regardless of its allowance at time of entry.

(3) Horses not entitled to the first weight allowance in a race shall not be entitled to any subsequent allowance specified in the conditions.

(4) Claim of weight allowance

to which a horse is not entitled shall not disqualify it unless protest is made in writing and lodged with the stewards at least one hour before post time for that race.

(5) A horse shall not be given a weight allowance for failure to finish second or back in any race.

(6) No horse shall receive allowance of weight nor be relieved extra weight for having been beaten in one or more races, but this rule shall not prohibit maiden allowances or allowances to horses that have not won a race within a specified period or a race of a specified value.

(7) Except in handicap, quarter horse races and races which expressly provide otherwise, two-year-old fillies shall be allowed three pounds, and fillies and mares, three-years-old and upward, shall be allowed five pounds before September 1 and three pounds thereafter in races where competing against male horses.

(8) A three pound weight allowance shall be allowed a registered New Mexico bred horse in all open races and in stakes races when included in the condition of the race. This allowance must be claimed at time of entry.

[15.2.5.10 NMAC - Rp, 15 NMAC 2.5.10, 03/15/2001; A, 01/01/2013]

15.2.5.11 WORKOUTS:

A. REQUIREMENTS:

(1) A non-starter must have had within sixty (60) days of entry at least two (2) workouts recorded at a pari mutuel or commission recognized facility and posted with the racing secretary prior to entry, one (1) of the two (2) workouts shall be from the starting gate, and be gate approved. It shall be the trainer's responsibility to establish validity as to workouts and gate approvals.

(2) Any horse which has started, but not within six (6) months, must have one (1) official workout from the starting gate or must have proof of standing the horse at least one (1) time within a sixty (60) day period. Any horse which has started, but not within sixty (60) days, must have at least one (1) workout within sixty (60) days prior to entry. Horses that have not started within six (6) months of entry must have at least two (2) approved workouts within the sixty (60) days.

(3) Horses that have never raced around the turn will be required to have within thirty (30) days prior to entry, at least one (1) workout at 660 yards or farther. Horses that have previously started in a race around the turn, but not within sixty (60) days, will be required to have at least one (1) workout at 660 yards or farther prior to entry.

~~(3)~~ (4) Gate approvals at a

licensed facility must be made by a licensed starter on a commission approved form.

[15.2.5.11 NMAC - Rp, 15 NMAC 2.5.11, 03/15/2001; A, 03/30/2007; A, 06/15/2009; A, 07/05/2010; A, 01/01/2013]

NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.7 NMAC, Section 12, effective 01/01/2013. In 15.2.7 NMAC, Section 12, Subsection A through E and Subsection G and V were not published as there were no changes.

15.2.7.12 CALCULATION OF PAYOUTS AND DISTRIBUTION OF POOLS:

F. PICK THREE POOLS:

(1) The pick three requires selections of the first-place finisher in each of three specified contests.

(2) The net pick three pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

(a) as a single price pool to those whose selection finished first in each of the three contests; but if there are no such wagers, then

(b) as a single price pool to those who selected the first-place finisher in any two of the three contests; but if there are no such wagers, then

(c) as a single price pool to those who selected the first-place finisher in any one of the three contest; but if there are no such wagers, then

(d) the entire pool shall be refunded on pick three wagers for those contests.

(3) If there is a dead heat for first in any of the three contests involving:

(a) contestants representing the same betting interest, the pick three pool shall be distributed as if no dead heat occurred;

(b) contestants representing two or more betting interests, the pick three pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

~~(4) Where late scratches (hereinafter scratches includes runners declared non-starters or a non-betting starter) before the first leg is declared official, refund all monies for the combinations that include scratched horse(s):~~

(5) Where late scratches occur after the first leg is declared official,

~~provide consolation payoffs to the bettors that have combined the scratched horse(s) with the winners in the other legs, similar to traditional procedures applied to late scratches in daily doubles.]~~

(4) Should a betting interest in any of the pick three contest be scratched, the actual favorite, as evidenced by total amounts wagered in the win pool at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalisator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as the result of the substitution, in addition to the normal winning combinations.

~~(6)~~ (5) If all three pick three contests are cancelled or declared "no contest"; the entire pool shall be refunded on pick three wagers for those contests.

~~(7)~~ (6) If one or two of the pick three contests are cancelled or declared "no contest", the pick three pool will remain valid and shall be distributed in accordance with Subsection F Paragraph (2) of 15.2.7 NMAC.

[15.2.7.12 NMAC - Rp, 15 NMAC 2.7.12, 03/15/2001; A, 03/31/2003; A, 09/15/2003; A, 04/14/2005; A, 07/15/2005; A, 11/30/2005; A, 03/30/2007; A, 06/15/2009; A, 12/01/2010; A, 11/01/2011; A, 01/01/2013]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.3 NMAC, Section 11, effective 12/31/12.

11.4.3.11 MILEAGE

BENEFITS: ~~[Employer shall pay worker's mileage, transportation and meal expenses for travel to HCPs of fifteen (15) miles or more, one (1) way, from the worker's residence or place of employment, depending upon the point of origin of the travel, based on the following rates:~~

~~A. forty cents (.40) per mile for travel in a privately owned vehicle;~~

~~B. actual reimbursement for the cost of a ticket on a common carrier, if applicable;~~

~~C. actual reimbursement, not to exceed thirty dollars (\$30.00) for meals in a 24-hour period; and~~

~~D. actual reimbursement, not to exceed eighty five dollars (\$85.00)~~

for the cost of overnight lodging in the event travel of at least two hours one way is required, provided however that the maximum actual expense reimbursement for an overnight stay in the city of Santa Fe shall not exceed one hundred and thirty five dollars (\$135.00):

A. Employer shall pay worker's mileage, transportation, meal and commercial lodging expenses for travel to HCPs pursuant to this rule. Payment shall be made only to the injured worker and within thirty (30) days of the employer's receipt of an original itemized receipt that complies with the requirements of this rule:

(1) forty cents (.40) per mile for travel to HCPs of fifteen (15) miles or more, one (1) way, from the worker's residence or place of employment, depending upon the point of origin of travel;

(2) actual reimbursement for the cost of a ticket on a common carrier, if applicable;

(3) actual reimbursement up to fifteen dollars (\$15.00) for any one meal wherein reimbursement is allowed for an initial one hundred and fifty (150) miles of travel and an additional meal is allowed for each additional one hundred and fifty (150) miles of travel with three (3) meals total and thirty dollars (\$30.00) total reimbursed for a twenty-four (24) hour period; and,

(4) actual reimbursement up to eighty-five dollars (\$85.00) for the cost of overnight commercial lodging in the event of required travel of at least one hundred and fifty (150) miles one (1) way from worker's residence or place of employment, depending upon the point of origin of travel.

B. The employer in its sole discretion may make payments under this section in advance. If worker accepts an advance payment and fails to appear for the scheduled HCP appointment for which an advance has been issued, the employer/insurer may deduct the amount of the advance from the present indemnity benefits. [5/26/87...6/1/96; 11.4.3.11 NMAC - A/E, 11/15/04; 11.4.3.11 NMAC - Rn, 11 NMAC 4.3.11, 11/30/04; A/E, 2/19/10; A, 12/31/12]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.4 NMAC, Sections 9, 10, 11, 12 and 13, effective 12/31/12.

11.4.4.9 FORMS, FILING AND HEARING PROCEDURES:

A. Requirements for filing with the clerk of the administrative court:

(1) All documents to be filed shall be legible, on 8 1/2 x 11 inch white paper,

signed in black ink, and shall include a caption with the name of each party and a descriptive title.

(2) A copy of all documents filed with the clerk shall be sent to the opposing party.

B. Name of the insurer:

(1) The workers' compensation complaint, petition for lump sum payment or application to workers' compensation judge must indicate the name of the employer's insurance [status, and if insured] carrier or claims administrator, if self-insured. If the insurance carrier or claims administrator is not named, the cause shall not be referred for mediation or hearing.

(2) A party or representative may obtain the name of the insurance carrier by mailing or faxing a request to the employer compliance bureau of the WCA. The request must provide the name of the party making the request, date of the accident, and names of the worker and employer. The person requesting information may be required to provide proof of identification.

C. Time for filing of pleadings with the clerk:

(1) Pleadings will be accepted for filing only between 8:00 a.m. and 5:00 p.m., on business days. Pleadings received by fax or other methods of delivery after 5:00 p.m. shall be filed the next regular business day. Complaints submitted by mail shall be deemed filed, for purposes of the act, on the date postmarked.

(2) Faxed pleadings will be filed as the original by the clerk. The clerk may require confirmation of the fax transmission of a pleading. A faxed pleading must comply with requirements established in these rules.

D. Mandatory forms: Forms designated as mandatory by these rules shall be used when filing a pleading. The mandatory form may be reproduced or reprinted. Additional information may be provided at the end of the required text or by adding additional pages, with clear reference to the paragraph being supplemented.

E. Complete filing is required: The complaint shall be filed with a summons, and an executed authorization to release medical information if filed by the worker. The application to workers' compensation judge shall be filed with a summons, when no service of process has previously occurred in the cause.

F. Service of process:

(1) The clerk shall serve the complaint to each named party by certified mail, domestic return receipt requested. Service may be accomplished by electronic mail for parties who have registered with the WCA. Service may be deemed complete upon filing. If service is not accomplished by certified mail, the clerk may have service performed by the county sheriff.

(2) The original pleading shall be

filed with the clerk. The filing party must provide the clerk a copy of the complete filing for each named party.

~~(3) A workers' compensation complaint filed against the subsequent injury fund must be accompanied by a summons and an executed authorization to release medical information or by a written explanation why the authorization is unavailable. The complaint must be served upon the subsequent injury fund, the attorney general, the superintendent of insurance, the employer and the worker. A copy of the complete filing must be provided to the clerk for service on each of these parties.]~~

~~(4) (3) Application to workers' compensation judge, summons and notice of judge assignment, if applicable, shall be served by the clerk on each named party by certified mail, domestic return receipt requested. Service may be accomplished by electronic mail for parties who have registered with the WCA.~~

~~(5) (4) The filing of a petition for a lump sum payment requires the assignment of a judge, if not previously assigned to the cause. The clerk shall issue a notice of judge assignment, unless waived. The petition and notice of judge assignment shall be served by the clerk upon each party by certified mail, domestic return receipt requested. Service may be accomplished by electronic mail for parties who have registered with the WCA.~~

G. Subpoenas: [Subpoenas shall be issued under the seal of the WCA. A Subpoena Duces Tecum shall identify specifically the documentary evidence the person shall bring to the hearing for inspection.] Unless otherwise stated herein, the issuance of subpoenas is governed by Supreme Court Rules Annotated 1986, 1-045. The clerk of the WCA may issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney authorized to practice law in New Mexico and who represents a party before the WCA, as an officer of the court, may also issue and sign a subpoena on behalf of the WCA.

H. File shall be segregated upon assignment to judge: Upon rejection of a recommended resolution, the clerk shall segregate the WCA file. The judge shall be provided only those documents file stamped by the clerk. All other documents will be placed in an administrative file by the clerk. The judge shall not have access to the administrative file.

I. Form of orders: Orders authorizing any type of monetary payment for benefits or professional fees, including awards for attorney's fees, shall specify the exact dollar amount and category of benefits awarded.

J. Copies made by clerk: The clerk may provide copies of pleadings or

documents in WCA files to parties of record. Copies may be requested by completing a copy request form or by calling the clerk's office. The clerk shall charge a reasonable fee for each copy requested. If the requested copies are mailed, adequate postage for mailing must be paid to the clerk.

