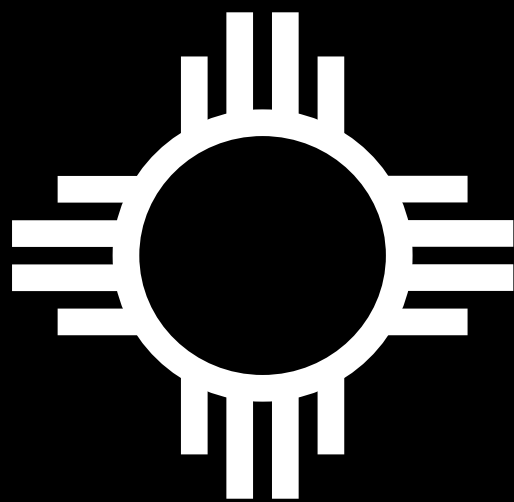


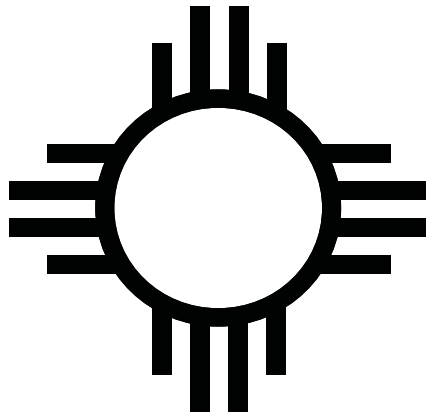
**NEW
MEXICO
REGISTER**



Volume XXV
Issue Number 9
May 15, 2014

New Mexico Register

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May 15, 2014**



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

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Administrative Law Division
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2014

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New Mexico Register

Volume XXV, Number 9

May 15, 2014

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Effective Date and Validity of Rule Filings

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

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Notices of Rulemaking and Proposed Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT EARLY CHILDHOOD SERVICES

NOTICE OF PUBLIC HEARING 8.15.2 NMAC and 8.16.2 NMAC

The Children, Youth and Families Department (CYFD), Early Childhood Services (ECS), will hold a formal public hearing on Thursday, June 19, 2014, at 11:00 a.m. in Apodaca Hall of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico, to receive public comments regarding changes to regulations 8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers and 8.16.2 NMAC Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs.

The proposed regulation changes may be obtained at www.newmexicokids.org or by calling 505-827-7499 or 1-800-832-1321. Interested persons may testify at the hearing or submit written comments no later than 12:00 p.m. on June 19, 2014. Written comments will be provided the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Jeffrey Miles, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-827-9978. For questions regarding the proposed regulation changes, please call 505-827-7499 or 1-800-832-1321.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please call 505-827-7499 or 1-800-832-1321. ECS requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NOTICIA DE AUDICION PÚBLICA 8.15.2 NMAC and 8.16.2 NMAC

El Departamento de Children, Youth and Families (CYFD), Servicios de Niñez Temprana (ECS), tendrá una audición formal para el público el jueves, 19 de junio de 2014, a las 11:00 de la mañana en el salón Apodaca, el segundo piso del edificio PERA localizado en 1120 Paseo de Peralta, Santa Fe, New Mexico, para recibir comentarios públicos con respecto

a cambios propuestos a las regulaciones NMAC 8.15.2, Los Requisitos para Programas de Ayuda de Guardería para Clientes y Proveedores y NMAC 8.16.2 Centros Guardería de Niños, Programas Fuera Tiempo de Escuela, Casa de Familia Guardería de Niños y Otro Programas Cuidado y Educación Temprana.

Los cambios propuestos de la regulación pueden ser obtenidos en www.newmexicokids.org o por llamar 505-827-7499 o 1-800-832-1321. Las personas interesadas pueden testificar en la audición o someter comentarios escritos hasta las 12:00 de la tarde el día 19 de junio de 2014. Los comentarios escritos serán proporcionados la misma consideración como testimonio oral en la audición. Los comentarios escritos deben ser dirigidos a: Jeffrey Miles, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax #: 505-827-9978. Preguntas con respecto a los cambios propuestos de regulación, por favor llame 505-827-7499 o 1-800-832-1321.

Si usted es una persona con incapacidades y usted requiere esta información en un formato alternativo o requiere alojamientos especiales para tomar parte en la audición pública, por favor llame 505-827-7499 o 1-800-832-1321. CYFD requiere aviso de las peticiones por lo menos 10 días de preaviso para proporcionar formatos solicitados alternativos y alojamientos especiales.

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT FILM DIVISION

Notice of Proposed Rulemaking

The Economic Development Department/ Film Division ("EDD or Department") hereby gives notice that the Department will conduct a public hearing as indicated to obtain input on amending the following rules:

- 5.5.51 NMAC (Development Employment Funding for Film and Multimedia Production Companies)
- 5.5.52 NMAC (Development Pre-Employment Training for Film and Multimedia Production Companies)

The proposed rulemaking actions specific to the Job Training Incentive Program (JTIP)

for Film and Multimedia Programs may be accessed on May 12, 2014 on the Film Division's website (www.nmfilm.com) or obtained from Rochelle Bussey at the contact below.

A public hearing regarding the rules will be held on Thursday, June 12, 2014 at the Joseph Montoya Building, BID Room, 1100 St. Francis Drive, Santa Fe, NM 87505. The time for the hearing on the proposed rules is 9:00 AM MDT.

Interested individuals may testify at the public hearing or submit written comments regarding the proposed rulemaking relating to the JTIP for Film and Multimedia Programs to Rochelle Bussey, Sr. Manager of Workforce Development Programs, New Mexico Economic Development Department, P.O. Box 20003 Santa Fe, New Mexico 87504-5003, or rochelle@nmfilm.com (505) 476-5604. Written comments must be received no later than 5:00 pm on Wednesday, June 11, 2014.

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

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed repeal and replacement of 7.34.2 NMAC ("Advisory Board Responsibilities and Duties"), 7.34.3 ("Registry Identification Cards"), and 7.34.4 NMAC ("Licensing Requirements for Producers, Production Facilities and Distribution"). The hearing will be held on Monday, June 16th at 9:00 a.m. in the Harold Runnels Building auditorium, located at 1190 St. Francis Drive in Santa Fe, New Mexico. The public hearing will be conducted to receive public comment regarding proposed changes to these rules.

