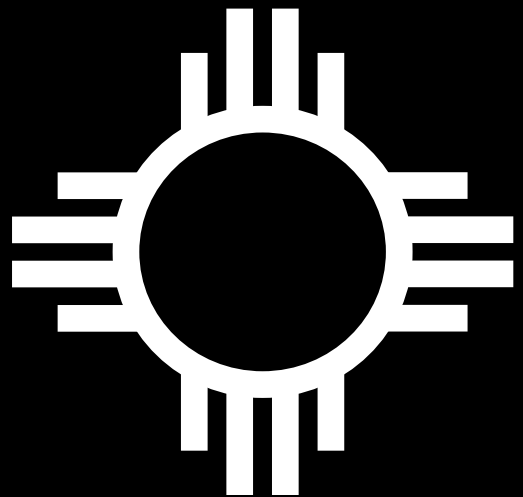


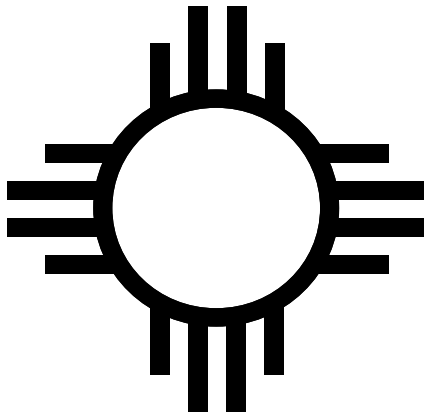
**NEW
MEXICO
REGISTER**



Volume XXV
Issue Number 21
November 13, 2014

New Mexico Register

**Volume XXV, Issue Number 21
November 13, 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
Santa Fe, New Mexico
2014

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New Mexico Register

Volume XXV, Number 21

November 13, 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.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board (“Board”) will hold a public hearing on January 23, 2015 at 10:00 a.m. at the Old PERA Building, Apodaca Hall, 1120 Paseo De Peralta, Santa Fe, New Mexico, 87504. The purpose of the hearing is to consider the matter of EIB 14-05 (R), a proposed amendment of the New Mexico State Implementation Plan (“SIP”) regarding 20.2.1 NMAC, *General Provisions*.

The proponent of this regulatory amendment is the New Mexico Environment Department (“NMED”).

The purpose of the public hearing is to consider and take possible action on a petition from the NMED to amend 20.2.1 NMAC. The purpose of proposed amendments to 20.2.1 NMAC is to codify the Department’s authority to request and receive documents required from regulated sources in an electronic format. The proposed amendment would stipulate that: pursuant to the *Cross-Media Electronic Reporting Rule* (CROMERR) as defined by Title 40 of the Code of Federal Regulations (CFR) Part 3; and the *Uniform Electronic Transactions Act*, NMSA 1978, §§ 14-16-1 to -21 (2001 as amended through 2013); any submittal to the department required by any part under Chapter 2, *Air Quality (Statewide)*, of Title 20, *Environmental Protection*, of the New Mexico Administrative Code, for which the department has notified persons subject to the applicable requirement that it is accepting specified electronic documents in lieu of paper, shall be submitted electronically, provided that the method of submittal complies with applicable federal and state standards for electronic submissions. The department may grant a waiver of this requirement on a case-by-case basis if requested by the regulated source. The proposed amendments will also address potential problems encountered with electronic reporting due to problems with computer systems and internet service providers. The proposed amendments will also include minor corrections to formatting and style. Upon adoption by the Board, the amended 20.2.1 NMAC would be submitted to EPA for incorporation into New Mexico’s SIP.

The full text of NMED’s proposed revised regulation is available on the Air Quality Bureau’s web site at http://www.nmenv.state.nm.us/aqb/prop_regs.html or by contacting Neal Butt at 505-476-4317 or neal.butt@state.nm.us. The proposed revised regulation may also be examined during office hours at the Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, 87505.

The hearing will be conducted in accordance with 20.1.1 NMAC, *Rulemaking Procedures – Environmental Improvement Board*, the *Environmental Improvement Act*, NMSA 1978, Section 74-1-9, the *Air Quality Control Act*, NMSA 1978, Section 74-2-6, and other applicable procedures.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) include a copy of the direct testimony of each technical witness in narrative
- (4) list and attach each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed new and revised regulations.