K. Notice of lien for child support: The clerk shall accept a notice of lien filed by the child support enforcement bureau of the New Mexico department of human services. The notice of lien shall state the worker's name and social security number, and the total dollar amount of the lien. The notice of lien shall include a copy of the district court order requiring the payment of child support by the worker.

L. Communications with WCA employees:

~~[(1) Ex parte communications with the director, judge, or mediator are not permitted. Any correspondence or documentation provided to the director, judge, or mediator shall be provided contemporaneously to each party.]~~

~~[(2)]~~ WCA employees shall be addressed at all times in a courteous and respectful manner.

M. Appointment of interpreter:

(1) It is the responsibility of the parties to determine if interpretive services are necessary. The employer or the uninsured employers' fund when named and when an employer fails to do so shall be responsible for arranging for a qualified interpreter for the hearing or mediation conference and shall be responsible for the cost of the interpreter.

(2) An interpreter may be appointed by the judge, director, or mediator. The interpreter shall be a court-certified interpreter, except a ~~[mediator may appoint an uncertified interpreter. Failure to comply with this rule may be brought to the attention of the director or judge for appropriate sanctions.]~~ non-certified interpreter may serve at mediation conferences.

N. Telephonic conference calls: The employer shall make all necessary arrangements and pay all costs incurred for telephonic conference calls. The director, judge, or mediator may appear telephonically for the conference call.

O. Withdrawal and substitution of counsel:

(1) The entry of appearance of an attorney or a firm for a party in a pending cause shall not be withdrawn without permission of the judge. If no judge has been assigned to the cause, the withdrawal must be approved by the director. A motion requesting withdrawal shall be filed with the clerk and shall indicate whether the client concurs with the motion.

(2) When a party changes counsel, a notice of substitution of counsel shall be

filed with the clerk. A copy of the notice shall be mailed to each party. The notice shall contain the new attorney's mailing address, phone and fax numbers.

(3) The attorney of record shall be subject to notice of hearings or other proceedings for six (6) months after the entry of the final order or accepted recommended resolution. After the expiration of six (6) months from the administrative closing date, the named party shall receive notice of any further proceedings in the cause. The clerk may require the party filing a pleading to serve a courtesy copy on the prior attorney of record.

~~[P.] Filing of a complaint naming the subsequent injury fund as a party:~~

~~———— (1) An employer must meet the requirements of the Subsequent Injury Fund Act, Section 52-2-14 NMSA 1978 (Supp. 1988), prior to the joinder of the subsequent injury fund ("fund") as a party.~~

~~———— (2) If the fund is joined as a party, it shall be granted all rights normally granted to a party when a dispute arises under the Act, including a mediation conference pursuant to Section 52-5-5(A) NMSA 1978 (Repl. Pam. 1991).~~

~~———— (3) If the fund desires the attendance at the mediation conference of a worker not currently named as a party to the proceeding, the fund shall file a third party complaint and summons directed to the worker at least ten (10) days prior to the mediation conference.~~

Q.] P. Return of records: A party who noticed a deposition may request the return of the original deposition after final disposition of the claim. The clerk may return a deposition or any exhibits tendered to the submitting party or its attorney. If no request for the deposition or exhibits is received, the deposition or exhibits will be destroyed. Notice of intent to destroy exhibits is published in the New Mexico Bar Bulletin.

~~[R.] Q.~~ WCA mandatory forms:

(1) The forms adopted by this rule have been designed to maximize retrieval of information required by the act.

(2) The forms adopted by this rule are mandatory and must be fully and legibly completed by the filing party. Items on the mandatory forms may not be deleted, but additional information may be provided at the end of the text or by additional pages with clear reference to the paragraph being supplemented. The format for the forms is provided in an Attachment A to this rule. The forms listed below have been adopted as mandatory forms:

(a) workers' compensation complaint;

(b) summons for workers' compensation complaint;

(c) authorization to release

medical information (HIPAA compliant);

(d) form letter to health care provider (also referred to as form letter to HCP);

(e) response;

(f) notice of acceptance or rejection of recommended resolution;

(g) notice of disqualification;

(h) application to workers' compensation judge;

(i) summons for application to workers' compensation judge;

(j) subpoena or subpoena duces tecum;

(k) request for setting and notice of hearing;

(l) HCP disagreement form; and

(m) petition for lump sum payment.

R. Discovery: Upon the filing of a complaint and by written stipulation of the parties, good cause is presumed and, authorization granted, for the following limited discovery:

(1) the deposition of worker;

(2) the deposition of an employer representative;

(3) the deposition of any authorized health care provider;

(4) the deposition of any provider of an independent medical examination.

[5/26/87, 6/20/89, 10/28/93, 3/3/94, 6/1/96, 9/25/96; 10/1/98; 11.4.4.9 NMAC - Rn & A, 11 NMAC 4.4.9, 6/13/03; A, 12/31/12]

11.4.4.10 MEDIATION RULES:

A. Evaluation of complaints:

(1) The director's designee, a mediator, shall evaluate all complaints for workers' compensation filed with the administration.

(2) The director's designee, a mediator, shall evaluate the merits of every complaint for workers' compensation, including, but not limited to, jurisdiction, proper parties, compensability, extent of any benefits due the worker, and the strength or availability of any defenses. The mediator may also evaluate the compliance of the parties with the mediation rules.

B. Mandatory production:

(1) No later than five (5) days before the mediation the parties shall exchange any and all:

(a) medical records;

(b) payroll records;

(c) witness statements; and

(d) any other documents related to a claim or defense.

(2) The documents outlined above do not need to be produced if they are unrelated to a claim or defense, have previously been produced or there is a good faith objection or privilege.

(+)] (3) The purpose of mandatory production is to insure the parties and

the mediator have access to all pertinent information regarding the issues disputed in the complaint.

(2) All items required to be produced by this rule shall be furnished to the mediator and the opposing party at least five (5) days prior to the mediation conference. All parties shall make a timely, good faith effort to obtain copies of all mandatory production items:

(3) To avoid duplication of paper, the parties may agree, prior to the mediation conference, to make a joint submission to the mediator of all mandatory production items.

(4) Mandatory production requirements for all complaints:

(a) Unless the complaint seeks only medical benefits, or unless the parties have previously agreed upon the compensation rate, employer shall furnish all payroll records of worker for at least twenty-six (26) weeks preceding the accident, and, if post-accident wages are at issue, both parties shall furnish all payroll records regarding such wages.

(b) If employer denies the compensability of a claim, the parties shall furnish all witness statements, written or otherwise recorded. Statements need not be transcribed prior to submission.

(c) Whenever a party has relied upon a videotape, photograph or private investigation report as a grounds for denial of a claim, the party shall furnish that item.

(d) When employer denies the injury occurred in the course and scope of employment, or contends the worker has falsified an employment application, it must furnish all personnel records, medical records and documentary evidence relating to such defense(s).

(e) Whenever disability benefits are at issue, the employer shall furnish a written job description of workers job at the time of the accident, and of any modified work offered to or performed by worker after the accident. If a written description is not available, reasonable information about job requirements, including the Dictionary of Occupational Titles number, shall be made available at the mediation conference.

(f) Upon request by the worker or mediator, the employer shall furnish a written history of all medical or indemnity benefits paid to date on a claim.

(5) Additional mandatory production for specific complaints:

(a) If the complaint seeks any kind of disability benefits, medical benefits or disfigurement, each party shall also furnish:

(i) all medical records of the worker in the possession of the party;

(ii) all unpaid medical bills in the possession of the party;

(iii) a completed form letter to health care provider, the cost of which shall be paid by employer.

(b) When the complaint seeks death benefits, each party shall also furnish:

(i) any unpaid funeral expenses relating to worker;

(ii) if the parties' relationship to the worker is at issue, proof of that relationship, including copies of any birth certificates, marriage license, adoption decree or child support order in the possession of the parties;

(iii) if the cause of death is disputed by employer, any medical records relating to the injuries alleged to be work-related.

(c) When the complaint seeks to reduce or terminate disability benefits, or to determine the compensability of a claim, or seeks reimbursement from a third party, or to assert a claim against the subsequent injury fund, each party shall also furnish:

(i) all medical records of worker in the possession of the party;

(ii) a completed form letter to health care provider, the cost of which shall be paid by employer.

(6) Claims of privilege:

(a) A party may assert that an item subject to mandatory production is protected by privilege. The party must reasonably describe and identify the item for the mediator at the mediation conference.

(b) The mediator may make a recommendation on whether the identified item is protected by a privilege.

(c) If a good faith basis exists upon which to continue to assert the privilege, a party may decline to produce the identified item.]

C. Mediation conferences:

(1) Notice of the mediation conference shall be mailed by certified mail, domestic return receipt requested, to the parties, accompanied by a copy of the complaint, summons and authorization to release medical information, at least fourteen (14) [working] calendar days before the mediation conference. Service may also be accomplished by electronic mail for parties who have registered with the WCA. Mediation conferences reset through the WCA electronic portal will result in notification via electronic mail to registered users.

(2) Responses:

(a) The respondent shall file a timely response not less than five (5) days prior to the mediation conference.

(b) The response shall include a short summary of reasons for denials of any benefits claimed, statements of facts and affirmative defenses. [The response shall have attached to it the items required by Subsection B of 11.4.4.10 NMAC.]

(c) [The response may be prepared and signed either by the employer, or a representative, or in a complaint for reduction or termination of benefits, by the

pro se worker or the attorney.] An answer, as set forth in Subsection D of 11.4.4.12 NMAC, may be filed in lieu of this response.

[~~(d) Failure to file a timely response shall be noted by the mediator in the recommended resolution.]~~

(3) [Continuances:

(a) Continuances of a mediation conference are strongly disfavored and shall be permitted only on a showing of exceptional circumstances.

(b) Continuances within the sixty (60) day period may be granted only by the mediation bureau chief, and must be sought no later than seven days prior to the mediation conference. A letter requesting a continuance of the mediation conference shall be submitted to the mediation bureau chief, and should indicate the reason for the requested continuance and whether the request for continuance is opposed.

(c) Continuances may be granted beyond the statutory sixty (60) days by the director, only upon filing of a waiver of sixty (60) day resolution by all parties prior to the scheduled conference, and upon submission of a proposed order for review by the director.] Rescheduling and continuances: By agreement, the parties may reschedule a mediation to occur within 90 days of filing the complaint. Mediation conferences reset through the WCA electronic portal will result in notification via electronic mail to registered users.

(4) Mediation conference: The mediation conference shall be held at the workers' compensation administration building in Albuquerque, unless otherwise requested by the parties and agreed to by the assigned mediator. Parties to the conference who live outside of the Albuquerque area may appear via video conference equipment at one of the administration's regional offices. Mediation conferences may also be conducted telephonically with prior approval from the mediator.

[~~(a) The mediation conference should be held not less than fourteen (14) days from the mailing of notice as calendar requirements permit, unless continued.~~

(b) The mediation conference shall be held in the county of the accident or where the occupational disease arose, unless the parties agree otherwise.

(c) Requests for change of venue should be filed together with the complaint or as soon thereafter as possible. A written change of venue request may be submitted by the requesting party to the mediation bureau chief, who shall determine any contested change of venue. A change of venue will not affect or toll the requirement that the mediation conference be held within sixty (60) days from the date of filing the complaint.]