A copy of these materials may be obtained from, and written comments may be submitted to:

Andrea Sundberg, Program Coordinator
Medical Cannabis Program

New Mexico Department of Health
P.O. Box 26110
1190 St. Francis Dr., Suite S-3400
Santa Fe, NM 87502-6110
505-827-2451
E-mail: medical.cannabis@state.nm.us

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Andrea Sundberg at the above address or telephone number. The Department requests at least ten (10) days' advance notice for special accommodations requests.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department (the Department), Medical Assistance Division (MAD) is proposing to repeal of the following rule that are part of the New Mexico Administrative Code (NMAC): 8.314.4 NMAC, *Long Term Care Services-Waivers, Acquired Immunodeficiency Syndrome (AIDS) or AIDS-Related Condition Home and Community-Based Services Waiver*. The public hearing to receive testimony on these proposed rules will be held in the South Park Conference Room, 2055 S. Pacheco, Santa Fe on Monday, June 16, 2014 at 9 a.m.

The register for the repeal of these rules is available on the HSD/MAD web site at <http://www.hsd.state.nm.us/>. If you do not have Internet access, a copy of the proposed rule may be requested by contacting MAD at 505-827-7743.

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling 505-827-7743. Electronic comments may be submitted to Cedric.Chavez@state.nm.us. Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. Mountain Standard Time Monday, June 16, 2014.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3152. In Santa Fe call 827-7743. The Department's TDD system may be accessed toll-free at 1-800-

659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY TRAINING AND RECRUITING DIVISION

Law Enforcement Academy

Notice

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY NM LAW ENFORCEMENT ACADEMY BOARD MEETING

On Wednesday June 25, 2014 at 9:00 a.m., the New Mexico Law Enforcement Academy Board will hold a Regular Board Meeting.

The NMLEA Board Meeting will be held at the South Broadway Cultural Center 1025 Broadway Albuquerque, NM 87102

Copies of the Regular Board Meeting Agenda's may be obtained by accessing our website at www.dps.nm.org/training or by calling Monique Lopez at (505) 827-9255.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF FUNERAL SERVICES

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LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Funeral Services will hold a Rule Hearing on Wednesday, June 18, 2014. Following the Rule Hearing, the New Mexico Board of Funeral Services will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Funeral Services Rule Hearing will begin at 10:00 a.m.

and the regular meeting will convene immediately following the Rule Hearing. The meetings will be held at the Regulation and Licensing Department, 2550 Cerrillos Rd., in the Hearing Room 1, Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.64.1 NMAC General Provisions, 16.64.13 NMAC Licensure for Military Service Members, Spouses and Veterans.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, PO Box 25101 Santa Fe, New Mexico 87505, (505)476-4622, or send an e-mail to thanatoboard@state.nm.us after May 18, 2014. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than June 4, 2014. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

The Board may enter into Executive Session pursuant to § 10-15-1 of the Open Meetings Act, to discuss matters related to the issuance, suspension, renewal or revocation of licenses.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4622 at least two weeks prior to the meeting or as soon as possible.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT PHYSICAL THERAPY BOARD

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Physical Therapy Examiners will hold a Rule Hearing on Thursday, June 26, 2014. Following the Rule Hearing the New

Mexico Board of Physical Therapy will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Physical Therapy Rule Hearing will begin at 12:00 p.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the Regulation and Licensing Department, 5200 Oakland Ave. NE Suite A, Albuquerque, NM 87113.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.20.1 NMAC: General Provisions, 16.20.2 NMAC: Examinations, 16.20.3 NMAC: Issuance of Licenses, 16.20.4 NMAC: Temporary Licenses, 16.20.6 NMAC: Physical Therapist Assistants, 16.20.7 NMAC: Supervision, 16.20.8 NMAC: Renewal Requirements and Continuing Education, 16.20.9 NMAC: Education Criteria for Foreign-Educated Applicants, 16.20.11 NMAC: Disciplinary Proceedings, 16.20.12 NMAC: Licensure for Military Service Members, Spouses and Veterans.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87505, or call (505) 476-4880 after March 13, 2014. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than June 9, 2014. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4880 at least two weeks prior to the meeting or as soon as possible.

Teresa Ortega, Board Administrator
PO Box 25101- Santa Fe, New Mexico
87504

**End of Notices and Proposed
Rules Section**

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Adopted Rules

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.10.8 NMAC, Section 8, effective May 15, 2014.

6.10.8.8 REQUIREMENTS:

A. It is the policy of this state that school age persons receive an education and do not dropout or otherwise withdraw prematurely prior to completing an educational program. To that end, a school-age person shall attend public school, private school, home school or a state institution until the school-age person is at least eighteen years of age unless that person has graduated from high school or received a general educational development certificate. A parent may give written, signed permission for the school-age person to leave school in case of a documented hardship approved by the local superintendent.

B. Each local school board and charter school shall develop a written attendance policy that:

(1) in accordance with the definition of "attendance" stated in this rule, requires that class attendance be taken and maintained by class period for every instructional day for each student in each school or school program in the school district;

(2) provides excused absences for pregnant and parenting students as follows:

(a) provides at least ten days of excused absences for a student who provides documentation of the birth of the student's child and allows the student a time period to make up the work that the student missed that equals the number of days the student was absent for the birth of a child;

(b) provides excused absences for any additional days missed by a pregnant or parenting student for which a longer period of absence is deemed medically necessary by the student's physician and allows the student a time period to make up the work that the student missed that equals the number of days the student was absent;

(c) provides four days per semester of excused absences, in addition to the number of allowed absences for all students, for a student who provides appropriate documentation of pregnancy or that the student is the parent of a child under the age of thirteen needing care and allows the student a time period to make up the work that the student missed that equals the number of days the student was absent;

(d) clearly states that the pregnant or parenting student is responsible for communicating the student's pregnancy and parenting status to the appropriate school

personnel if the student chooses to disclose the information; and

(e) provides that the school district or charter school shall provide a copy of the pregnant and parenting student absence policies to all students in middle, junior high and high schools; and

[(2)] (3) requires each school to report unexcused absences of two or more classes up to fifty percent of an instructional day as one-half day absence, and the unexcused absence of more than fifty percent of an instructional day to be counted as one full-day absence;

[(3)] (4) prohibits out-of-school suspension and expulsion as a punishment for unexcused absences and habitual truancy;

[(4)] (5) uses withdrawal as provided in Section 22-8-2 NMSA 1978 only after exhausting intervention efforts to keep students in educational settings;

[(5)] (6) provides for early identification of students with unexcused absences, students in need of early intervention, and habitual truants; provides for intervention strategies that focus on keeping students in need of early intervention in an educational setting; and further provides that:

(a) if a student is in need of early intervention, the school district or charter school shall contact the student's parent(s)/guardian(s) to inform them that the student has unexcused absences from school and to discuss possible interventions unless the parent(s)/guardian(s) has contacted the school to explain the absence and the excuse compiles with the school district attendance policy;

(b) a representative of the school district or charter school shall meet with the student in need of early intervention and his or her parent(s)/guardian(s) to identify the causes for the student's unexcused absences, identify what actions can be taken that might prevent the student's unexcused absences, identify possible school district, charter school and community resources to address the causes for the student's unexcused absences, and establish a corrective action plan to address the student's unexcused absences;