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on January 2, 2015, and should reference the docket number, EIB 14-05 (R), and the date of the hearing. Notices of Intent to present technical testimony should be submitted to:

Pam Castaneda, Board Administrator
Environmental Improvement Board
P. O. Box 5469
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-0310

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with their testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Juan Carlos Borrego of the NMED Human Resources Bureau by January 13, 2015 at P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-0424 or e-mail juancarlos.borrego@state.nm.us. TDY users please access his number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulation at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

NEW MEXICO COMMUNITY DEVELOPMENT COUNCIL

NOTICE OF PROPOSED RULE MAKING

The New Mexico Community Development Council (Council) through the Department of Finance and Administration gives notice that the Council will conduct a public hearing at Room 317 of the New Mexico State Capitol, 411 State Capitol, Santa Fe, New Mexico on Thursday, December 4, 2014, at 10:00 a.m. The purpose of the public hearing will be to obtain input to the proposed amendments to 2.110.2 NMAC Small Cities Community Development Block Grant.

Interested individuals may provide comments at the public hearing and/or submit written comments to Jolene Slown, Bureau Chief, Community Development Bureau, Local Government Division, Department of Finance and Administration, via email at JoleneM.Slowen@state.nm.us, fax (505) 827-4948, or directed to Ms. Slown at Department of Finance and Administration, Local Government Division, Bataan Memorial Building Room 202, Santa Fe, New Mexico 87501. Written comments must be received no later than 5:00 p.m. on Wednesday, December 3, 2014. The submission of written comments as soon as possible is encouraged. Copies of the proposed rules may be accessed on the Department’s website (<http://www.nmdfa.state.nm.us/>), or

obtained from Ms. Slown by calling (505) 827-4974.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Ms. Slown as soon as possible. The Department of Finance and Administration requires at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

NEW MEXICO CIVIL LEGAL SERVICES COMMISSION

NOTICE OF PROPOSED RULE MAKING AND REGULAR COMMISSION MEETING

The New Mexico Civil Legal Services Commission through the Department of Finance and Administration gives notice that the Commission will conduct a public rules hearing at the State Bar of New Mexico, 5121 Masthead NE, Albuquerque, New Mexico 87109 on Wednesday, December 17, 2014 at 10:00 a.m. The purpose of the public hearing will be to obtain input to the proposed amendments to 2.40.3.11 NMAC - Civil Legal Services Fund that define "suit against the state." Immediately following the rules hearing, the Commission will convene a regular meeting to take formal action on the proposed rules amendments and to conduct other Commission business and discuss and act on all other items listed on its meeting agenda. The final agenda for the Commission meeting will be available at least 72 hours before the meeting.

Interested individuals may provide comments at the public rules hearing and/or submit written comments to Jeannette Gallegos, Bureau Chief, Special Services Bureau, Local Government Division, Department of Finance and Administration, via email at Jeannette.Gallegos@state.nm.us, fax (505) 827-4948, or directed to Ms. Gallegos at Department of Finance and Administration, Local Government Division, Bataan Memorial Building Room 202, Santa Fe, New Mexico 87501. Written comments must be received no later than 5:00 p.m. on Wednesday, December 3, 2014. The submission of written comments as soon as possible is encouraged. Persons offering written comments at the rules hearing must have 10 copies for Commissioners and staff.

Copies of the proposed rules and the Commission meeting agenda may be accessed on the Department's website, http://www.nmdfa.state.nm.us/Civil_Legal_Services_Program.aspx or obtained by calling (505) 827-4787 or at the DFA Local Government Division, Room 202, Bataan Memorial Building, 407 Galisteo St., Santa Fe, New Mexico.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Ms. Gallegos as soon as possible. The Department of Finance and Administration requires at least ten (10) days advance 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 7.29.5 NMAC – "Certification of Community Health Workers." The hearing will be held at 9:00 AM on December 2, 2014 in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

The public hearing will be conducted to review proposed new regulations regarding the training and certification of community health workers pursuant to the 2014 Community Health Workers Act.

A copy of the proposed regulations can be obtained from:
Christina Carrillo
Office of Community Health Workers
New Mexico Department of Health
300 San Mateo Blvd., Suite 900
Albuquerque, New Mexico 87108
505-222-8671
Comm.HealthWorker@state.nm.us

Please submit any written comments regarding the proposed regulations to the attention of Christina Carrillo at the above address or e-mail prior to the hearing. If you are an individual with a disability who is need of special assistance or accommodations to attend or participate in the hearing, please contact Christina Carrillo by telephone at 505-222-8671. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The State of New Mexico Human Services Department (HSD) is accepting written comments through December 15, 2014, regarding its Home and Community-Based Services (HCBS) Developmental Disabilities Waiver (DDW) Transition Plan. The DDW program provides home and community-based services to eligible recipients who meet both financial eligibility and an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) level of care criteria. The goal of the DDW program is to serve an eligible recipient in his or her community as an alternative to him or her being institutionalized.