(5) Amendments of caption/joiner of parties: The mediator may recommend an

amendment to the caption of the complaint to correct an improperly named party or to reflect the joining of appropriate parties who otherwise have notice or attended the mediation conference.

(6) The purposes of mediation conferences and duties of mediator are:

(a) to bring the parties together and, with the use of mediation and other dispute resolution techniques, attempt to settle disputed issues by discussing the facts and applicable law pertaining to the complaint and by suggesting compromises or settlements;

(b) to define, evaluate, and make recommendations on all issues remaining in dispute;

(c) to state an opinion of the strength of any argument or position, and the possible results if the complaint is tried by a judge;

(d) to issue a recommended resolution within sixty (60) days of the filing of the complaint;

(e) to identify all potential parties;

(f) to make a recommendation regarding attorney's fees; and

(g) to refer any violation of these rules or the act for administrative investigation, if appropriate.

(7) Conduct of mediation conferences:

(a) The conduct of the mediation conference shall be in the control of the mediator.

(b) The mediator shall be addressed in a courteous and respectful manner by all parties.

(c) Mediation conferences are informal meetings with no transcript of the proceedings. No motions practice shall be allowed. Conferences shall be conducted in a civil, orderly manner, with all presentation geared towards discussion and negotiation of disputed issues. Attorneys and other representatives of the parties shall be attired in an appropriate manner, suitable to a court proceeding.

(d) Employer and attorney, or a representative, if no attorney has entered an appearance, and worker and attorney, if any, shall appear in person at the mediation conference. The mediator may enter recommendations against any party failing, without excuse as determined by the mediator, to attend the conference. ~~[For good cause shown, the non-appearance or telephonic appearance of a party may be approved by the mediation bureau chief. Approval must be sought at least five (5) calendar days prior to the mediation conference. The opposing party shall be afforded an opportunity to present its position on non-appearance.]~~

(e) Appearances by a legal assistant, paralegal, or other agent or employee of the attorney, in lieu of a personal appearance by an attorney, are prohibited.

This rule does not prohibit the appearance of an employer through an adjuster or third-party administrator, nor prohibit a worker from attending a mediation conference with an unpaid lay assistant.

(f) The attendance of any other person at the mediation conference is subject to the discretion of the mediator.

~~[(g) Where causation is in dispute the worker must establish, as a probability by expert testimony of a health care provider, that a causal connection exists between the accident and the alleged disability.~~

~~————(h) Each party shall come to the mediation conference with specific settlement authority, or instructions that no settlement is appropriate. Unexcused failures to comply with this rule shall be referred by the mediator to the mediation bureau chief, who may require that the matter be referred to the director or a judge for consideration of sanctions.~~

~~————(i) Issues to be addressed at the mediation conference shall be limited to the issues raised in the pleadings. Additional]~~

(g) All issues may be considered at the discretion of the mediator when consistent with the goals of economy and fairness, and when an opportunity can be granted for additional response.

[(f)] (h) The parties are encouraged to prepare written narratives and summaries to assist the mediator.

D. Recommended resolutions:

(1) The mediator shall issue the recommended resolution within sixty (60) days of the filing of the complaint unless the parties have stipulated to a waiver of the sixty (60) day requirement and the mediator approves. The mediator may allow additional time to supplement the file ~~[within this sixty (60) day period]~~ prior to issuance of the recommended resolution.

(2) The mediator shall serve a copy of the recommended resolution on the parties by certified mail, domestic return receipt requested, unless the parties have registered with the agency to receive electronic service and thereby waived their statutory right to service by certified mail.

(3) Receipt by the WCA of a certified mail domestic return receipt with a signature and date of receipt shall create a presumption of receipt by the party of the recommended resolution on the indicated date. Service by electronic mail will create a presumption of receipt upon transmission.

(4) Receipt by the WCA of a certified mail domestic return receipt with a signature, but without a date of receipt, shall create a rebuttable presumption of receipt of the recommended resolution on the fourth day following transmission of the recommended resolution by the WCA.

(5) Effect of recommended

resolution:

(a) Parties shall timely file, within thirty (30) days of receipt of the recommended resolution, a notice of acceptance or rejection of recommended resolution. Failure to timely accept or reject the recommended resolution shall conclusively bind the parties to the recommended resolution. The thirty (30) day period begins on the date of receipt of the recommended resolution and ends on the date of actual receipt, by the clerk, of the notice of acceptance or rejection of recommended resolution. For purposes of this rule, mailing does not constitute actual receipt and no additional time shall be granted or allotted for mailed responses to the recommended resolution. Receipt by the clerk of a facsimile of notice of acceptance or rejection of recommended resolution shall constitute actual receipt.

(b) A rejection in whole or in part of a recommended resolution shall result in assignment to a judge for a new determination of all issues in a formal hearing.

(c) A rejection shall contain a statement of the party's reasons for rejecting the recommended resolution.

(d) The judge shall have access to the recommended resolution.

(e) Effect of acceptance or rejection: Once a party has filed an acceptance or a rejection of a recommended resolution, the party is bound to the acceptance or rejection, unless permitted to withdraw it by written order of the director. The party requesting leave to withdraw a previously filed acceptance or rejection shall submit a written motion and proposed order to the director, reciting good cause, within thirty (30) days following receipt by that party of the recommended resolution. The clerk may cancel any judge assignment when a rejection is withdrawn.

E. [Failure or refusal to participate in the mediation process:] Penalties:

(1) Willful failure or refusal to participate in the mediation process shall not preclude the issuance of a recommended resolution, and may constitute bad faith ~~[or oppressive conduct].~~

(2) ~~[The mediation bureau chief may investigate non-compliance with the mediation rules, and may refer any such violation for administrative investigation or to the director.]~~ The assigned mediator, or any party, may refer any such violation for administrative investigation by the enforcement bureau.

(3) ~~[Failure to comply with the mediation rules or cooperate with an inquiry of the mediation bureau chief may subject a party to penalties pursuant to Section 52-1-61 NMSA 1978 (Repl. Pamp. 1991).]~~ Failure to comply with the mediation rules, including those requiring mandatory production of evidence prior to the mediation conference,

or to cooperate with an inquiry of the enforcement bureau may subject a party to penalties pursuant to Sections 52-1-28.1 and 52-1-61, NMSA 1978 (Repl. Pamp. 1991), and in accordance with 11.4.5 NMAC.

F. Amendment of recommended resolution: The recommended resolution may be amended by a mediator or by the agreement of the parties within the time allowed for acceptance or rejection of a recommended resolution, which shall not be expanded or modified in any way by the issuance of an amended recommended resolution.

[G.] Penalties:

(1) Any party, including a mediator, may bring to the attention of the judge or the director any allegation of a violation of these rules.

(2) Violation of any of these rules may be penalized pursuant to Section 52-1-61 NMSA 1978 (Repl. Pamp. 1991), and the procedures set forth in Part Five (5) of these rules.

H.] G. Confidentiality: Notes of the mediator taken in conducting a mediation conference are not subject to discovery and shall not be admissible as evidence in any legal proceeding.

[5/26/87, 6/20/89, 2/24/92, 10/30/92, 6/1/96; 11.4.4.10 NMAC - Rn, 11 NMAC 4.4.10, 6/13/03; A, 12/31/12]

11.4.4.11 HCP RULES:

A. HCP general provisions:

(1) These rules apply to claims governed by the 1990 amendments to the act.

(2) The assigned judge shall decide HCP choice disputes. If no judge has been assigned, a judge shall be appointed by the clerk solely to resolve the HCP dispute.

(3) The HCP judge appointed by the clerk is not assigned pursuant to Section 52-5-5(C) NMSA 1978 (Repl. Pamp 1991). The peremptory right to disqualify a judge allowed by Section 52-5-5(D) NMSA 1978 (Repl. Pamp. 1991), does not apply to the appointment of the HCP judge.

[B.] HCP hearings:

(1) HCP hearings may be conducted in person or telephonically.

(2) Except as otherwise provided, the Rules of Civil Procedure and Rules of Evidence shall govern all hearings required by the Act or these rules.

(3) The Rules of Civil Procedure and Rules of Evidence shall apply when computing any period of time for purposes of these rules.

[C.] HCP choice:

(1) Emergency care: The provision of emergency medical care shall not be considered a choice of a treating HCP by the employer or worker.

(2) Selection of HCP:

(a) The employer shall decide

either to select the initial HCP or to permit the worker to select the initial HCP. The decision made by the employer shall be made in writing to the worker. Employer may communicate the decision to select the initial HCP or to permit the worker the selection by any method reasonably calculated to notify workers. The employer may use a wallet card, a poster stating the decision posted with the WCA poster, a flyer inserted semi-annually with pay checks, or any other method employer [knows] reasonably believes will be successful in alerting the worker.

(b) If the decision of the employer is not communicated in writing to the worker, [the employer shall be presumed, absent other evidence, to have selected the HCP initially] then the medical care received by the worker prior to written notification shall not be considered a choice of treating HCP by either party.

(c) Medical treatment provided to the worker prior to the [employers] employer's written communicated decision to either select the HCP, or to permit the worker to select the HCP, shall be considered authorized health care, the cost of which is to be born by the employer.

(d) If a provider not licensed in New Mexico treats a worker, the employer must, upon receipt of the initial billing from that provider, either request approval of the out-of-state HCP pursuant to the act, or immediately notify the worker in writing that the provider is not acceptable pursuant to Section 52-4-1 NMSA 1978 (Repl. Pamp. 1991).

[D.] C. Referrals by an authorized HCP:

(1) A referral by an authorized HCP to another HCP shall be deemed a continuation of the selection of the referring HCP.

(2) The sixty (60) day effective period allowed in Section 52-1-49(B) NMSA 1978 (Repl. Pamp. 1991), is not enlarged by the HCP's referral.

[E.] D. Notice of change of HCP:

(1) The sixty (60) day period of initial HCP choice shall run from the date of first treatment or examination by, or consultation with, the initial HCP.

(2) The notice of change of HCP shall provide:

(a) name, address and telephone number of worker, employer and insurance carrier, if any;

(b) date and county of accident;

(c) nature of injury;

(d) the names, addresses and telephone numbers of the current and proposed HCPs;

(e) the signature of the party requesting the change of HCP; and

(f) the following text: "your rights

may be affected by your failure to respond to this notice; if you need assistance and are not represented by an attorney, contact an ombudsman of the WCA."

(3) After fifty (50) days of the initial sixty (60) day period, the party denied the initial selection may give notice of change of HCP.

[F.] E. Issuance of notice of change: The party seeking the change of HCP shall issue a notice of change of HCP. A copy of the notice shall be provided to the other party ten (10) calendar days prior to provision of any medical treatment by the proposed HCP.

[G.] E. Effective date of notice of change:

(1) The notice of change shall be effective, unless an objection is filed with the clerk within three (3) calendar days from receipt of the notice of change. If no objection is filed, the HCP declared on the notice of change form shall be designated as the authorized treating HCP and may begin treating the worker eleven (11) days after issuance of the notice of change.

(2) An objection can be filed after the three (3) day period, but any bills incurred for medical treatment rendered after the effective date of the notice of change and prior to a ruling by the judge on the objection shall be paid by the employer. A party required to pay for medical treatment pursuant to this rule shall not be deemed to have waived any objections to the reasonableness or necessity of the treatment provided.

[H.] G. Responsibility for payment of HCP services:

(1) The employer shall be responsible for all reasonable and necessary medical services provided by an authorized HCP from the date the notice of change is effective.

(2) The worker shall be responsible for any medical services rendered by an unauthorized HCP.