(c) the notification to the student's parent(s)/guardian(s) and the meeting with the parent(s)/guardian(s) must be respectful and in a language and in manner that is understandable to the student and the parent(s)/guardian(s);

(d) the corrective action plan must contain follow-up procedures to ensure that the causes for the student's unexcused absences are being addressed;

(e) if the student is a habitual

truant, the local school board, charter school or their authorized representatives shall, in addition, give written notice of the habitual truancy by mail to or by personal service on the student's parent(s)/guardian(s); the notice shall include a date, time and place for the parent to meet with the local school district or charter to develop intervention strategies that focus on keeping the student in an educational setting;

(f) if there is another unexcused absence after delivery of a written notice of habitual truancy, the student shall within seven (7) days of this unexcused absence be reported to the probation services office of the judicial district where the student resides;

(g) if the student is a habitual truant the school shall document the following for each student identified as a habitual truant:

(i) attempts of the school to notify the parent that the student had unexcused absences;

(ii) attempts of the school to meet with the parent to discuss intervention strategies; and

(iii) intervention strategies implemented to support keeping the student in school.

C. If the habitual truant is not referred to the children's court by the juvenile probation office for appropriate disposition, including consideration of initial or renewed suspension of his or her driving privileges, the school district may contact the children's court attorney directly to determine what action will be taken.

D. If a determination and finding has been made by the juvenile probation office that the habitual truancy by a student may have been caused by the parent or guardian of the student, and no charges have been filed against the parent or guardian, the school district may contact the district attorney's office to determine what action will be taken.

E. A copy of the local school board or charter school's attendance policy shall be provided to the public education department's [~~truancy prevention coordinator~~] health education coordinator or designated staff for approval within ten (10) days of its adoption by the local school board or governing body of a charter school.

F. The public education department's truancy prevention coordinator shall be permitted access to any records and information related to students in need of early intervention or habitual truancy in any school district, any particular school within a district, or any charter school.

[6.10.8.8 NMAC - N, 12-30-04; A, 09-30-09; A, 05-15-14]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.12.6 NMAC, Sections 7 and 8, effective May 15, 2014.

6.12.6.7 DEFINITIONS:

A. "Coordinated school health approach" means the framework for linking health and education. The focus is healthy and successful students. There are eight interactive components of coordinated school health: health education; physical education and activity; nutrition; social and emotional well-being; healthy and safe environment; health services; staff wellness; and family, school and community involvement.

B. "Family, school and community involvement" means an integrated family, school and community approach for enhancing the health and well-being of students by establishing a district school health advisory council that has the responsibility to make recommendations to the local school board in the development or revision, implementation, and evaluation of the wellness policy.

C. "Health education" means the instructional program that provides the opportunity to motivate and assist all students to maintain and improve their health, prevent disease, and reduce health-related risk behaviors. It allows students to develop and demonstrate increasingly sophisticated health-related knowledge, attitudes, skills, and practices. It meets the content standards with benchmarks and performance standards as set forth in 6.30.2.19 NMAC.

D. "Health services" means services provided for students to appraise, protect, and promote health. These services are designed to ensure access or referral to primary health care or behavioral health services or both, foster appropriate use of primary health care services, behavioral health services, prevent and control communicable diseases and other health problems, provide emergency care for illness or injury, promote and provide optimum sanitary conditions for a safe school facility and school environment, and provide educational and counseling opportunities for promoting and maintaining individual, family, and community health.

E. "Healthy and safe environment" means the physical and aesthetic surroundings and the psychosocial climate and culture of the school. It supports a total learning experience that promotes personal growth, healthy interpersonal relationships, wellness, and freedom from discrimination and abuse.

F. "Nutrition" means programs that provide access to a variety of nutritious and appealing meals and snacks that accommodate the health and nutrition needs of all students.

G. "Physical activity" means body movement of any type which include recreational, fitness, and sport activities.

H. "Physical education" means the instructional program that provides cognitive content and learning experiences in a variety of activity areas. It provides the opportunity for all students to learn and develop the skills, knowledge and attitudes necessary to personally decide to participate in a lifetime of healthful physical activity. It meets the content standards with benchmarks and performance standards as set forth in Section 6.30.2.20 NMAC.

I. "Social and emotional wellbeing" means services provided to maintain and/or improve students' mental, emotional, behavioral, and social health.

J. "Staff wellness" means opportunities for school staff to improve their health status through activities such as health assessments, health education and health-related fitness activities. These opportunities encourage school staff to pursue a healthy lifestyle that contributes to their improved health status, improved morale, and a greater personal commitment to the school's overall coordinated school health approach.

K. [~~"Tactical emergency response plan" means that portion of a safe school plan that details risk assessments and establishes the plans or procedures to manage an emergency event after it has occurred and includes, but is not limited to, emergency routes and staff assignments as they relate to immediate actions, delayed actions, mitigation actions, facility evacuations and facility reentry~~] "Emergency Operation Plan (EOP)" means the document which outlines and explains functions, resources and coordination procedures for responding to and supporting crisis, emergency, terrorist-response, and disaster operations, and is that portion of a safe school plan that details risk assessments and establishes the plans or procedures to manage a crisis, emergency, terrorist or disaster event before, during and after it has occurred and includes, but is not limited to, emergency routes and staff assignments as they relate to immediate actions, delayed actions, mitigation actions, facility evacuations and facility reentry.

[6.12.6.7 NMAC - N, 02-28-06; A, 11-30-06; A, 05-15-14]

6.12.6.8 REQUIREMENTS:

A. This section applies to local school boards, local school districts, and charter schools and governs

policies to be implemented by local school districts with regards to student and school employee wellness.

B. Each school district and charter school shall develop and implement a policy that addresses student and school employee wellness through a coordinated school health approach.

C. Each school district and charter school shall submit the wellness policy to the public education department for approval.

(1) Sections of the wellness policy that meet the requirements set forth in Paragraphs (3), (4), (5), (6) and (11) of Subsection D and the requirements set forth in Subsection E of this section shall be submitted to the public education department on or before August 30, 2006.

(2) Sections of the wellness policy that meet the requirements set forth in Paragraphs (1), (2), (7), (8), (9) and (10) of Subsection D of this section shall be submitted to the public education department on or before January 30, 2007.