The key components of proposed DDW Transition Plan are as follows:

1. HSD, in collaboration with DOH, will revise the DDW Service Standards to include requirements of Final Rule (2249-F/2296-F).
2. HSD will launch a DDW provider self-assessment survey to gauge the level of compliance currently in place with Final Rule (2249-F/2296-F).
3. HSD, through DOH, will begin training DDW providers on its new DDW Service Standards.
4. Based on the self-assessment survey results, DOH will provide individual technical assistance to providers to assist them come into compliance with the revised DDW Service Standards.
5. DOH will conduct DDW provider site surveys beginning in 2017 to ensure full compliance with DDW Service Standards.
6. If a DDW provider fails to fully comply, HSD and DOH will begin the transitioning of eligible recipients to a fully compliant DDW provider.

Impact: *HSD does not anticipate a service or financial impact to eligible recipients and their healthcare providers based on the proposed DDW Transition Plan as listed in 1-6 above.*

Public Comment and Testimony Opportunities

Further information can be found on the HSD webpage at:
<http://www.hsd.state.nm.us/public-notice-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>.

Written comments must be submitted by 5:00 p.m. Mountain Standard Time (MST) on December 15, 2014

by mail to: Cecelia Salazar, Human Services Department, Medical Assistance Division,

Program Policy & Integrity Bureau, P.O. Box 2348, Santa Fe, New Mexico 87504. Recorded messages may be left at (505) 827-7743 or toll free at (888) 997-2583 asking for extension 7-7743. Emails may be directed to: Cecelia.Salazar@state.nm.us.

A public hearing on the proposed DDW Transition Plan is scheduled to be held at the Toney Anaya Building, in the Rio Grande Room, Santa Fe, New Mexico on December 15, 2014 @ 10 a.m. MST.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The State of New Mexico Human Services Department (HSD) is accepting written comments through December 15, 2014, regarding its Home and Community-Based Services (HCBS) Developmental Disabilities Waiver (DDW) Amendment (DDW Amendment). The DDW program provides home and community-based services to eligible recipients who meet both financial eligibility and an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) level of care criteria. The goal of the DDW program is to serve an eligible recipient in his or her community as an alternative to him or her being institutionalized.

The key components of proposed changes under the DDW Amendment are as follows:

1. Increase provider rates for Customized In-Home Supports, Customized Community Supports, and Supported Employment - (Appendix J)
2. Increase the number of eligible recipients served through DDW for waiver years 4 and 5 - (Appendices B and J).
3. Revise the Critical Incident Reporting Processes - (Appendix G).
4. Include the Transition Plan related to the CMS Final Rule 2249-F/2296-F - (Attachment 2 and Appendix C).
5. Update the HSD Administrative Hearing process - (Appendix F-1).

Impact: HSD does not anticipate a service or financial impact to DDW eligible recipients or their healthcare providers with the DDW Amendment.

Public Comment and Testimony Opportunities

Further information can be found on the

HSD webpage at:

<http://www.hsd.state.nm.us/public-notice-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>.

Written comments must be submitted by 5:00 p.m. Mountain Standard Time (MST) on December 15, 2014

by mail to: Cecilia Salazar, Human Services Department, Medical Assistance Division, Program Policy & Integrity Bureau, P.O. Box 2348, Santa Fe, New Mexico 87504. Recorded messages may be left at (505) 827-7743 or toll free at (888) 997-2583 asking for extension 7-7743. Emails may be directed to: Cecelia.Salazar@state.nm.us.

A public hearing on the proposed DDW Amendment is scheduled to be held at the Toney Anaya Building, in the Rio Grande Room, Santa Fe, New Mexico on December 15, 2014 @ 11 a.m. MST.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to amend a rule that is part of the New Mexico Administrative Code (NMAC): 8.314.5 *Developmental Disabilities Home and Community-Based Services Waiver* (DDW). The register for the proposed amendments to this rule will be available November 13, 2014 on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx>. If you do not have Internet access, a copy of the proposed rule may be requested by contacting MAD at (505) 827-7743.

Specifically:

1) Section 8.314.5.10 C.

HSD is proposing to add new language to this Section in order to delete repetitive and lengthy standard language throughout the rule and replace it one sentence in corresponding Sections and Subsections of the rule.