(3) The designation of an authorized HCP shall remain in effect until modified by agreement of the parties or by order of the judge.

(4) Effective July 1, 2013, all medical services rendered pursuant to recommended treatment contained in the most recent edition of the official disability guidelines™ (ODG) is presumed reasonable and necessary; there is no presumption regarding any other treatment.

H. Reasonable and necessary disputes: Disputes concerning the reasonableness and necessity of prescribed treatment may be brought before the administration pursuant to 11.4.7.13 NMAC.

I. Hearing on objection to notice of change: If an objection to notice of change of HCP is filed with the clerk,

the objection shall be heard by the judge within seven (7) days from the filing of the objection. The judge may issue a minute order at the conclusion of the hearing on the objection.

J. Request for change of HCP: If a disagreement arises over the selection of a HCP, and the parties cannot otherwise agree, a request for change of HCP must be submitted to the clerk. The request for change of HCP may be submitted at any time, including the initial sixty (60) day period.

K. Request for change of HCP form:

(1) The request for change of HCP must state the specific reasons for the requested change.

(2) The request for change of HCP may suggest an alternative HCP's name.

L. Burden of proof: The applicant requesting a change of HCP must prove the authorized HCP is not providing the worker reasonable and necessary medical care. If the applicant fails to establish the provision of medical care is not reasonable, the request for change shall be denied.

M. Hearing on request for change of HCP: The request for change of HCP disagreement shall be heard by the judge within seven (7) days from the filing of the request for change of HCP. The judge may issue a minute order at the conclusion of the hearing on the request for change.

[1/21/91, 1/24/91, 6/1/96; 11.4.4.11 NMAC - Rn, 11 NMAC 4.4.11, 6/13/03; A, 12/31/12]

11.4.4.12 ~~[THE~~
~~ADJUDICATION PROCESS:]~~ **THE**
FORMAL HEARING PROCESS:

A. Application to judge:

(1) Unless otherwise provided, all disputes under the act shall be plead on a complaint form, which shall be scheduled for mediation under 11.4.4.10 NMAC. A party may file an application to judge only for the following limited forms of relief:

(a) physical examination pursuant to Section 52-1-51 NMSA 1978 (Repl. Pamp. 1991);

(b) independent medical examination pursuant to Section 52-1-51 NMSA 1978 (Repl. Pamp. 1991);

(c) determination of bad faith, unfair claims processing, fraud or retaliation;

(d) supplemental compensation order;

(e) award of attorney fees;

(f) stipulated reimbursement agreement pursuant to Section 52-5-17 NMSA 1978; ~~[or]~~

(g) consolidation of payments into quarterly payments (not a lump sum under Section 52-5-12 NMSA 1978); or

(h) approval of limited discovery where no complaint is pending before the agency.

(2) If any claim not enumerated in (1) (a) - ~~[(g)]~~ (h) above is raised on an application to judge, the application shall be deemed a complaint and processed by the clerk under 11.4.4.9 NMAC and 11.4.4.10 NMAC.

(3) Except for an application seeking relief under Subparagraphs (e), (f) or (g) of Paragraph (1) of Subsection A of 11.4.4.12 NMAC above, an application to judge may not be filed if a complaint has previously been filed in the same cause, and the time period for acceptance or rejection of the recommended resolution has not yet expired. Any other claim for relief arising under ~~[Subparagraphs (a) through (d) of Paragraph (1) of]~~ Subsection A of 11.4.4.12 NMAC above during that time period shall be raised in the mediation process in accordance with 11.4.4.10 NMAC.

(4) Unless the relief sought is stipulated by both parties, the responding party shall file a response to application to judge within ten days of receipt of an application. A response to application to judge may not raise new claims or issues unless enumerated in Subparagraphs (a) through ~~[(f)]~~ (h) of Paragraph (1) of Subsection A of 11.4.4.12 NMAC above.

(5) All applications to a judge shall be accompanied by a proposed order or a request for setting, as appropriate, and by self-addressed stamped envelopes for all parties entitled to notice. Such hearings as necessary may be scheduled by the assigned judge.

B. Approval of petition for lump sum:

(1) All requests for approval of a lump sum shall be plead on the WCA mandatory petition form, which shall be signed and verified by the worker or his dependents pursuant to NMRA 1-011(B) or signed by the worker or his dependents before a notary public.

(2) Petitions under Section 52-5-12 (D) shall also be signed by the employer/insurer or their representative or, where applicable, the UEF.

(3) Hearing. The lump sum hearing shall be for the purpose of determining that the agreement is voluntary, that the worker understands the terms, conditions and consequences of the settlement agreement or any release under Section 52-5-12(D), and that the settlement is fair, equitable and provides substantial justice to the parties.

(4) Any lump sum petition filed pursuant to this rule shall comply with Section 52-1-54 and counsel for the parties may concurrently file a petition for approval or award of attorney fees, if appropriate, to be heard in the context of the lump sum hearing.

(5) All petitions shall be accompanied by a request for setting and self-addressed, stamped envelopes for all

parties entitled to notice. Such hearings will be promptly scheduled by the assigned judge.

C. Assignment of judge:

(1) Upon receipt of a timely rejection of a recommended resolution or application to judge, the clerk shall assign a judge to the cause and shall notify all parties of the judge assignment by certified mail, domestic return receipt requested. This notice shall be considered the initial notice of judge assignment.

(2) Each party shall have the right to disqualify a judge. To exercise the peremptory right to disqualify a judge, a party must file a notice of disqualification of judge no later than ten (10) calendar days from the date of filing of the notice of assignment of judge. The clerk shall assign a new judge to the cause and notify all parties by certified mail, domestic return receipt requested. A party who has not exercised the right of disqualification may do so no later than ten (10) calendar days from the filing of the notice of reassignment of judge.

(3) No action may be taken by any judge on a cause until the expiration of the time for all parties to exercise the peremptory right to disqualify a judge. To expedite the adjudication process, the parties may file a stipulated waiver of the right to disqualify a judge, or a waiver of the ten (10) day period in which to disqualify a judge.

~~[(4) The judge may assist a party to an application to judge by:~~

~~(a) providing information to the party about the requirements of the rules of evidence and civil procedure applicable to any hearings arising from the application;~~

~~(b) referring the matter to the administrative investigations bureau for independent fact-finding, directing that the final investigative report be provided to the judge and parties; or~~

~~(c) remanding the matter to the mediation bureau for informal resolution.]~~

D. C o m m e n c e m e n t of adjudication process and answer to complaint: The adjudication process for complaints shall commence upon the clerk's receipt of a timely rejection of a recommended resolution. An answer to complaint shall be filed within twenty (20) days of date of filing of the initial notice of assignment of judge unless already filed in lieu of the response required under Paragraph (2) of Subsection C of 11.4.4.10 NMAC.

The answer shall admit or deny each claim asserted in the complaint. Any affirmative defenses to the complaint shall be stated in the answer. The answer shall comply with the general rules of pleading set forth in the rules of civil procedure for the district courts of New Mexico.

~~[E. — Mandatory exchange of evidence:~~

~~(1) The parties shall exchange~~

the following evidence, within thirty (30) days of date of filing of the initial notice of assignment of judge, or promptly after receipt of such evidence:

~~(a) payroll records for at least twenty-six (26) weeks prior to date of accident or disability;~~

~~(b) payroll records since date of accident or disability;~~

~~(c) all medical records relating to the work injury or disability claim, or an executed authorization to release medical records;~~

~~(d) any documents relating to selection of HCPs;~~

~~(e) a record of all indemnity and medical benefits relating to the work injury;~~

~~(f) all statements, written or otherwise recorded, unless privileged;~~

~~(g) all photographs, videotapes and private investigation reports concerning the worker;~~

~~(h) all descriptions/analyses of jobs performed by worker prior to accident or offered to worker post-injury;~~

~~(i) any documents evidencing employer's communications with worker about returning to work; and~~

~~(j) any exhibits to be offered into evidence during the adjudication process.~~

~~(2) Failure to comply with this rule or with the mandatory production rule governing the mediation process may result in exclusion of such evidence at any hearing or other sanctions deemed appropriate by the judge. Mandatory exchange of evidence is required, unless a stipulation is entered in the pre-trial report that such evidence is not material to any disputed issue, or if ordered by the judge.~~

~~(3) All documentary evidence to be presented at the adjudication hearing shall be provided to all other parties at least twenty (20) days prior to the adjudication hearing.~~

~~(4) The judge shall have discretion to modify the time limits established by Subsection D of H.4.4.12 NMAC for good cause.]~~

~~[F.] E. [Pre-trial report and discovery order:~~

~~(1) Within forty-five (45) days of date of filing of the initial notice of assignment of judge, the parties shall jointly present a pre-trial report to the judge for approval. The report shall contain:~~

~~(a) stipulations or admissions of the parties;~~

~~(b) a statement of all contested issues;~~

~~(c) names, addresses, and telephone numbers of authorized HCPs;~~

~~(d) worker's and employer's potential witnesses, including addresses and phone numbers;~~

~~(e) worker's and employer's list of potential exhibits;~~

~~(f) objections to any medical records and exhibits;~~

~~(g) stipulated discovery procedures and deadlines for completion, including a finding that good cause exists for discovery;~~

~~(h) disputed discovery procedures or issues, if any; and~~

~~(i) any other matters that will assist the judge with expediting adjudication of the claim.~~

~~(2) If there are disputed discovery issues, the parties shall request a pre-trial hearing within ten (10) days of completion of the pre-trial report.~~

~~(3) The judge shall review the report, and if good cause exists, approve the report or issue an order. The order or approved report issued shall be binding on the parties, unless modified in writing or stipulated to by the parties. Failure to participate in the preparation of the pre-trial report may subject that party to sanctions or attorney fee penalties.] The assigned judge may hold pre-trial conferences as necessary, establish appropriate deadlines, mandate evidentiary disclosures between the parties, approve formal discovery, and otherwise control all other aspects of the adjudication process in order to enable the prompt adjudication of the claim.~~

~~[G.] E. Medical evidence:~~

~~(1) Live medical testimony shall not be permitted, except by an order of the judge.~~

~~(2) A form letter to HCP, completed by an authorized HCP, may be admitted into evidence. The employer shall pay the costs for completion of the form letter.~~

~~(3) Medical records identified in the pre-trial report and exchanged shall be admitted into evidence, unless an objection is preserved:~~

~~(4) To preserve an objection to the admissibility of medical records, the objecting party must state the objection in the pre-trial report or file a notice of objection within thirty (30) days of entry of the pre-trial report. A specific basis for the objection must be stated. Objections may be raised subsequently upon a showing of good cause.]~~

~~[H.] G. Depositions:~~

~~(1) The parties [shall] should make a good faith effort to obtain a completed and signed form letter to HCP prior to setting the deposition of the HCP~~

~~(2) Depositions shall be taken pursuant to Supreme Court Rules Annotated 1986, 1-030. Reasonable notice shall be deemed to be not less than five (5) business days prior to the date set for the deposition.~~

~~(3) The original deposition shall be kept by the party who noticed the deposition.~~

~~(4) Deposition testimony of authorized HCPs shall be admissible, in lieu of live testimony.~~

~~(5) The use of depositions shall~~

otherwise be governed by Supreme Court Rules Annotated 1986, 1-032. A party intending to use a deposition shall notify the other party of the intended use at least ten (10) days prior to trial. Any objection to the use of the deposition shall be determined at the adjudication hearing.