D. The wellness policy shall include, but shall not be limited to:

(1) a planned, sequential, K-12 health education curriculum that addresses the physical, mental, emotional, and social dimensions of health and is aligned to the health education content standards with benchmarks and performance standards as set forth in 6.30.2.19 NMAC;

(2) a planned, sequential, K-12 physical education curriculum that provides the optimal opportunity for all students to learn and develop skills, knowledge and attitudes necessary to personally decide to participate in lifetime healthful physical activity and is aligned to the physical education content standards with benchmarks and performance standards as set forth in 6.30.2.20 NMAC;

(3) guidelines to provide physical activity opportunities to students before, during and/or after school;

(4) nutrition guidelines for a la carte offerings minimally meeting guidelines set forth in Subsection B of 6.12.5.8 NMAC;

(5) guidelines for school sponsored fund raisers during the normal school hours minimally meeting guidelines set forth in Paragraph (1) of Subsection C of 6.12.5.8 NMAC;

(6) guidelines for school sponsored fund raisers before and after schools hours ensuring that at least fifty percent of the offerings shall be healthy choices in accordance with the requirements set forth in Paragraph (2) of Subsection C of 6.12.5.8 NMAC;

(7) a plan addressing the behavioral health needs of all students in the educational process by focusing on students' social and emotional wellbeing;

(8) school safety plans at each school building focused on supporting healthy and safe ~~[environments and including but not necessarily limited to:~~
~~_____ (a) prevention;~~
~~_____ (b) policies and procedures, and~~
~~_____ (c) tactical emergency response plan;]~~ learning environments; the school safety plan must be submitted to the public education department for approval on a three-year cycle and must include the following minimum components:
~~_____ (a) introduction;~~
~~_____ (b) school policies and procedures;~~
~~_____ (c) prevention; and~~
~~_____ (d) a school EOP;~~
 (9) a plan addressing the health services needs of students in the educational process;

(10) a plan addressing the staff wellness needs of all school staff that minimally ensures an equitable work environment and meets the American with Disabilities Act, Part III;

(11) a plan for measuring implementation and evaluation of the wellness policy, including the designation of one or more persons within the school district, or at each school, as appropriate, charged with operational responsibility for ensuring that each school fulfills the district's wellness policy.

E. Family, school and community involvement. Each local board of education shall establish a district school health advisory council that consists of parent(s), school food authority personnel, school board member(s), school administrator(s), school staff; student(s); and community member(s). The school health advisory council shall have the responsibility to make recommendations to the local school board in the development or revision, implementation, and evaluation of the wellness policy consistent with this rule. The school health advisory council shall meet for this purpose a minimum of two times annually.
 [6.12.6.8 NMAC - N, 02-28-06; A, 11-30-06; A, 05-15-14]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.12.7 NMAC, Sections 2, 3, 6, 7 and 8, effective May 15, 2014.

6.12.7.2 SCOPE: ~~[All public schools, including charter schools, and state-supported educational institutions]~~ Local school boards and all public schools, including charter schools.
 [6.12.7.2 NMAC - N, 11-30-06; A, 05-15-14]

6.12.7.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to Sections ~~22-2-1, 22-2-21~~ and 9-24-8 NMSA 1978.
 [6.12.7.3 NMAC - N, 11-30-06; A, 05-15-14]

6.12.7.6 OBJECTIVE: This rule establishes requirements for ~~[districts, schools and state-supported educational institutions]~~ local school boards and public schools, including charter schools, to address bullying of students by adopting and implementing policies and prevention programs.
 [6.12.7.6 NMAC - N, 11-30-06; A, 05-15-14]

6.12.7.7 DEFINITIONS:
 A. "Bullying" means any repeated and pervasive written, verbal or electronic expression, physical act or gesture, or a pattern thereof, that is intended to cause distress upon one or more students in the school, on school grounds, in school vehicles, at a designated bus stop, or at school activities or sanctioned events. Bullying includes, but is not limited to, hazing, harassment, intimidation or menacing acts of a student which may, but need not be based on the student's race, color, sex, ethnicity, national origin, religion, disability, age or sexual orientation.

B. "Cyberbullying" means electronic communication that:
(1) targets a specific student;
(2) is published with the intention that the communication be seen by or disclosed to the targeted student;
(3) is in fact seen by or disclosed to the targeted student; and
(4) creates or is certain to create a hostile environment on the school campus that is so severe or pervasive as to substantially interfere with the targeted student's educational benefits, opportunities or performance.

~~[B:]~~ C. "Department" means the public education department.
~~[C:]~~ D. "Harassment" means knowingly pursuing a pattern of conduct that is intended to annoy, alarm or terrorize another person.

~~[D:]~~ E. "IDEA" means the federal Individuals with Disabilities Education Act, 20 USC Secs. 1401 and following, including future amendments.

~~[E:]~~ F. "Local school board" means the governing body of a school district ~~[or charter school].~~

G. "Public school" means a school as defined by Section 22-1-2 NMSA 1978, including charter schools.

~~[F:]~~ "School district" means an area of land established as a

political subdivision of the state for the administration of public schools and ~~segregated geographically for taxation and bonding purposes.]~~
 [6.12.7.7 NMAC - N, 11-30-06; A, 05-15-14]

6.12.7.8 REQUIREMENTS:
 A. This section ~~[applies to local school boards, local school districts, and charter schools and]~~ governs policies and programs to be adopted and implemented by local school ~~[districts with regards to]~~ boards addressing bullying and cyberbullying. Cyberbullying policies and programs must be in effect beginning with the 2013-2014 school year.
 B. Each ~~[school district and charter school]~~ local school board shall develop and implement a policy that addresses bullying ~~[, no later than April 1, 2007]~~ and cyberbullying. Each local school board shall make any necessary revisions to its disciplinary policies to ensure that cyberbullying is addressed in accordance with the requirements of this rule.

C. ~~[Any such]~~ The anti-bullying policy shall at least include, but shall not be limited to:

- (1) definitions;
- (2) an absolute prohibition against bullying and cyberbullying;
- (3) a method to ensure initial and annual dissemination of the anti-bullying and anti-cyberbullying policy to all students, parents, teachers, administrators and all other school or district employees;
- (4) procedures for reporting incidents of bullying and cyberbullying which ensure confidentiality to those reporting bullying or cyberbullying incidents and protection from reprisal, retaliation or false accusation against victims, witnesses or others with information regarding a bullying or cyberbullying incident;
- (5) consequences for bullying and cyberbullying which include consideration of compliance with state and federal IDEA requirements;

(6) consequences for knowingly making false reports pursuant to the anti-bullying policy;

(7) procedures for investigation by administration of incidents reported pursuant to the anti-bullying policy;

(8) a requirement that teachers and other school staff report any incidents of bullying and cyberbullying; and

(9) a requirement that anti-bullying is included as part of the health education curriculum as set forth in 6.30.2.19 NMAC ("content standards - health education").