Example –

8.314.5.10 C MAD through its designee, DDS, follows a subcontractor model for certain DDW services. A provider agency, following the DDS model, must ensure the subcontractors or employees meet all required qualifications. A provider agency must provide oversight of subcontractors and employees to ensure subcontractors or employees meet all required MAD and DDS qualifications. ***There must be oversight of subcontractors and***

employees by the provider agency to ensure the services are delivered in accordance with the all requirements set forth by DDS DDW service definition, all requirements outlined in the DDW services standards, applicable NMAC rules, MAD supplement, and as applicable, his or her New Mexico licensing board's scope of practice and licensure. Pursuant to federal regulations, an agency may not employ or subcontract with the spouse an eligible recipient or the parent of an eligible recipient under 18 years of age receiving MAD services to provide direct care services for the eligible recipient.

Case management providers, ***their case managers, whether subcontractors or employees must comply with Section 10 of this rule.***

Impact: HSD does not anticipate a service or financial impact to eligible recipients and their healthcare providers based on the amendments to the DDW rule.

2) 8.314.5.12 K.(5) Column 3

HSD is proposing to delete Section 13 Subsection K's third column from the table, *Development Disabilities Waiver Groups 1 through G*. HSD is proposing to no longer use the *SIS sum ABE National Percentile* as part of the DDW Standard Decision Rules. DOH does not rely on the *SIS sum ABE National Percentile* as part of the Standard Decision Rules therefore HSD would remove this language from the rule.

Impact: HSD does not anticipate a service or financial impact to eligible recipients and their healthcare providers based on the amendment to the DDW rule.

3) Section 8.314.5.20 Continuation of Benefits Pursuant to Timely Appeal

HSD revised 8.352.2 NMAC *Claimant Hearing* rule earlier this year. In this, the timeframe to request a continuation of existing benefits was set at 10 calendar days. HSD is proposing to align this rule to 8.352.2 NMAC for consistency.

Impact: HSD does not anticipate a service or financial impact to impact to eligible recipients and their healthcare providers based on the amendments to the DDW rule.

- 4)** Overall, HSD is taking this opportunity to standardize language throughout the rule, such as the replacing 'individual' or 'participant' with eligible recipient. These changes do not alter the manner

or intent of the current application of the rule for providers and eligible recipients.

Impact: *HSD does not anticipate a service or financial impact to eligible recipients and their healthcare providers based on the amendments to the DDW rule.*

A public hearing to receive testimony on this proposed rule will be held in the Rio Grande Conference Room, Toney Anaya Building, 2550 Cerrillos Road Santa Fe on December 15, 2014 at 1:30 p.m. Mountain Standard Time (MST).

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 Cecelia.Salazar@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 December 15, 2014, 5:00 p.m. MST.

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 7-7743. 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 10 working 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 COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The New Mexico Commission of Public Records has scheduled a regular meeting for Tuesday, December 9, 2014, at 9:30 a.m. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a

reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette L. Solano at 476-7902 by December 3, 2014. Public documents, including the agenda and minutes, can be provided in various accessible formats.

NOTICE OF RULEMAKING

The Commission of Public Records may consider the following items of rulemaking at the meeting:

Amendment

1.18.333 NMAC ERRDS, Taxation and Revenue Department
1.18.350 NMAC ERRDS, General Services Department
1.18.369 NMAC ERRDS, State Commission of Public Records
1.18.924 NMAC ERRDS, Public Education Department
1.13.5 NMAC New Mexico Historical Records Grant Program Guidelines

Repeal

1.18.505 NMAC ERRDS, Department of Cultural Affairs
1.18.516 NMAC ERRDS, Department of Game and Fish
1.18.550 NMAC ERRDS, Office of the State Engineer
1.18.708 NMAC ERRDS, Crime Victims Reparation Commission
1.13.6 NMAC New Mexico Historical Records Scholars Program

Replacement

1.18.505 NMAC ERRDS, Department of Cultural Affairs
1.18.516 NMAC ERRDS, Department of Game and Fish
1.18.550 NMAC ERRDS, Office of the State Engineer
1.18.708 NMAC ERRDS, Crime Victims Reparation Commission

New

1.18.551 NMAC ERRDS, Interstate Stream Commission
1.13.9 NMAC New Mexico Historical Records Advisory Board

A copy of the agenda and proposed rules are available at the Office of the State Records Administrator, 1205 Camino Carlos Rey, Santa Fe, NM 87507 and on the Commission website at: www.nmcpr.state.nm.us/index.htm. The agenda is subject to change up to 72 hours prior to the meeting.