~~[I.] H. Written discovery procedures: If authorized, interrogatories, request for production or inspection, and requests for admissions shall be governed by supreme court rules annotated 1986, 1-033, 1-034 and 1-036[; except:~~

~~(1) answers to interrogatories, responses to requests for production or inspection, and responses to requests for admissions shall be due twenty-one (21) calendar days from the date of service;~~

~~(2) no party shall serve more than twenty-five (25) interrogatories or twenty-five (25) requests for admissions without approval of the judge; sub-parts must relate to the subject matter of the interrogatory or request;~~

~~(3) the party submitting written discovery shall serve at least two copies upon each party to be served; interrogatories shall be numbered consecutively, and limited to one interrogatory per page; and~~

~~(4) answers to interrogatories and responses to requests for production shall not be filed; a certificate of service shall be filed with the clerk of the WCA].~~

~~[J.] I. Motions: All motions, except in open court, shall be written and comply with Supreme Court Rules Annotated 1986, 1-007.1. Motions for summary judgment shall comply with Supreme Court Rules Annotated 1986, 1-056.~~

~~[K.] J. Settlement/pre-trial conferences: The judge shall have discretion to schedule settlement conferences or pre-trial conferences to expedite adjudication. A settlement conference with the assigned judge shall require the consent of all parties either on the record or in writing.~~

~~[L.] Pre-trial order: At least five (5) days prior to the adjudication hearing, the parties shall present a pre-trial order to the judge for approval. The pre-trial order shall contain:~~

~~(1) the date, place and time set for commencement of the adjudication hearing and the estimated time required for completion of the adjudication hearing;~~

~~(2) stipulations or admissions of the parties, if any;~~

~~(3) contested issues;~~

~~(4) names, addresses, and telephone numbers of the authorized HCPs;~~

~~(5) a list of worker's and employer's witnesses, including anticipated rebuttal witnesses, with current addresses and telephone numbers;~~

~~(6) a list of admissible medical records;~~

~~(7) worker's and employer's list of~~

potential exhibits;

~~(8) objections to any exhibits and a statement of how the objection was timely preserved;~~

~~(9) any other issues or special considerations; and~~

~~(10) a binding effect of order statement: "The parties have reviewed this order and are bound by its terms and conditions. The judge may modify this order only as provided by law."~~

~~M. Subpoenas: The issuance of subpoenas is governed by Supreme Court Rules Annotated 1986, 1-045.~~

~~N.] **K.** Continuance of hearing:~~

~~(1) The continuance of an adjudication hearing shall be at the discretion of the judge for good cause shown. [If granted, the moving party shall present an order to reset the adjudication hearing to the judge within five (5) days from the granting of the continuance. The order shall designate the moving party, and the date of the vacated setting, with space provided for entry of a new date and time.]~~

~~(2) All discovery, disclosure and exchange deadlines shall be extended by the granting of a continuance unless otherwise ordered.~~

~~[O:] **L.** Hearings:~~

~~(1) Failure to appear at a hearing after proper notice and without good cause may result in the imposition of sanctions.~~

~~(2) The parties shall appear personally at the adjudication hearing, without the necessity of a subpoena. Unless excused by a judge, the parties shall appear personally or through their legal representatives at all other hearings properly noticed.~~

~~(3) All hearings shall be recorded by audio tape recording or by any other method approved by the director.~~

~~(4) Prior to commencement of the adjudication hearing, the parties shall confer with the court monitor to ensure that all exhibits are properly marked. Any exhibit to be jointly tendered shall be marked and offered as a joint exhibit. All other exhibits shall be marked by party and exhibit number or letter. Depositions shall be marked as exhibits.~~

~~(5) Under exceptional circumstances and in the interest of justice, within ten (10) days of the close of the adjudication hearing, the judge has discretion to direct or allow supplementation of evidence.~~

~~[P:] **M.** Additional rules: Unless otherwise stated or necessarily implied in the preceding rules, the rules of evidence and the rules of civil procedure for the district courts of New Mexico shall apply to and govern proceedings within the adjudication process. [5/26/87, 6/20/89, 6/1/96, 9/25/96, 2/15/97; 11.4.4.12 NMAC - Rn, 11 NMAC 4.4.12,~~

6/13/03; A/E, 2/19/10; A, 12/31/12]

11.4.4.13 APPROVAL OF ATTORNEY'S FEES OR SANCTION:

A. The award of attorney's fees may be requested on an application to a judge. The application must contain sufficient information to determine if the fee requested is appropriate. The contested application should indicate the date and terms of any offers of settlement made; the present value of the benefits awarded the worker, including, but not limited to, medical expenses and past and future weekly benefits; the total number of hours reasonably expended by counsel to secure benefits for the worker; the hourly billing rate of counsel; and any other relevant information for the determination of fees.

B. No attorney fees shall be paid until the claim has been settled or adjudged. For purposes of the Workers' Compensation Act, settled or adjudged includes:

(1) the entry of a compensation order; or

(2) the acceptance by both parties of a recommended resolution; or

(3) an order granting or denying any petition or application when no other claims are pending before the administration; or

(4) the WCA has administratively closed the file; or

(5) when there is a good faith belief that all pending issues or questions have been resolved, whether or not the jurisdiction of the administration has been invoked.

~~[B:] **C.** The judge may sanction any party, attorney, or representative thereof, for the following conduct:~~

~~(1) rejecting a recommended resolution without reasonable basis, or without reasonable expectation of doing better at formal hearing;~~

~~(2) making repeated unfounded objections;~~

~~(3) advancing a meritless position in order to harass or vex the opposing party; or~~

~~(4) engaging in conduct before the WCA which amounts to bad faith or unfair claims processing.~~

~~[C:] **D.** The judge will conduct a separate hearing on the imposition of sanctions according to the procedures in this part. The judge may refer the matter to the director under [Part Five (5) of these rules] 11.4.5 NMAC.~~

~~[D:] **E.** As a sanction, the judge may do any or all of the following:~~

~~(1) assess reasonable attorney's fees against a party;~~

~~(2) reduce the fees of an attorney for a party;~~

~~(3) assess prejudgment interest~~

from the date of the recommended resolution in the claim; and

(4) assess expenses and costs against a party.

[5/26/87, 6/20/89, 5/29/91, 6/1/96; 11.4.4.13 NMAC - Rn, 11 NMAC 4.4.13, 6/13/03; A, 12/31/12]

[Continued on page 1141]

STATE OF NEW MEXICO

WORKERS' COMPENSATION ADMINISTRATION

_____, WCA No.: _____
Worker,
v.
_____, and
_____,
Employer/Insurer.

REQUEST FOR SETTING

- 1. WCA Judge assigned: _____
2. Are any other hearings currently set? ___Yes ___No
If yes, please indicate the date of the hearing: _____
3. Specific matter to be heard: _____
4. Time required for hearing: _____
5. Names/addresses/phone & fax of all counsel/parties pro se entitled to notice:

NOTICE OF HEARING

This matter will be heard before Judge _____ on _____,
20____, at _____ a.m./p.m. with _____ hours/minutes allocated for hearing

at: (____) WCA Office or (____) _____
[+820-Randolph SE]
2410 Centre Ave. SE
Albuquerque, NM 87106
(505) 841-6000

By: Calendar Clerk

Notice Mailed _____, 20____, by _____
Counsel are expected to appear:

(____) in person (____) by telephone conference call.

STAMPED ENVELOPES FOR ALL PARTIES MUST BE SUBMITTED WITH REQUEST

STATE OF NEW MEXICO

WORKERS' COMPENSATION ADMINISTRATION

_____, WCA No.: _____
Worker,
vs.
_____, and
_____,
Employer.

_____ SUBPOENA OR _____ SUBPOENA DUCES TECUM

TO: _____

GREETINGS:

You are commanded to appear, under penalty of law, on _____
at _____m. before the Workers' Compensation Administration at

[Address where adjudication hearing is set]

New Mexico, to testify in the above-entitled action on behalf of the _____

[FOR SUBPOENA DUCES TECUM]

You are further directed, under penalty of law, to bring the items described with you to the
hearing for inspection: _____

[WITNESSED AND SEALED BY THE WCA CLERK]
WORKERS' COMPENSATION ADMINISTRATION

By: _____
Date: _____

Attorney/Representative: _____
Address: _____
City/State/Zip: _____
Telephone: () _____

[5/26/87, 6/20/89, 10/28/93, 3/3/94, 6/1/96, 9/25/96; 10/1/98; 11.4.4 NMAC, Appendix A - Rn, 11 NMAC 4.4 Appendix A, 06/13/03; A,
08/31/05; A, 12/31/07; A/E, 07/1/09; A/E, 2/19/10; A, 12/31/11; A, 12/31/12]

NEW MEXICO WORKERS'
COMPENSATION
ADMINISTRATION

This is an amendment to 11.4.7 NMAC,
Sections 8, 9 and 10, effective 12/31/12.

11.4.7.8 GENERAL
PROVISIONS

A. These rules apply to all
charges and payments for medical, other
health care treatment, and related non-
clinical services covered by the New Mexico
Workers' Compensation Act and the New
Mexico Occupational Disease Disablement
Law.

B. These rules shall be

interpreted to the greatest extent possible
in a manner consistent with all other rules
promulgated by the workers' compensation
administration (WCA). In the event of an
irreconcilable conflict between these rules
and any other rules, the more specific set of
rules shall control.

C. Nothing in these rules
shall preclude the separate negotiation of
fees between a practitioner and a payer
within the healthcare provider fee schedule
for any health care service as set forth in
these rules.

D. These rules and the
director's annual order adopting the
healthcare provider fee schedule utilize the
edition of the current procedural terminology
referenced in the director's annual order,

issued pursuant to Subparagraph (c) of
Paragraph (1) of Subsection B, 11.4.7.9
NMAC. All references to specific CPT code
provisions in these rules shall be modified to
the extent required for consistency with the
director's annual order.

E. A carrier who
subcontracts the bill review services remains
fully responsible for compliance with these
rules.

F. Employers are
responsible for timely good faith payment as
defined in Subsection A of 11.4.7.11 NMAC
for all reasonable and necessary health
care services for work-related injuries and
diseases. Effective July 1, 2013, all medical
services rendered pursuant to recommended
treatment contained in the most recent edition

of the official disability guidelines™ (ODG) is presumed reasonable and necessary; there is no presumption regarding any other treatment.

G. Employers are required to inform a worker of the identity and source of their coverage for the injury or disablement.

H. The provision of services gives rise to an obligation of the employer to pay for those services. Accordingly, all services are controlled by the rules in effect on the date the services were provided.

I. Fees and payments for all physician professional services, regardless of where those services are provided, are reimbursed within the healthcare provider fee schedule.

J. Diagnostic coding shall be consistent with the *international classification of diseases, 9th edition, clinical modification* (ICD-9-CM) or *diagnostic and statistical manual of mental disorders* guidelines as appropriate.

K. AUTHORIZATION FOR TREATMENT AND SERVICES

(1) Outpatient services

(a) All requests for authorization of referrals and procedures shall be approved or denied by the insurer within three (3) business days of receipt of all supporting documentation.

(b) If, after three (3) business days, an authorization or denial is not received by the practitioner, the requested service or treatment will be deemed authorized.

(c) The practitioner shall document all attempts to obtain authorization from the date of the initial request.

(d) The three (3) business days shall not include weekends or holidays.

(e) Any dispute about payment for the treatment or service can be raised to the medical cost containment bureau chief as a reasonable and necessary dispute.