D. The cyberbullying prevention policy shall require that:

- (1) all licensed school employees complete training on how to recognize signs

of cyberbullying;

(2) any licensed school employee who has information about or a reasonable suspicion of cyberbullying shall report the matter immediately to either or both the school principal and the local superintendent or to the head administrator of a charter school;

(3) any school administrator or local superintendent who receives a report of cyberbullying take immediate steps to ensure prompt investigation of the report; and

(4) school administrators take prompt disciplinary action in response to cyberbullying confirmed through investigation; disciplinary action taken pursuant to this subsection must be by the least restrictive means necessary to address a hostile environment on the school campus resulting from the confirmed cyberbullying and may include counseling, mediation and appropriate disciplinary action that is consistent with the legal rights of the involved students.

E. Every public school shall implement a bullying and cyberbullying prevention program.

F. Every local school board shall submit to the department, as directed by the department, assurances of:

(1) adoption and implementation of a policy addressing bullying and cyberbullying; and

(2) review and, if necessary, revision of disciplinary policies to ensure that the policies address cyberbullying; and

(3) implementation of cyberbullying training for all licensed school employees.

G. Every local school board and every charter school shall submit to the department, as directed by the department, assurances of implementation of bullying and cyberbullying prevention programs.

[6.12.7.8 NMAC - N, 11-30-06; A, 05-15-14]

NEW MEXICO PUBLIC REGULATION COMMISSION UTILITY DIVISION

This is an amendment to 17.9.572 NMAC Sections 7 and 14, effective May 15, 2014.

17.9.572.7 DEFINITIONS:

Unless otherwise specified, as used in this rule:

A. procure means to generate or purchase renewable energy or to purchase renewable energy certificates or to commit to generate or purchase renewable energy or to commit to purchase renewable

energy certificates;

B. public utility means an entity certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act but does not include rural electric cooperatives;

C. reasonable cost threshold (RCT) means the cost level established by the commission above which a public utility shall not be required to add renewable energy to its electric energy supply portfolio pursuant to the renewable portfolio standard;

D. renewable energy means electrical energy generated by means of a low or zero emissions generation technology with substantial long-term production potential and generated by use of renewable energy resources that may include solar, wind, hydropower resources brought into service after July 1, 2007, geothermal, fuel cells that are not fossil fueled and biomass resources; biomass resources are fuels, such as agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas and anaerobically digested waste biomass; renewable energy does not include fossil fuel or nuclear energy;

E. renewable energy certificate (REC) [~~means a document evidencing that the enumerated renewable energy kilowatt-hours have been generated from a renewable energy generating facility; and shall represent all of the environmental attributes associated with the generation of renewable energy;~~] means a certificate or other record, in a format approved by the commission, that represents all the environmental attributes from one kilowatt-hour of electricity generation from a renewable energy resource;

F. renewable portfolio standard (RPS) means the percentage of retail energy sales by a public utility to electric consumers in New Mexico that is required to be supplied by renewable energy;

G. fully diversified renewable energy portfolio means one in which no less than 30% of the renewable portfolio standard requirement is met using wind energy, no less than 20% is met using solar energy, no less than 5% is met using one or more of the other renewable energy technologies, as defined by this section; in a fully diversified renewable energy portfolio, no less than the following percentages are met through distributed generation:

(1) no less than 1 ½% for plan years 2011 through 2014; and

(2) no less than 3% beginning in plan year 2015;

H. emissions means all emissions regulated by state or federal authorities, including but not limited to all criteria pollutants and hazardous air pollutants, plus mercury and carbon dioxide (CO₂);

I. distributed generation means electric generation sited at a customer's premises, providing electric energy to the customer load at that site or providing electric energy to a public utility or a rural electric distribution cooperative for use by multiple customers in one or more contiguous distribution substation service areas;

J. plan year means the calendar year for which approval is being sought;

K. plan year total revenues means plan year projected total retail revenues including the sum of:

(1) plan year total retail energy sales multiplied by the company's approved base fuel and non-base fuel retail rates by rate class;

(2) projected fuel clause revenues; and

(3) all projected rider revenues, not including:

(a) projected plan year renewable portfolio revenue requirements, and

(b) projected undergrounding rider contributions in aid of construction;

L. plan year total retail energy sales means weather adjusted retail energy sales in kWh projected for the plan year adjusted for projected energy efficiency reductions based on approved energy efficiency and load management programs in effect at the time of the filing, less:

(1) energy sales to large customers that qualify under Section 62-16-4A (2) NMSA 1978; and

(2) energy sales to customers exempted pursuant to Section 62-16-4A (3) NMSA 1978;

M. large customer adjustment means the specific procurement requirements for nongovernmental customers at a single location or facility, regardless of the number of meters at that location or facility, with consumption exceeding 10 million kilowatt-hours per year, the procurement of renewable energy will be limited to the lower of two percent of that customer's annual electric charges or \$99,000; after January 1, 2012, the \$99,000 limit is adjusted for inflation by the amount of the cumulative increase change in the consumer price index, urban, all items (CPI-U) published by the bureau of labor statistics between January 1, 2011 and January 1 of the procurement plan year;

N. political subdivision of the state means a division of the state made by proper authorities thereof, acting within

their constitutional powers, for purpose of carrying out a portion of those functions of the state which by long usage and inherent necessities of government have always been regarded as public.

[17.9.572.7 NMAC - Rp, 17.9.572.7 NMAC, 5-31-13; A, 5-15-14]

17.9.572.14 ANNUAL RENEWABLE ENERGY ACT PLAN:

An annual Renewable Energy Act plan shall include plan year and next plan year data. The plan year shall be presented for commission approval and the next plan year shall be presented for informational purposes.

A. On or before July 1 of each year, each public utility must file with the commission an annual Renewable Energy Act plan. The filing schedule shall be staggered, each of the investor owned utility filings shall occur one month apart, the last filing to be made July 1 of each year. The utilities shall file alphabetically each year (El Paso electric shall file May 1; public service company of New Mexico shall file June 1; and southwestern public service company shall file July 1 each year).

B. The annual Renewable Energy Act plan is to include:

(1) testimony and exhibits providing a full explanation of the utility's determination of the plan year and next plan year renewable portfolio standard and reasonable cost threshold;

(2) the cost of procurement in the plan year and the next plan year for all new renewable energy resources required to comply with the renewable portfolio standard selected by the utility pursuant to Section 13 of this rule;

(3) the amount of renewable energy the public utility plans to provide in the plan year and the next plan year required to comply with the renewable portfolio standard;

(4) testimony and exhibits demonstrating how the cost and amount specified in Paragraphs (2) and (3) of this subsection were determined;

(5) testimony and exhibits demonstrating the plan year and next plan year procurement amounts and costs based on revenue requirements expected to be recovered by the utility;

(6) testimony and exhibits demonstrating the plan year and next plan year procurement amounts and costs if complying with a fully diversified renewable portfolio standard is limited by the reasonable cost threshold;

(7) testimony and exhibits demonstrating the plan year and next plan year procurement amounts and costs based on revenue requirements expected to be recovered by the utility if limited by the

reasonable cost threshold;

(8) testimony and exhibits that demonstrate that the proposed procurement is reasonable as to its terms and conditions considering price, costs of interconnection and transmission, availability, dispatchability, renewable energy certificate values and portfolio diversification requirements;

(9) testimony and exhibits regarding the amount and impact of renewable energy that can be added in any given year without adding generating resources for load following or system regulation purposes;

(10) testimony and exhibits demonstrating that the portfolio procurement plan is consistent with the integrated resource plan and explaining any material differences; and

(11) demonstration that the plan is otherwise in the public interest.