NEW MEXICO PUBLIC SCHOOLS INSURANCE AUTHORITY

NOTICE OF PUBLIC HEARING REGARDING PROPOSED REPEAL AND REPLACEMENT OF RULES 6.50.1 NMAC AND 6.50.10 NMAC IN ORDER TO UPDATE REGULATIONS IN ACCORDANCE NEW MEXICO PUBLIC SCHOOL AUTHORITY POLICY CHANGES.

Notice is hereby given pursuant to amendments to Sections 22-29-7(E) and 22-29-7(F), NMSA 1978 (being Laws 1986, Chapter 94, Section 7 as amended) that the New Mexico Public School Insurance Authority plans to repeal and replace rules 6.50.1 NMAC and 6.50.10 NMAC in order to update the regulations in accordance with Authority policy changes.

The proposed new rules will be discussed and comments taken at a public hearing to be held February 4, 2015 at 9:00 a.m. at the New Mexico Public Schools Insurance Authority Board Meeting on February 4, 2015 at 9:00a.m. at the Cooperative Educational Services, 4216 Balloon Park Road, NE, Albuquerque, NM 87109. The Board Meeting will be called pursuant to Subsection H of 6.50.1.9 NMAC of the Board's Rules and Regulations and as provided by the current Open Meeting Act Resolution of the Authority. Copies of the proposed rules will be provided to all of the member of school districts, charter schools and other educational entities and may be obtained before the meeting at the New Mexico Public School Insurance Authority's offices at 410 Old Taos Highway, Santa Fe, New Mexico by contacting Christy Edwards (505) 988-2736 or by email to christy.edwards@state.nm.us.

Interested person may submit written comments to the New Mexico Public Schools Insurance Authority at 410 Old Taos Highway, Santa Fe, New Mexico 87501 or email comments to christy.edwards@state.nm.us to be received by 5:00p.m. January 28, 2015. Written comments should suggest specific reasons for any suggested amendments or comments and include and proposed amendatory language.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the meeting, please contact the office of the Executive Director of the New Mexico Public School Insurance Authority at 1-800-548-3724 prior to

the hearing, or as soon as possible. The proposed rules can be provided in various accessible formats. Please contact the office of the Executive Director of the New Mexico Public School Insurance Authority at 1-800-548-3724 if a summary or other type of accessible format is needed before January 28, 2015. If accommodation is not requested in advance, we cannot guarantee the availability of accommodation on-site.

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
NURSING BOARD**

Public Rules Hearing

The New Mexico Board of Nursing will hold a Rules Hearing on Monday, December 15, 2014. The Rules Hearing will begin at 9:00 a.m. The rules hearing will be held at the New Mexico Board of Nursing Conference Room, 6301 Indian School RD NE, Suite 710, Albuquerque NM 87110.

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

Persons desiring to present their views on the proposed amendments to the rules may download them from www.bon.state.nm.us.

In order for the Board members to review the comments prior to the hearing, persons wishing to submit written comments regarding the proposed rules should submit them to the Board office in writing no later than December 1, 2014. Persons wishing to present written comments at the hearing are asked to provide (10) copies of any comments or proposed changes for distribution to the Board and staff. In addition, persons may present their comments orally at the hearing.

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

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

**NEW MEXICO TAXATION
AND REVENUE
DEPARTMENT**

**NEW MEXICO TAXATION AND
REVENUE DEPARTMENT**

**NOTICE OF HEARING AND
PROPOSED RULES**

The New Mexico Taxation and Revenue Department proposes to adopt the following rules:

Gross Receipts and Compensating Tax Act

3.2.103.8 NMAC
Section 7-9-15 NMSA 1978
(Single Member Limited Liability

*Company Whose Sole Member is a 501(c)
(3) Organization)*

3.2.117.11 NMAC
Section 7-9-29 NMSA 1978
(Single Member Limited Liability

*Company Whose Sole Member is a 501(c)
(3) Organization)*

3.2.218.14 NMAC
Section 7-9-60 NMSA 1978
(Single Member Limited Liability

*Company Whose Sole Member is a 501(c)
(3) Organization)*

These proposals were placed on file in the Office of the Secretary on November 10, 2014. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about January 15, 2015.

A public hearing will be held on these proposals on Wednesday, December 17, 2014, at 2:00 p.m. in the ASD Large Conference Room on the third floor of the Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before December 17, 2014.

**TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS
TAXES
PART 103: EXEMPTION -
COMPENSATING TAX - CERTAIN**

ORGANIZATIONS

3.2.103.1 ISSUING AGENCY:
Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[3.2.103.1 NMAC - N, xx/xx/xx]

3.2.103.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[3.2.103.2 NMAC - N, xx/xx/xx]

3.2.103.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[3.2.103.3 NMAC - N, xx/xx/xx]

3.2.103.4 DURATION:
Permanent.
[3.2.103.4 NMAC - N, xx/xx/xx]

3.2.103.5 EFFECTIVE DATE:
xx/xx/xx, unless a later date is cited at the end of a section.
[3.2.103.5 NMAC - N, xx/xx/xx]

3.2.103.6 OBJECTIVE:
The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[3.2.103.6 NMAC - N, xx/xx/xx]

3.2.103.7 DEFINITIONS:
[Reserved]
[3.2.103.7 NMAC - N, xx/xx/xx]

3.2.103.8 SINGLE MEMBER LIMITED LIABILITY COMPANY WHOSE SOLE MEMBER IS A 501(c)(3) ORGANIZATION:

A. A single member limited liability company (llc) whose sole member is a 501(c)(3) organization will be treated like a 501(c)(3) organization and receive the same treatment for purposes of Section 7-9-15 NMSA 1978 so long as the llc is recognized by the internal revenue service as a disregarded entity for federal income tax purposes.

B. An llc described in Subsection A above that uses the property in the conduct of an unrelated trade or business as defined in Section 513 of the Internal Revenue Code of 1986, as amended or renumbered, is not exempt pursuant to Section 7-9-15 NMSA 1978.
[3.2.103.8 NMAC - N, xx/xx/xx]

3.2.117.11 SINGLE MEMBER LIMITED LIABILITY COMPANY WHOSE SOLE MEMBER IS A 501(c)(3) ORGANIZATION:

A. A single member limited liability company (llc) whose sole

member is a 501(c)(3) organization will be treated like a 501(c)(3) organization and receive the same treatment for purposes of Section 7-9-29 NMSA 1978 so long as the llc is recognized by the internal revenue service as a disregarded entity for federal income tax purposes.

B. Any receipts of an llc described in Subsection A above that are derived from an unrelated trade or business as defined in Section 513 of the Internal Revenue Code of 1986, as amended or renumbered, are not exempt from gross receipts tax under Subsection A of Section 7-9-29 NMSA 1978.

[3.2.117.11 NMAC – N, xx/xx/xx]

3.2.218.14 SINGLE MEMBER LIMITED LIABILITY COMPANY WHOSE SOLE MEMBER IS A 501(c)(3) ORGANIZATION:

A. A single member limited liability company (llc) whose sole member is a 501(c)(3) organization will be treated like a 501(c)(3) organization and receive the same treatment for purposes of Section 7-9-60 NMSA 1978 so long as the llc is recognized by the internal revenue service as a disregarded entity for federal income tax purposes.

B. Receipts from the sale of tangible personal property to an llc described in Subsection A above when the property is employed in the conduct of an unrelated trade or business as defined in Section 513 of the Internal Revenue Code of 1986, as amended or renumbered, are not deductible pursuant to Subsection A of Section 7-9-60 NMSA 1978. If the llc, or its 501(c)(3) single member, delivering the nttc employs the tangible personal property in the conduct of an unrelated trade or business, the compensating tax is due.

[3.2.218.14 NMAC – N, xx/xx/xx]

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO HIGHER EDUCATION DEPARTMENT

**TITLE 5 POST-SECONDARY
EDUCATION
CHAPTER 55 PUBLIC POST-
SECONDARY EDUCATION GENERAL
PROVISIONS
PART 2 TRIBAL COLLEGE
DUAL CREDIT PROGRAM**

5.55.2.1 ISSUING AGENCY:
New Mexico Higher Education Department
[5.55.2.1 NMAC - N, 11/13/2014]

5.55.2.2 SCOPE: This rule
applies to dual credit programs at Diné
College, the Institute of American Indian
Art, Navajo Technical University and
Southwest Indian Polytechnic Institute.
[5.55.2.2 NMAC - N, 11/13/2014]

**5.55.2.3 STATUTORY
AUTHORITY:** Section 9-25-8; 21-1-1.2
NMSA 1978.
[5.55.2.3 NMAC - N, 11/13/2014]

5.55.2.4 DURATION:
Permanent.
[5.55.2.4 NMAC - N, 11/13/2014]

5.55.2.5 EFFECTIVE DATE:
November 13, 2014, unless a later date is
cited at the end of a section.
[5.55.2.5 NMAC - N, 11/13/2014]