(2) Inpatient services

(a) ~~[All requests for authorization of referrals and procedures shall be approved or denied by the insurer within twenty-four (24) hours.]~~ Once a worker has been admitted to an inpatient facility, all requests for authorization of referrals and procedures during the inpatient stay shall be approved or denied by the insurer by the close of the next business day after receipt of all supporting documentation.

(b) If, ~~[after twenty-four (24) hours]~~ after the close of the next business day, an authorization or denial is not received by the practitioner, the requested service or treatment will be deemed authorized.

(c) The practitioner shall document all attempts to obtain authorization from the date of the initial request.

(d) Any dispute about payment for the treatment or service can be raised to the medical cost containment bureau chief as a

reasonable and necessary dispute.

[12-31-91, 1-15-93, 10-28-93, 3-14-94, 12-2-94, 8-1-96, 8-15-97, 10-01-98; 11.4.7.8 NMAC - Rn & A, 11 NMAC 4.7.8, 8-07-02; A, 10-25-02; A, 1-14-04; A, 12-31-07; A, 12-31-09; A, 12-31-10; A, 12-31-12] [CPT only copyright 2011 American Medical Association. All rights reserved.]

11.4.7.9 PROCEDURES FOR ESTABLISHING THE MAXIMUM AMOUNT OF REIMBURSEMENT DUE

A. All hospitals shall be reimbursed at the hospital ratio itemized in the official WCA listing that becomes effective on December 31~~[, 2011]~~ of each year for all services rendered ~~[from December 31, 2011 to December 31, 2012]~~ during the next calendar year, except as provided in Subsection B [of this temporary rule]. Any new hospital shall be assigned a ratio of 67%.

(1) The assigned ratio is applied toward all charges for compensable services provided during a hospital inpatient stay, emergency department visit and outpatient hospital surgery.

(2) This ratio does not include procedures that are performed in support of surgery, even if performed on the same day and at the same surgical site as the surgery.

(3) Appeal of assigned ratio by hospitals:

(a) A written appeal may be filed with the director within thirty (30) days of the assignment of the ratio. The administration will review the appeal and respond with a written determination. The administration may require the hospital to provide additional information prior to a determination.

(b) If the hospital is not satisfied with the administration's written determination, within ten (10) calendar days of the date of the determination, the hospital may request that a formal hearing be set and conducted by the director. The director's rulings in all such formal hearings shall be final.

B. The following services and items will be reimbursed as specified:

(1) Implants, hardware and instrumentation implanted or installed during surgery in the setting of a hospital shall be reimbursed at invoice cost times 1.25 plus shipping and handling for the implant or hardware and NMGR.

(2) The professional and technical charges for radiology and pathology/laboratory services provided in a hospital shall be paid at rates equivalent to those set forth in the most current version of the healthcare provider fee schedule. The hospital shall provide a detailed billing breakdown of the professional and technical components of the services provided, and shall be paid pursuant to the procedures set

forth at Paragraph (7) of Subsection [G] E of 11.4.7.9 NMAC of these rules.

C. All hospitals shall provide to the WCA:

(1) the most recent full year filing of their HCFA/CMS 2552 G-2 worksheet prepared on behalf of the organization, by February 1~~[, 2012]~~ of each calendar year;

(2) any hospital may specifically designate this worksheet as proprietary and confidential; any worksheet specifically designated as proprietary and confidential in good faith shall be deemed confidential pursuant to NMSA 1978, Section 52-5-21 and the rules promulgated pursuant to that provision.

(3) Failure to comply may result in fines and penalties.

~~[D. All provisions of 11.4.7 NMAC contrary to the provisions set forth in this temporary rule are deemed void and inoperative during the effective period of this rule.~~

~~E.]~~ **D.** Method of payment for FASCs:

(1) All FASCs will provide global billing by CPT code on a CMS-1500 and shall be paid ~~[by]~~ pursuant to the assigned centers for medicare and medicaid services (CMS) ambulatory payment classification (APC) base payment rate in effect at the time of service times 1.3 ~~[effective for services from December 31, 2011 to December 31, 2012. See <http://www.cms.gov/HospitalOutpatientPPS/AU> under Addendum B, October 2011].~~ No adjusted conversion factors or index values are to be applied. ~~[Payment will be made in accordance with the APC base payment rate assigned for that service in Addendum B dated October 2011.]~~ Absent an assigned APC base payment rate, services shall be paid BR.

(a) Bilateral procedure "-50"

(i) When performed during the same operative session, the first or major procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of billed charges or the APC base payment rate times 1.3.

(ii) The second procedure shall be coded with the same CPT code plus the "-50" modifier code and shall be paid at no more than 50% of the APC base payment rate times 1.3.

(b) Multiple procedures "-51"

(i) The primary or major surgical procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of the billed charges or the APC base payment rate times 1.3.

(ii) The second and third procedure shall be coded with the respective CPT code plus the "-51" modifier code and shall be paid at 50% of the APC base payment rate times 1.3.

(iii) The fourth and subsequent procedures will be paid BR.

(2) Implants, hardware and instrumentation implanted or installed during surgery in the setting of a FASC shall be reimbursed at invoice cost times 1.25 plus shipping and handling for the implant or hardware and NMGR.

(3) The professional and technical charges for radiology and pathology/laboratory services provided in a FASC shall be paid at rates equivalent to those set forth in the most current version of the healthcare provider fee schedule. The FASC shall provide a detailed billing breakdown of the professional and technical components of the services provided, and shall be paid pursuant to the procedures set forth at Paragraph (7) of Subsection G of 11.4.7.9 NMAC of these rules.

~~[F. Subsections A-E of 11.4.7.9 NMAC, inclusive, shall be repealed effective 11:59 P.M. December 31, 2012, and shall be of no force or effect with respect to any services provided thereafter.~~

~~[G.] E. Maximum allowable amount method~~

(1) Basic provisions

(a) These rules apply to all charges for medical and other health care treatment provided on an outpatient basis, including procedures that are performed in support of ambulatory surgery, even on the same day and at the same site as the surgery.

(b) The healthcare provider fee schedule is procedure-specific and provider-neutral. Any code listed in the edition of the *current procedural terminology* adopted in the director's annual order may be used to designate the services rendered by any qualified practitioner within the parameters set by that practitioner's licensing regulatory agencies combined with applicable state laws, rules, and regulations.

(c) For purposes of NMSA 1978, Section 52-4-5(A) (1990), the director shall issue an order not less than once per annum setting the healthcare provider fee schedule for medical services. The order shall contain the revised fee schedule, a brief description of the technique used for derivation of the fee schedule and a reasonable identification of the data upon which the fee schedule was based. The fee schedule shall be released to the public not less than 30 days prior to the date upon which it is adopted and public comments will be accepted during the 30 days immediately following release. After consideration of the public comments the director shall issue a final order adopting a fee schedule, which shall state the date upon which it is effective. The final fee schedule order shall be available at the WCA clerk's office not less than ten days prior to its effective date.

(2) Evaluation and management (E/M) services:

(a) The definition for "new patient" is unique to New Mexico, differing from the definition presented in the *current procedural terminology*. (See Subsection HH of 11.4.7.7 NMAC)

(b) E/M CPT codes shall not be pro-rated.

(3) Independent medical examinations

(a) All IMEs and their fees must be authorized by the claims payer prior to the IME scheduling and service, regardless of which party initiates the request for an IME. In the event of an IME ordered by a judge, the judge will set the fee.

(b) In the event a worker fails to provide 48 hours' notice of cancellation of an IME appointment, the HCP may be reimbursed either 60% of the pre-approved fee or up to 60% of the HCP's usual and customary fee if a fee was not pre-approved. "Missed IME" should be written next to the code.

(4) Physical impairment ratings

(a) All PIRs and their fees shall be authorized by the claims payer prior to their scheduling and performance regardless of which party initiated the request for a PIR. The PIR is inclusive of any evaluation and management code.

(b) Impairment ratings performed for primary and secondary mental impairments shall be billed using CPT code 90899 and shall conform to the guidelines, whenever possible, presented in the most current edition of the AMA guides to the evaluation of permanent impairment.

(c) A PIR is frequently performed as an inherent component of an IME. Whenever this occurs, the PIR may not be unbundled from the IME. The HCP may only bill for the IME at the appropriate level.

(d) In the event that a PIR with a specific HCP is ordered by a judge and the HCP and claims payer are unable to agree on a fee for the PIR, the judge may set the fee or take other action to resolve the fee dispute.

(5) Physical medicine and rehabilitation services

(a) It shall be the responsibility of the physical medicine/rehabilitation provider to notify the claims payer of a referral prior to commencing treatment.

(b) The appropriate CPT code must be used for billing by practitioners.

(c) Services provided by caregivers (e.g., technicians, exercise physiologists) must be pre-authorized and paid pursuant to Paragraph (13) of Subsection [G] E of 11.4.7.9 NMAC.

(d) In the event a worker fails to provide 48 hours notice of cancellation of an FCE appointment, the practitioner may be reimbursed up to 60% of the healthcare provider fee schedule for a four-hour appointment.

(6) Materials supplied under CPT

code 99070

(a) Supplies and materials must be itemized.

(b) Supplies and materials are reimbursed at the practitioner's invoice cost plus 25%, plus tax, shipping and handling charges.

(c) A copy of the invoice shall be provided either at the time of billing or upon the payer's request.

(7) Service component modifiers -- radiology and pathology/laboratory

(a) Use of the technical and professional component modifier codes is required for the billing of all radiology and pathology/laboratory procedures. The CPT code followed by "TC" is the appropriate billing code for the technical component.

(b) The dollar value listed in the healthcare provider fee schedule for a specific radiology or pathology/laboratory procedure represents the combined maximum allowable amount for both the technical and professional components of that procedure:

(i) The entity billing for the technical component shall be paid at no more than 60% of the healthcare provider fee schedule for the procedure when the service is provided on an inpatient or outpatient basis.

(ii) The entity billing for the professional component shall be paid at no more than 40% of the healthcare provider fee schedule for the billed procedure, whether the service was provided on an inpatient or an outpatient basis.

(8) Surgical modifiers

(a) Bilateral procedure "-50"

(i) When performed during the same operative session, the first or major procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of billed charges or the healthcare provider fee schedule.

(ii) The second procedure shall be coded with the same CPT code plus the "-50" modifier code and shall be paid at no more than 50% of the healthcare provider fee schedule.

(b) Multiple procedures "-51"

(i) The primary or major surgical procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of the billed charges or the healthcare provider fee schedule.

(ii) The second and third procedure shall be coded with the respective CPT code plus the "-51" modifier code and shall be paid at 50% of the healthcare provider fee schedule.

(iii) The fourth and subsequent procedures will be paid BR.

(c) Assistant surgeon "-80"

(i) The attending surgeon shall bill using the appropriate CPT

code(s) and modifiers, if applicable, for the procedure(s) performed and shall be paid at the lesser of the billed charges or the healthcare provider fee schedule, subject to the percentages for modifiers in this section.

(ii) The assistant surgeon shall bill using the appropriate CPT codes(s) plus the modifier for the procedures performed and shall be paid at no more than 25% of the healthcare provider fee schedule.

(9) Unlisted services or procedures are billable and payable on a BR basis.

(10) Performance of BR services.

(a) The fee for the performance of any BR service is negotiated between the practitioner and the payer prior to delivery of the service. Payers should ensure that a CPT code with an established fee schedule amount is not available.

(b) Performance of any BR service requires that the practitioner submit a written report with the billing to the payer.

(i) The report shall substantiate the rationale for not using an established CPT code.