C. Plan year revenue requirements: For RCT purposes, the plan year revenue requirements shall reflect rate impacts on customer bills and shall be determined by applying a traditional revenue requirements impact approach for all resources, including regulatory assets authorized in prior plan years, used to satisfy the renewable portfolio standard and shall not include normalizations, annualizations and out of period adjustments.

(1) Revenue requirement adjustments shall ~~only~~ include net avoided fuel and purchased power costs, cost savings resulting from environmental credits (if not already included in the net avoided fuel costs) pursuant to compliance rules in effect during the plan year, and costs cost savings or increases for capacity, generation, transmission, or distribution, operation and maintenance expense, back-up and load following generation, off-system sales opportunity impacts, or other facilities and improvements or functions that may be required and that can be shown to result in actual reductions or increases in plan year revenue requirements to be collected from [in costs to] ratepayers.

(2) Avoided fuel costs are expected or modeled fuel savings that result from the procurement of renewable resources in the plan years.

D. A public utility shall serve notice and a copy of its annual renewable energy plan filing by first class mail on renewable resource providers requesting such notice from the commission, the New Mexico attorney general, and the intervenors in the public utility's most recent rate case. A public utility shall also post on its website the most recent and the pending annual Renewable

Energy Act plans.

[17.9.572.14 NMAC - Rp, 17.9.572.16 NMAC, 5-31-13; A, 5-15-14]

NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.6 NMAC, Section 8, 9 and 10, effective May 16, 2014. In 15.2.6.9 NMAC, Subsection A through H and Subsection J through P were not published as there were no changes.

15.2.6.8 VETERINARY PRACTICES:

A. VETERINARIANS UNDER AUTHORITY OF OFFICIAL VETERINARIAN: Veterinarians licensed by the commission and practicing at any location under the jurisdiction of the commission are under the supervision of the official veterinarian and the stewards. The official veterinarian shall recommend to the stewards or the commission the discipline to be imposed upon a veterinarian who violates the rules.

B. TREATMENT RESTRICTIONS:

(1) Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the commission.

(2) This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:

(a) a recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;

(b) a non-injectable substance on the direction or by prescription of a licensed veterinarian;

(c) a non-injectable non-prescription medication or substance.

(3) No person shall possess on any location under the jurisdiction of the commission any of the following unless approved by the commission:

(a) any drug which is a narcotic, stimulant, or depressant, or any other substance or medication that has been prepared or packaged for injection by a hypodermic syringe, or hypodermic needle;

(b) any hypodermic syringe, hypodermic needle or any equipment

associated with the aid of intravenous administration.

(4) At any location under the jurisdiction of the commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the commission.

(5) If a person has a medical condition which makes it necessary to possess a prohibited item pursuant to Paragraph (3) of Subsection B of 15.2.6.8 NMAC, that person may:

(a) request permission of the stewards or the commission in writing;

(b) furnish a letter from a licensed physician explaining why it is necessary for the person to possess a prohibited item;

(c) and must comply with any conditions and restrictions set by the stewards or the commission.

(6) If the licensee is a trainer the following requirements are to be followed: Commencing on the day of the alleged violation of Paragraph (3) of Subsection B of 15.2.6.8 NMAC, all of the trainer's horses that will be racing within 48 hours will be tested by the commission's official laboratory. Upon a finding of a violation by the board of stewards of Paragraph (3) of Subsection B of 15.2.6.8 NMAC payment of all costs for testing of the horses shall be borne by the trainer.

(7) The recommended penalty (in absence of mitigating circumstances) for violation of Paragraph (3) of Subsection B of 15.2.6.8 NMAC is a fifteen hundred dollar (\$1,500) fine and a six month suspension.

(8) Veterinarians shall not have contact with an entered horse on race day except for the administration of furosemide under the guidelines set forth in Subsection F of 15.2.6.9 NMAC unless approved by the official veterinarian or in an emergency situation. Should an emergency occur during evening hours, the veterinarian shall notify the official veterinarian as soon as possible the following morning.

C. EXTRACORPOREAL SHOCK WAVE THERAPY OR RADIAL PULSE WAVE THERAPY: The use of extracorporeal shock wave therapy or radial pulse wave therapy shall not be permitted unless the following conditions are met:

(1) Any extracorporeal shock wave therapy or radial pulse wave therapy machine, whether in operating condition or not, must be registered with and approved by the commission or its designee before such machine is brought to or possessed on any racetrack or training center within the jurisdiction of the commission.

(2) The use of extracorporeal shock wave therapy or radial pulse wave therapy within the jurisdiction shall be limited to veterinarians licensed to practice

by the commission. Extracorporeal shock wave therapy or radial pulse wave therapy may only be performed with machines that are registered and approved for use by the commission; used at a previously-disclosed location that is approved by the commission; and must be reported within 24 hours prior to treatment on a prescribed form to the official veterinarian.

(3) Any treated horse shall not be permitted to race or breeze for a minimum of 10 days following treatment.

(4) Any horse treated with extracorporeal shock wave therapy or radial pulse wave therapy shall be added to a list of ineligible horses. This list shall be kept in the race office and accessible to the jockeys and their agents during normal business hours and be made available to other regulatory jurisdictions.

(5) A horse that receives any such treatment without full compliance with this section and similar rules in any other jurisdiction in which the horse was treated shall be placed on the stewards' list.

(6) Any person participating in the use of extracorporeal shock wave therapy or the possession of extracorporeal shock wave therapy machines in violation of this rule shall be considered to have committed a prohibited practice and is subject to a class A penalty.

[C-] D. VETERINARIAN'S REPORTS:

(1) Every veterinarian who treats a race horse at any location under the jurisdiction of the commission shall, in writing on a form approved by the commission, report to the official veterinarian the name of the horse treated, any medication, drug or substance administered or prescribed or administered, the name of the trainer of the horse, the date and time of treatment and any other information requested by the official veterinarian.

(2) The report shall be signed by the practicing veterinarian.

(3) The report will be made available to racing officials on request within a 48-hour period. Any such report is confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of these rules or in a proceeding before the stewards or the commission, or to the trainer or owner of record at the time of treatment.

[D-] E. VETERINARY

COMPLIANCE: The official veterinarian, racing veterinarian, and each practicing veterinarian shall comply with all federal and state statutes and applicable rules regulating veterinary practices as may be promulgated by the New Mexico board of veterinary medicine and the New Mexico board of pharmacy.