5.55.2.6 OBJECTIVE: The
purposes of the tribal college dual credit
program are:

A. to provide high school
students the opportunity to enroll in college-
level academic or career-technical courses
offered by the four tribal post-secondary
institutions;

B. to permit those enrolled
students to simultaneously earn credit
toward high school graduation and a post-
secondary degree or certificate; and

C. to provide for
reimbursement of dual credit tuition and
fees for the four tribal colleges.
[5.55.2.6 NMAC - N, 11/13/2014]

5.55.2.7 DEFINITIONS:

A. "Appropriation"
means the legislative financial allocation
granted to reimburse the tribal colleges for
dual credit tuition and fees.

**B. "Classification of
instructional program (CIP)"** is a coding
system that contains titles and descriptions
of instructional programs.

C. "Dual Credit Council"
is an advisory group consisting of staff of

the higher education department and the
public education department that issues
recommendations to the cabinet secretaries
of the public education and higher
education departments regarding dual credit
issues.

**D. "Dual Credit
Program"** means a program offered by
the tribal colleges and secondary schools
that permits high school students to enroll
in college-level courses offered by the
tribal colleges that may be academic
or career-technical, but not remedial or
developmental. Dual credit students will
simultaneously earn credit toward high
school graduation and a postsecondary
degree or certificate.

E. "Department"
means the New Mexico higher education
department.

**F. "Inadequate
Appropriation"** means a legislative
financial allocation that does not fully
compensate all of the tribal colleges for the
dual credit tuition and fees.

**G. "Local Educational
Agency (LEA)"** is a public school district,
a state-chartered school or a bureau of
Indian education-funded high school.

H. "Tribal College"
means diné college, the institute of
American Indian arts, the Navajo technical
university, southwest Indian polytechnic
institute and any other post-secondary
educational institutions that are tribally,
federally or congressionally chartered in
the state of New Mexico and accredited by
the north central association of colleges and
schools.
[5.55.2.7 NMAC - N, 11/13/2014]

5.55.2.8 REIMBURSEMENT OF TUITION AND FEES:

A. If sufficient
appropriations are received, the tribal
colleges will be fully reimbursed for all
dual credit tuition and fees. The date
of reimbursements is dependent upon
receiving accurate and timely data from
each tribal college in order to accurately
calculate the amount due to each college.
If final and accurate data is received in a
timely manner, the reimbursements for fall
semester will be distributed on or about
March 31 of each year. If final and accurate
data is received in a timely manner, the
reimbursements for the spring semester
will be made on or about August 31 of each
year.

B. If the legislative
appropriation is inadequate to fully
reimburse each of the tribal colleges for the
full amount of the tuition and fees expended
to provide dual credit, the department will

offer the presidents of the tribal colleges
or their designees the opportunity to select
another method of reimbursement.

C. In the event of an
inadequate appropriation, the department
will honor a fair and equitable alternative
method of distribution of the reimbursement
only if the method is agreed upon by all the
tribal colleges pursuant to a memorandum
of agreement.

D. If the tribal colleges
cannot agree unanimously upon a fair and
equitable distribution of an inadequate
appropriation for dual credit tuition and
fees, the department will develop a formula
that fairly distributes the appropriation. The
department's formula will be distributed to
the colleges for review and comment before
any distribution is made. However, in the
event of disagreement, the department's
determination of a distribution method is
the final determination.
[5.55.2.8 NMAC - N, 11/13/2014]

5.55.2.9 ELIGIBLE COURSES:

A. Types of courses:

(1) College
courses that are academic or career-
technical may simultaneously earn credit
toward high school graduation and a
postsecondary degree or certificate and
shall be eligible for dual credit. Remedial,
developmental and physical education
activity courses are not eligible for dual
credit.

**(2) Courses taken
for audit** are not eligible for dual credit.

**(3) Dual credit
courses** may be taken as electives or core
courses (except physical education activity
course) high school credits.

**(4) Dual credit
courses** must meet the public education
department standards and benchmarks.

**(5) College
courses** eligible for dual credit shall meet
the rigor for postsecondary institution credit
and be congruent with the postsecondary
institution's academic standards.

**(6) Dual credit
courses** offered in high school settings shall
conform to college academic standards.

**(7) Course
requirements** for high school students
enrolled in dual credit courses shall be equal
to those of regular college students.