(ii) The report shall include pertinent information regarding the nature, extent, and special circumstances requiring the performance of that service and an explanation of the time, effort, personnel, and equipment necessary to provide the service.

(iii) Information provided in the medical record(s) may be submitted in lieu of a separate report if that information satisfies the requirements of Paragraph (1) of Subsection D of 11.4.7.10 NMAC.

(iv) No separate charge is allowed for the report.

(v) In the event a dispute arises regarding the reasonableness of the fee for a BR service, the practitioner shall make a prima facie showing that the fee is reasonable. In that event, the burden of proof shall shift to the payer to show why the proposed fee is not reasonable.

(vi) Any disputes shall be submitted pursuant to Section 13 of this rule.

(11) Special reports shall be billed with CPT code "99080" and the descriptor "special report". The form letter to health care provider is a special report. The allowable amount is \$45.

(12) The use of global fees is encouraged, however global fee shall not be used unless payer and provider agree. Agreement for use of a global fee may be sought and obtained before, during or after provision of services. All services not covered by the global fee shall be coded and paid separately, to the extent substantiated by medical records. Agreement to use a global fee creates a presumption that the HCP will be allowed to continue care throughout the global fee period.

(13) Caregiver services are subject to the payer's pre-authorization prior to the scheduling and performance of any service. All services provided by caregivers are paid BR.

(14) Durable medical equipment (DME) shall be pre-authorized by the payer within 72 hours unless the worker is hospitalized at the time of the request. In the event the worker is hospitalized, authorization shall be granted or denied within 24 hours. Authorization will be presumed if the adjuster or claims manager does not respond to the request. Any dispute about payment for the treatment or service can be raised to the medical cost containment bureau chief as a reasonable and necessary dispute. However, reasonable and necessary prosthetic/orthotics training or adjusting is excluded from the cost of the DME and may be billed separately.

(a) Rental of DME shall not exceed 90 days unless it is determined by the payer to be more cost efficient to do so.

(b) Rental fees shall not exceed the cost of purchase established in the subparagraph, below. Rental fees paid for the first 30 days of rent may be applied against the purchase price. Subsequent rental fees may not be applied against the purchase price. The decision to purchase should be made within the first 30 days of rental.

(c) Purchases of DME are paid at the practitioner's invoice cost plus 25% plus taxes, shipping and handling charges.

(d) A copy of the invoice shall be provided either at the time of billing or upon the payer's request.

(15) Prorating

(a) The prorating of the practitioner's fees for time spent providing a service, as documented in the provider's treatment notes, is not prohibited by these rules; provided however, that EOB -- 13 is sent to the practitioner. (See item (iii) of Subparagraph (e) of Paragraph (4) of Subsection C of 11.4.7.11 NMAC).

(b) The practitioner's fees should not be prorated to exclude time spent in pre- and post-treatment activity, such as equipment setup, cleaning, disassembly, etc., if it is directly incidental to the treatment provided and is adequately documented.

(16) Referrals

(a) If a referral is made within the initial sixty (60) day care period as identified by NMSA 1978, Section 52-1-49(B), the period is not enlarged by the referral.

(i) When referring the care of a patient to another provider, the referring provider shall submit complete medical records for that patient, upon request of the referral provider, at no charge to the patient, referral provider or payer.

(ii) When transferring the care of a patient to another provider,

the transferring provider shall submit complete medical records for that patient to the subsequent provider at no charge to the patient, subsequent provider or payer.

(b) If, subsequent to the completion of a consultation, a referral is made to the consultant for the assumption of responsibility for the management of a portion or all of the patient's condition(s), the following procedures apply:

(i) Follow up consultation codes shall not be used.

(ii) Evaluation and management codes shall be used.

(iii) Only established patient codes shall be used.

(c) If a practitioner who has been requested to examine a patient assumes responsibility immediately for primary provision of the patient's care, it shall be considered a referral and not a consultation.

(i) Consultation codes shall not be used.

(ii) Evaluation and management codes shall be used.

(iii) For the first visit only, a new patient code may be used.

(iv) HCPs and caregivers may negotiate with the payer, prior to performing the service, regarding the use of consultation codes in appropriate circumstances.

(17) Physical therapy

(a) New Mexico specific codes are no longer in use. Please consult the fee schedule currently in use for specific codes. Evaluation and management codes are not appropriate for this purpose.

(b) Physical therapy bills may include all codes which are reasonable and necessary for the evaluation and treatment of a worker in a single day.

(c) An initial failed appointment, without providing 48 hours' notice to the physical therapist, may be billed at 60% of the healthcare provider fee schedule.

(18) Failed appointments

(a) An initial failed appointment, when the new patient fails to provide 48 hours notice to the HCP, may be billed at the level of a new outpatient/expanded problem focused H&E/low to moderate severity/straightforward medical decision making/evaluation and management service, using CPT code 99202 and annotated as "FAILED INITIAL APPOINTMENT/NEW PATIENT"

(b) A failed appointment by an established patient may not be billed.

(19) Facility fees

(a) Charges for the use of a room for other than an emergency room visit or operating and recovery rooms for inpatient or outpatient hospital surgery are prohibited by these rules.

(b) For instances of outpatient services, where two or more HCPs combine

in delivery of the service, the maximum total payment is based on the healthcare provider fee schedule for the specific service. The HCPs may allocate the payment among themselves.

(20) Charges for copies of radiographic film (X-rays) may be billed to the requestor by the X-ray facility following by report (BR) procedures.

(21) Second medical opinions requested by a party are deemed medically reasonable and necessary for payment purposes.

[H:] E. Pharmacy maximum allowable payment (Pharm MAP) is based upon the maximum payment that a pharmacy or authorized HCP is allowed to receive for any prescription drug, not including NMGR.

(1) Basic provisions

(a) Pharmacies and authorized HCPs must include patient identification and information. No specific form is required.

(i) Pharmacies shall not dispense more than a 30-day supply of medication unless authorized by the payer.

(ii) Only generic equivalent medications shall be dispensed unless a generic does not exist and unless specifically ordered by the HCP.

(iii) Compounded medication prepared by pharmacists shall be paid on a by report (BR) basis.

(b) Any medications dispensed and administered in excess of a 24-hour supply to a registered emergency room patient shall be paid according to the hospital ratio.

(c) Health care provider dispensed medications shall not exceed a 10 day supply for new prescriptions only. The payment for health care provider dispensed medications shall not exceed the cost of a generic equivalent.

(d) Any bill that is submitted without an NDC number will be paid at the lowest AWP available for the month in which the drugs were dispensed.

(e) The HCP formula for billing generic and brand name prescription drugs is:

$(\$)AWP \times .90$ with no dispensing fee included.

(2) Average wholesale price (AWP)

(a) Any nationally recognized monthly or weekly publication that lists the AWP may be used to determine the AWP.

(b) The date that shall be used to determine the AWP and calculation of the Pharm MAP shall be the date on which the drugs were dispensed, regardless of AWP changes during the month.

(c) Use of a prorated calculation of AWP will often be necessary in the formulas. For each drug dispensed, the prorated AWP shall be based on the AWP for the "100s ea" quantity of the specific strength of the

drug, as listed in a nationally recognized publication, with the following exceptions:

(i) If an AWP listed in the publication is based on the exact quantity of the drug dispensed, e.g., #15, #60, 15 ml, 3.5 gm, etc., the AWP for the exact quantity shall be used with no prorating calculation made.

(ii) If the drug is dispensed as a quantity based on volume (grams, ounces, milliliters, etc.) rather than single units ("ea"), the prorated AWP shall be calculated in accordance with the highest quantity (volume) listed for the specific strength of drug.

(iii) In cases of a conflict between referenced publications, the lower price shall prevail.

(3) The formula for billing generic and brand name prescription drugs is:

$Pharm\ MAP(\$) = (\$)AWP \times .90 + \$5.00.$

[F:] G. Qualification of out of state health care providers

(1) An HCP that is not licensed in the state of New Mexico must be approved by the director to qualify as an HCP under the act.

(2) No party shall have recourse to the billing and payment dispute resolution provisions of these rules with respect to the services of an HCP who is not licensed in New Mexico or approved by the director.

(3) The director's approval may be obtained by submitting a written motion and order, supported by an original affidavit of the HCP seeking approval, on forms acceptable to the director. Nothing in this rule shall prevent the director from entering into agreements with any party or HCP to provide for simplified and expeditious qualification of HCPs in individual cases, provided, however, that all such agreements shall be considered public records.

(4) The director's approval of a health care provider in a particular case, pursuant to the provisions of Section 52-4-1, will be deemed given when an out of state health care provider provides services to that injured worker and the employer/insurer pays for those services. The approval obtained by this method will not apply to the provision of health care by that provider to any other worker, except by obtaining separate approval as provided in these rules. [01-24-91, 4-1-91, 12-30-91, 12-31-91, 1-18-92, 10-30-92, 1-15-93, 10-28-93, 2-23-94, 3-14-94, 12-2-94, 1-31-95, 8-1-96, 9-1-96, 8-15-97, 4-30-98, 10-01-98, 6-30-99; 11.4.7.9 NMAC - Rn & A, 11.4.7.9 NMAC, 8-07-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 12-30-05; A, 12-31-06; A, 1-1-07; A, 12-31-07; A, 12-31-08; A, 12-31-09; A, 12-31-10; A, 12-31-11; A, 12-31-12]

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11.4.7.10 B I L L I N G PROVISIONS AND PROCEDURES

A. Basic provisions

(1) Balance billing is prohibited.

(2) Unbundling is prohibited.

(a) If a service that is ordinarily a component of a larger service is performed alone for a specific purpose it may be considered a separate procedure for coding, billing, and payment purposes.

(b) Documentation in the medical records must justify the reasonableness and necessity for providing such services alone.

(3) The patient/worker shall not be billed for health care services provided by an authorized HCP as treatment for a valid workers' compensation claim except as provided in Subparagraphs (a) or (b) of Paragraph (2) of Subsection A of 11.4.7.13 NMAC.

(4) All reasonable and necessary services provided to a patient/worker with a valid workers' compensation claim shall be paid by the employer or the employer's representative on behalf of the employer.

(5) If a service has been pre-authorized or is provided pursuant to a treatment plan that has been pre-authorized by an agent of the payer, it shall be rebuttably presumed that the service provided was reasonable and necessary. The presumption may be overcome by competent evidence that the payer, in the exercise of due diligence, did not know that the compensability of the claim was in doubt at the time that the authorization was given.

(6) Timeliness

(a) Initial billing of outpatient services by practitioners, other than hospitals and FASC's, shall be postmarked no later than 30 calendar days from the date of service.

(b) Initial billing of outpatient services by hospitals and FASCs shall be postmarked within 30 days from the end of the month in which services were rendered.

(c) Initial billing of inpatient services shall be issued no later than 60 calendar days from the date of discharge.

(d) Failure of the practitioner to submit the initial billing within the time limits provided by these rules shall constitute a violation of these rules but does not absolve the employer of financial responsibility for the bill.

(7) Effective July 1, 2014, the payor shall be capable of receiving bills electronically and of submitting electronic payment pursuant to a system generally recognized and used in the medical community.

B. Billing forms have been adopted from the US department of health and human services' health care financing administration.

(1) Billing for services calculated according to the ratio discount method must

be on a UB-92 (effective until 6/1/07), UB04 (effective 6/1/07), CMS-1450. This includes inpatient services, emergency room services and hospital outpatient surgery.