[15.2.6.8 NMAC - Rp, 15 NMAC 2.6.8, 04/13/2001; A, 07/15/2002; A, 02/15/2012; A, 07/31/2012, A, 05/16/2014]

15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES:

The "uniform classification guidelines for foreign substances and recommended penalties and model rule", revised December 2012, version 5.0 as issued by the association of racing commissioners international, is incorporated by reference. Upon a finding of a violation of any medication and prohibited substances rule, which includes the possession of contraband as listed in 15.2.6.9 NMAC, the stewards shall consider the classification level of the violation as listed at the time of the violation by the uniform classification guidelines of foreign substances as promulgated by the association of racing commissioners international and impose penalties and disciplinary measures as determined by the New Mexico racing commission.

I. ANDROGENIC-ANABOLIC STEROIDS:

(1) No AAS shall be permitted in test sample collected from racing horses except for residues of the major metabolite of ~~stanozolol~~ nandrolone, and the naturally occurring substances boldenone and testosterone at concentrations less than the indicated thresholds.

(2) Concentrations of these AAS shall not exceed the following urine threshold concentrations for total (i.e., free drug or metabolite and drug or metabolite liberated from its conjugates): [a] 16B-hydroxystanozolol (metabolite of stanozolol (Winstrol) - 1 ng/ml in urine for all horses regardless of sex; b) boldenone (Equipoise® is the undecylenate ester of boldenone) in male horses other than geldings - 15 ng/ml in urine; no boldenone shall be permitted in geldings or female horses; c) nandrolone (Durabolin® is the phenylpropionate ester and Deca-Durabolin® is the decanoate ester) (in geldings - 1 ng/ml in urine, in fillies and mares - 1 ng/ml in urine); in male horses other than geldings - 45 ng/ml of metabolite, 5 alpha-oestrane-3 beta, 17 alpha - diol in urine; d) testosterone (in geldings - 20 ng/ml in urine, in fillies and mares - 55 ng/ml in urine);

(a) boldenone (Equipoise® is the undecylenate ester of boldenone) in male horses other than geldings - 15 ng/ml in urine; no boldenone shall be permitted in geldings or female horses;

(b) nandrolone (Durabolin® is the phenylpropionate ester and Deca-Durabolin® is the decanoate ester) (in

geldings - 1 ng/ml in urine, in fillies and mares - 1 ng/ml in urine); in male horses other than geldings-45 ng/ml of metabolite, 5 alpha oestrane-3 beta, 17 alpha - diol in urine;

(c) testosterone (in geldings - 20 ng/ml in urine, in fillies and mares - 55 ng/ml in urine).

(3) Any other anabolic steroids are prohibited in racing horses.

(4) The presence of more than one of the [four] three AAS identified in Paragraph (2) of this subsection at concentrations greater than the individual thresholds indicated above shall not be permitted.

(5) Post-race urine samples collected from intact males must be identified to the laboratory.

(6) Any horse to which an anabolic steroid has been administered in order to assist in the recovery from illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug or metabolite in urine. After the concentration has fallen below the designated threshold for the administrated AAS, the horse is eligible to be removed from the list.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001; A, 07/15/2002; A, 08/15/2002; A, 09/29/2006; A, 10/31/2006; A, 08/30/2007; A, 01/31/2008; A, 03/01/2009; A, 06/15/2009; A, 06/30/2009; A, 09/15/2009; A, 12/15/2009; A, 03/16/2010; A, 07/05/2010; A, 09/01/2010; A, 12/01/2010; A, 11/01/2011; A, 02/15/2012; A, 04/30/2012; A, 07/31/2012; A, 12/14/2012; A, 05/01/2013; A/E, 05/02/2013; A, 09/30/2013; A, 05/16/2014]

15.2.6.10 TESTING:

A. REPORTING TO THE TEST BARN:

(1) The official winning horse, or any other horses ordered by the commission or the stewards shall be taken to the test barn to have a blood sample or a urine sample or both taken at the direction of the official veterinarian.

(2) Random or extra testing may be required by the stewards or the commission at any time on any horse.

(3) Unless otherwise directed by the stewards or the official veterinarian, a horse that is selected for testing must be taken directly to the test barn.

(4) A track security guard shall monitor access to the test barn area during and immediately following each racing performance. All persons who wish to enter the test barn area must be a minimum of 18-years-old, be currently licensed by

the commission, display their commission identification badge and have a legitimate reason for being in the test barn area.

B. SAMPLE COLLECTION:

(1) Sample collection shall be done in accordance with the RCI drug testing and quality assurance program external chain of custody guidelines, or other guidelines and instructions provided by the official veterinarian.

(2) The official veterinarian shall determine a minimum sample requirement for the primary testing laboratory. A primary testing laboratory must be accredited by [~~AALVD~~ or] ISO:17025 and approved by the commission.

(3) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the primary testing laboratory.

(4) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.

(5) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the primary testing laboratory shall be secured as the split sample.

(6) No split samples will be collected for determination of TCO2 levels.

C. ALKALINIZING SUBSTANCES:

(1) Blood samples for TCO2 and base excess testing should be collected 45 minutes (+ or - 15 min) pre-race and approximately three hours after furosemide administration. The samples must be handled in a consistent manner and cannot be frozen. If samples are obtained pre-furosemide a lower regulatory threshold is necessary and the horse must be kept in a secure barn until race time.

(2) The provisions of this rule pertaining to sample collection shall not apply to blood samples drawn for TCO2 analysis.

(3) Blood samples must be processed and tested within 120 hours using standardized, reproducible, validated procedures.

D. STORAGE AND SHIPMENT OF SPLIT SAMPLES:

(1) Split samples obtained in accordance with Paragraphs (3) and (4) Subsection B, of 15.2.6.10 NMAC above shall be secured and made available for further testing. A split sample shall be secured in the test barn under the same manner as the portion of the specimen acquired for shipment to a primary laboratory until such time as specimens are packed and secured for shipment to the

primary laboratory. Split samples shall then be transferred to a freezer at a secure location as provided by state statute or approved by the commission.

(2) A trainer, owner or designee of a horse having been notified that a written report from a primary laboratory states that a prohibited substance has been found in a specimen obtained pursuant to these rules may request that a split sample corresponding to the portion of the specimen tested by the primary laboratory be sent to another testing laboratory that is accredited by [~~AALVD~~ or] ISO:17025 and approved by the commission. The request must be made and confirmed with the commission not later than 48 hours excluding weekends and holidays after the trainer of the horse receives notice of the findings of the primary laboratory. The trainer's first choice, second choice and third choice of laboratories, for the split sample to be sent to, shall be listed within that 48 hours and kept on file with the horsemen's association. Any request not received within the specified deadline shall be considered a positive test. Any split sample so requested must be shipped within seven (7) working days after the trainer's 48 hour deadline or the New Mexico horsemen's association may be subject to disciplinary action.

(3) The owner, trainer or designee requesting testing of a split sample shall be responsible for the cost of shipping and testing. Failure of the owner, trainer or designee to appear at the time and place designated by the commission or the commission's designee shall constitute a waiver of all rights to split sample testing. Prior to shipment, the New Mexico horsemen's association shall confirm the split sample laboratory's willingness to provide the testing requested, the laboratory's willingness to send results to both the person requesting the testing and the commission, and arrangements for payment satisfactory to the split sample laboratory. A split sample testing laboratory must be accredited by [~~AALVD~~ or] ISO:17025 and approved by the commission. If a reference laboratory will accept split samples, that laboratory must be included among the laboratories approved for split sample testing.

(4) Prior to opening the split sample freezer, the commission shall provide a split sample chain of custody verification form that shall provide a place for recording the following information and such other information as the commission may require. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample.

(5) Split sample chain of custody form requirements: the date and time the

sample is removed from the split sample freezer; the sample number; the address where the split sample is to be sent; the name of the carrier and the address where the sample is to be taken for shipment; verification of retrieval of the split sample from the freezer; verification of each specific step of the split sample packaging in accordance with the recommended procedure verification of the address of the split sample laboratory on the split sample package; verification of the condition of the split sample package immediately prior to transfer of custody to the carrier; the date and time custody of the sample is transferred to the carrier.

(6) A split sample shall be removed from the split sample freezer by a commission representative in the presence of a representative of the horsemen's association.

(7) The owner, trainer or designee shall pack the split sample for shipment in the presence of the representative of the commission, in accordance with the packaging procedures recommended by the commission. A form shall be signed by both the horsemen's representative and the commission representative to confirm the packaging of the split sample. The exterior of the package shall be secured and identified with initialed tape, evidence tape or other means to prevent tampering with the package.

(8) The package containing the split sample shall be transported in a manner prescribed by the commission to the location where custody is transferred to the delivery carrier charged with delivery of the package to the commission-approved laboratory selected by the owner or trainer.

(9) The owner, trainer or designee and the commission representative shall inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(10) The split sample chain of custody verification form shall be completed and signed by the representatives of the commission and the owner or trainer. A commission representative shall keep the original and provide a copy for the owner or trainer.

E. OFFICIAL STATE RACING CHEMIST: The state racing commission may hire or contract with a qualified chemist to act as the official state racing chemist. The duties of the official state racing chemist may include, but shall not be limited to the following:

(1) review and evaluate scientific data submitted by the official testing laboratory concerning any race horse's positive drug test;

(2) submit a written report to the agency director of the racing commission

concerning a positive test, certifying the positive test as such, or that the test does not constitute a positive test based on the scientific data submitted by the official testing laboratory; if the test does not constitute a positive test it may be referred back to the laboratory for further testing;

(3) in the event that a split sample is sent for independent testing and the result of that test does not confirm with the results of the primary testing laboratory, the official state racing chemist shall review all scientific data submitted by the laboratory which tested the split and make recommendations to the agency director;

(4) appear before the racing commission as an expert witness, as needed in matters concerning chemical testing for drugs and medications;

(5) consult with the racing commission in matters concerning chemical testing for drugs and medication as the need arises;

(6) at the request of the commission, inspect the official testing laboratory and the racetrack collection facilities to insure their compliance with, and use of, proper scientific techniques and procedures.

[15.2.6.10 NMAC - Rp, 15 NMAC 2.6.10, 04/13/2001; A, 03/30/2007; A, 09/01/2010; A, 07/31/2012; A, 05/01/2013; A, 05/16/2014]

NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an amendment to 16.47.1 NMAC, Section 10, effective May 16, 2014. Subsection B through E were not published as there were no changes.

16.47.1.10 TRAINERS

A. ELIGIBILITY:

(1) An applicant for a license as trainer or assistant trainer must be at least 18 years of age; be qualified, as determined by the stewards or other commission designee, by reason of experience, background and knowledge of racing; a trainer's license from another jurisdiction, having been issued within a 24 month period by the commission, may be accepted as evidence of experience and qualifications; evidence of qualifications may require passing one or more of the following: a written examination; an oral examination; a demonstration of practical skills in a barn test given by a committee of trainers appointed by the New Mexico horsemen's association, witnessed by a steward and approved by the commission.

(2) Applicants not previously licensed as a trainer shall be required to pass a written/oral examination,

and demonstrate practical skills, and submit at least two written statements as to the character and qualifications of the applicant, and documentation of having completed a six month apprenticeship under the direct supervision of a licensed trainer or assistant trainer.

(a) Applicants failing the first written/oral examination must wait thirty (30) days before retaking the trainer's test.

(b) Applicants failing the second written/oral examination must wait sixty (60) days before retaking the trainer's test.

(c) Applicants failing the third written/oral examination must wait one (1) year before retaking the trainer's test.

(3) Beginning in 2015, trainers shall take and pass a written examination every three years prior to renewing their license. All trainer licenses expiring in the year 2015 and thereafter are subject to this requirement.

(4) A trainer, with a New Mexico trainer's license obtained before 2015 and that has been maintained for 10 consecutive years, is exempt from the written examination requirement in Paragraph (3) of this subsection, provided the trainer has no record of a class 1 or 2 violation, or has less than three class 3, 4, or 5 violations in the preceding 24 month period in New Mexico.

F. PROGRAM

TRAINERS:

(1) A program trainer, as defined in 15.2.1 NMAC, is a trainer who on behalf of an ineligible trainer or an undisclosed person:

(a) enters into an agreement for the sole purpose of completing an entry form for a race;

(b) pays an entry fee on behalf of an ineligible trainer or an undisclosed person;

(c) receives a financial or beneficial interest for the sole purpose of being listed as the trainer on the official race program; or

(d) obtains official works within New Mexico's jurisdiction on behalf of an ineligible trainer or an undisclosed person.

(2) A licensed trainer who violates Paragraph (1) of this subsection will be subject to the following penalties:

(a) First offense - six month suspension and a \$5,000 fine.

(b) Second offense - one year suspension and a \$10,000 fine.

(c) Third offense - license revocation with a three year ban on re-application and \$20,000 fine.

(d) A fourth or subsequent offense shall carry the same penalty as that imposed

for a third offense, and the penalties will run consecutively.

[16.47.1.10 NMAC - Rp, 16 NMAC 47.1.10, 03/15/2001; A, 11/15/2001; A, 03/30/2007; A, 08/30/2007; A, 06/30/2009; A, 09/15/2009; A, 07/05/2010; A, 05/16/2014]

End of Adopted Rules Section

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