(2) Billing for services calculated according to the healthcare provider fee schedule and provided by hospitals may be on form UB04 (effective 6/1/07), CMS-1450 or form CMS-1500. FASCs shall bill for services on a CMS-1500.

(3) Billings for all outpatient services calculated according to the healthcare provider fee schedule must be on form CMS-1500.

(4) Pharmacies and authorized HCPs must include patient identification and appropriate information. Billings for pharmaceuticals requires no specific form.

(5) Completion of forms

(a) "WORKERS' COMPENSATION" or "WORK COMP" shall be clearly printed or stamped at the top of the billing form. Any subsequent billing for the same service(s) must be clearly labeled "TRACER" or "TRACER BILL" at the top of the billing form and may be a copy of the original bill.

(b) Entry of the applicable CPT code and a descriptor are mandatory for each procedure billed, regardless of which form or itemized statement is utilized.

(c) FORM CMS-1500 (12/90) information required for completion is self-explanatory with the following exceptions:

(i) Sections 6, 9, 11a-d, 12, 13, 17a, 19, 22, 23, 24h-k, and 27 are not applicable.

(ii) Section 1. Check "Other".

(iii) Section 1a. Enter patient's social security number.

(iv) Section 4. Enter employer's name.

(v) Section 7. Enter employer's address and telephone number.

(vi) Section 11. Name of workers' compensation insurance carrier or self-insured employer or third party administrator.

(vii) Section 21. Enter ICD-9-CM or DSM code and descriptor for each diagnosis.

(viii) Section 24d. Entry of a specific CPT code, any applicable modifier and the descriptor is mandatory for each procedure/service billed.

(ix) Section 26. Optional

(x) Section 28. Multiple page bills should show the cumulative total in Section 28 of each consecutively numbered page, with the combined total for all pages on the last page.

(xi) Section 29. This section may be used to indicate any agreed upon discount amount or rate.

(xii) Section 30. This

section may be used to indicate the amount due after applying any discounts. Otherwise, leave it blank.

(xiii) Anesthesiologists and laboratories may omit Sections 14, 15, and 16.

(d) Form CMS-1450 (UB-04) must be completed by health care facilities (effective 6/1/2007):

(i) The following locators on the UB-04 must be completed by the health care facilities: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 15, 17, 18 - 28, 29, 31, 37, 42, 43, 44, 46, 47, 50, 56, 58, 60, 63, 65, 67, 72, 73, 74.

(ii) Locator 1. Practitioner name, complete address and telephone number.

(iii) Locator 2. Paid to service provider - name and address.

(iv) Locator 3. Patient control number, medical record number

(v) Locator 4. Enter code 111, 115, 117, 121, 125, 127, 851, 855, or 857 for inpatient; 131, 135, 137 for outpatient and for emergency room; 831 for FASC. (Note: if locator 42 contains an entry beginning with "45", then the service was emergency room, not outpatient.)

(vi) Locator 5. Hospital federal tax identification number.

(vii) Locator 6. Statement coverage dates must be provided.

(viii) Locator 7. (NM Specific) Covered days - the days during the billing period applicable to the cost report.

(ix) Locator 8a. Injured worker's I.D. 8b-injured worker's name

(x) Locator 10. Injured worker's birthdate.

(xi) Locator 11. Gender

(xii) Locator 12. Date of admission to hospital or facility.

(xiii) Locator 14. Type of admission, code values: 1=emergency, 2=urgent, 3=elective, 5=trauma center, 9=information unavailable.

(xiv) Locator 15. Source of admission code values: 1=physician referral, 2=clinic referral, 3=HMO referral, 4 = hospital transfer, 6 = transfer from HCF, 7 = ER, 8 = law enforcement, 9 = unavailable, A = transfer from (CAH).

(xv) Locator 17. Patient status: code values (01-76).

(xvi) Locators 18-28. Use condition code 02 for employment related injury.

(xvii) Locator 29. Accident and state abbreviation.

(xviii) Locator 31. Date of work-related occurrence. Note: code = 04, 03, 02, 05, 06 or 07.

(xix) Locator 37. New Mexico specific (WCA) DRG code (diagnosis related group) code used by medicare to group medical services provided

by inpatient hospital services. Required for type of bill = 111, 115, 117, 121, 125, 127, or inpatient for CAH codes 851, 855, and 857.

(xx) Locator 42. Revenue codes for services billed. (Note: revenue code (0001) must be provided in column 42 for total charges.)

(xxi) Locator 43. Lists and describes each medical service and item being billed corresponding to revenue code applicable.

(xxii) Locator 44. Accommodation rate for applicable services provided.

(xxiii) Locator 46. Units of service (mandatory for accommodation rate).

(xxiv) Locator 47. Billed charges. Information based on service provided (revenue code). (note: last revenue code in column 42 must be 0001)

(xxv) Locator 50. Insurance carrier, self-insurer or TPA (claims administrator).

(xxvi) Locator 56. National provider identifier of hospital facility.

(xxvii) Locator 58. Insured's name or employer's name.

(xxviii) Locator 60. SSN of injured worker or worker's identification number.

(xxix) Locator 63. WCA authorization number

(xxx) Locator 65. Employer's name.

(xxxi) Locator 67. Principle diagnosis code must be based on ICD-9-CM. Code must include all five digits.

(xxxii) Locator 67a-h. Other diagnosis codes are based on ICD-9-CM. These codes are sent to payer if available.

(xxxiii) Locator 72. External cause of injury code.

(xxxiv) Locator 73. (N.M. WCA Specific) The health care facilities, current workers' compensation ratio.

(xxxv) Locator 74. and 74 (a-e) Principle procedure code and date: The HCP enters the ICD-9-CM code for the inpatient principle procedure. The principle procedure is the procedure performed for definitive treatment rather than for diagnostic or exploratory purposes, which is necessary to take care of a complication. The code should relate closely to the principle diagnosis. A date should also be provided.

(6) The health care facility is required to submit all requested data to the payer. Failure to do so could result in fines and penalties imposed by the WCA. All payers are required to notify the economic research bureau of unreported data fields within 10 days of payment of any inpatient

bill.

C. New Mexico gross receipts tax (NMGRT): Practitioners whose corporate tax status requires them to pay NMGRT shall bill for NMGRT in one of the following ways:

(1) Indicate via a printed or stamped statement adjacent to the combined “total charges” that the individual charges and total charges include NMGRT at the specific percentage applicable to the practitioner.

(2) Make no mention of NMGRT, in which case the bill shall be paid at the lesser of the healthcare provider fee schedule or the billed amount.

(3) Itemize the actual amount of the NMGRT below the combined “total charges” amount for all billed services and items, indicating the specific tax rate (percent) applicable to the municipality or county location of the practitioner; and, add this amount to the combined “total charges” to derive a “total amount billed”.

D. Medical records

(1) Initial bills for every visit shall be accompanied by appropriate office notes (medical records) which clearly substantiate the service(s) being billed and are legible.

(2) No charge shall be made to any party to the claim for the initial copy of required information. Second copies provided shall be charged and paid pursuant to Subsection A of 11.4.7.15 NMAC.

(3) A charge may be made to the requesting party to the claim for second and subsequent copies of any medical records.

(4) No charge shall be made for provision of medical records to the WCA’s utilization review/case management/peer review contractor for required information.

(5) Records for hospitals and FASCs shall have a copy of the admission history and physical examination report and discharge summary, hospital emergency department medical records, ambulatory surgical center medical records or outpatient surgery records.

[4-1-91, 12-31-91, 11-18-92, 1-15-93, 10-28-93, 3-14-94, 12-2-94, 11-18-94, 12-31-94, 8-1-96, 10-01-98; 11.4.7.10 NMAC - Rn, 11 NMAC 4.7.10, 8-30-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 12-30-05; A, 12-31-06; A, 1-1-07; A, 12-31-07; A, 12-31-09; A, 12-31-12]

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End of Adopted Rules Section

Other Material Related to Administrative Law

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Director's Response to Public Comment

The proposed changes to the WCA Healthcare Provider Fee Schedule, Parts 3, 4 and 7 and of the WCA Rules were released for public comment on October 18, 2012. The public comment period was from October 18, 2012 through November 26, 2012, which was subsequently extended through December 3, 2012.

The WCA accepted comment at the public hearing on the proposed amendments. There was no comment at the hearing on the fee schedule or Part 3 of the WCA Rules.

Part 3: The agency proposed amendments to the rules governing mileage and reimbursement to workers. No comments were received at hearing and the rule will be promulgated as proposed.

Comments concerning Part 4:

Evidence based medicine: The agency proposed adoption of EBM to streamline the authorization process, provide consistent medical care and provide for the quick and efficient delivery of medical care and reduce disputes over the reasonableness and necessity of medical care.

Comments were received concerning the adoption of two separate guidelines that indicated it would be confusing. Based on those comments, the WCA has opted to adopt the Official Disability Guidelines™ (ODG) instead of both systems. ODG received more support in public comment than did American College of Occupational and Environmental Medicine (ACOEM). Another proposal suggested that the NM WCA adopt the Colorado guidelines or New Mexico specific guidelines. This comment was rejected because the cost and time associated in formulating and maintaining our own guidelines was prohibitive. NM opted not to adopt the Colorado state guidelines because of concerns that they were not as comprehensive nor as frequently updated as ODG. One comment proposed that there should be a delay in adoption to allow for training. In response to this comment, we have delayed implementation until July 1, 2013 to allow time for training. Another comment indicated that ODG would be mandated as the only medical standard in treating injured workers and that flexibility should be allowed. The proposed rule was revised to clarify that this is only intended to

create a positive presumption not a negative presumption. Comments were also expressed that purchasing or subscribing to the ODG system is costly. The WCA continues to look into options to mitigate the costs associated with using ODG.

HCP Selection Rule: Comments were received that the implementation of this rule would lead to more litigation. In response, the rule has been revised to clarify that healthcare providers treating the worker prior to written notification would not be deemed either party's choice. Another comment received was that this rule removes predictability and creates ambiguity. This concern was addressed through the revision. Another comment was that the proposal negates the current rule and case law that had previously put this issue to rest. The final revised rule clarifies and gives effect to the statutory scheme.

Adjudication rules: Concerns were raised that amendments to the adjudication rules would confuse rather than clarify the litigation process. The WCA has made minor revisions to the proposed rules to make clarifications to the adjudicatory process.

Comments received regarding Part 7:

E-billing: One comment was received that the mandate for electronic billing should be delayed to allow payers more time to implement the process. In response to this comment, the WCA delayed implementation until July 1, 2014. Another concern was expressed that the proposed e-billing rule is vague and that it is unclear what standard should be implemented. The WCA continues to look at this issue and the rule may be revised in the future. At this time, the rule is left broad enough that the medical and insurance communities can determine appropriate standards of use.

These rules will be adopted pursuant to NMSA 1978, §52-5-4 and 52-4-4.

The public record of this rulemaking shall incorporate this Response to Public Comment and the formal record of the rulemaking proceedings shall close upon execution of this document.

Ned S. Fuller
Director
N.M. Workers' Compensation Administration
December 17, 2012

End of Other Related Material Section

Submittal Deadlines and Publication Dates 2012

| Volume XXIII | Submittal Deadline | Publication Date |
|-----------------|--------------------|------------------|
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| Issue Number 20 | October 16 | October 30 |
| Issue Number 21 | November 1 | November 15 |
| Issue Number 22 | November 16 | November 30 |
| Issue Number 23 | December 3 | December 14 |
| Issue Number 24 | December 17 | December 31 |

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