**(8) Dual
credit courses** that are part of the general
education common core for postsecondary
institutions are eligible for transfer among
New Mexico postsecondary institutions
pursuant to Subsection D of 21-1B-3
NMSA 1978.

B. Identifying courses:

(1) The LEA in collaboration with the postsecondary institution shall determine a list of academic and career technical courses eligible for dual credit.

(2) The department shall inform and assist the tribal colleges in identifying the dual credit courses and the data needed to adequately assist the LEAs, the tribal colleges and the department in correctly assessing appropriate dual credit courses and credits.

C. Course delivery:

(1) Dual credit courses may be offered at LEAs, postsecondary institutions, and off-campus centers as determined by the LEA in collaboration with the postsecondary institution offering the courses.

(2) Dual credit courses may be delivered during or outside of regular LEA hours.

(3) Postsecondary institutions may offer dual credit courses via distance learning (ITV, online, hybrid, correspondence) as this option becomes available and cost-effective. All dual credit course rules apply.

D. Semesters dual credit may be taken; caps for dual credit; nature of high school credit earned:

(1) Eligible students may enroll in dual credit courses year-round.

(2) There is no state limit to the number of credits a student may earn through dual credit in an academic term; however, the student must meet eligibility requirements.

(3) Unless otherwise approved by the cabinet secretaries of the higher education and public education departments, successful completion of three credit hours of postsecondary instruction shall result in the awarding of one high school unit for said completed postsecondary course. If the LEA and postsecondary institution determine that a different ratio is warranted for a particular dual credit course comparable to LEA core courses in order to meet public education department standards and benchmarks, they may appeal to the council, which may recommend a different ratio to the cabinet secretaries of the public education and higher education departments. The joint decision of the public education and higher education department cabinet secretaries shall be final.

[5.55.2.9 NMAC - N, 11/13/2014]

**HISTORY OF 5.55.2 NMAC:
[RESERVED]**

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.1 NMAC, Section 10, effective 12-01-2014

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, \$20 each; [and]

(6) grade transfer candidates, \$75 each; [and]

(7) replacement packages for by-examination candidates, \$20 \$75 each;

~~[(6)]~~ (8) copies of combined Accountancy Act and board rules, \$10 each;

~~[(7)]~~ (9) copies of records and documents, \$.25 per page; and ~~[(8)]~~ (10) 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~~] \$75.

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; A, 12-01-2014]

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is amendment to 16.60.2 NMAC, Sections 10 and 13, effective 12-01-2014.

16.60.2.10 EXAMINATION ADMINISTRATION:

A. Time and place of examination: Eligible applicants shall independently contact a test center operator identified by the board to schedule the time and place for the examination at an approved test site.

B. Examination subjects: The examination required by the act shall test the knowledge and skills required for performance as an entry-level certified public accountant and shall include the subject areas of accounting and auditing and such related subjects as the board may require.

C. Provisional scores shall be released to the candidate following each testing window since 2004. All examination scores shall be considered provisional until approved by the board's administrative

staff. Scores must be approved by the board's administrative staff prior to the issuance of certificates requiring such scores.

D. 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 five years of passing the final section of the examination, the scores will be presented to the Board to determine validity.

[16.60.2.10 NMAC - Rp 16 NMAC 60.3.9.3, 02-14-2002; A, 01-15-2004; A, 06-30-2008; A, 12-01-2014]

~~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, 01-15-2014, A, 07-30-2004; A, 01-17-2013; Repealed 12-01-2014]

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.3 NMAC, Sections 9 and 15, effective 12-01-2014

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. As of November 5, 2013, New Mexico Department of Public Safety (DPS) will no longer accept hardcopy fingerprint cards. Applicants will conduct a fingerprinting through the Cogent live scan location prescribed by DPS.

(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.] (1) The applicant will register online, through the Cogent website, with the Board's ORI number and make payment with registration. After the process is complete, the applicant will receive a Registration Confirmation.~~

~~(2) The applicant shall take their Registration Confirmation to an approved Cogent live scan facility and conduct the electronic fingerprinting process.~~

~~(3) Results will be sent to the Board electronically. The Board shall not issue a certificate or license until the applicant's background check has been successfully completed.~~

~~(4) Out-of-State Applicants, who are unable to visit a Cogent fingerprinting facility, may follow the same registration process and submit a hardcopy fingerprint card to Cogent CardScan in Dublin, OH. The results will be sent to the Board electronically. The Board shall not issue a certificate or license until the 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 or its 2,000 hour equivalent shall consist of full or part-time employment that extends over a period of no less than 1 year and no more than three 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]~~ board's administrative staff 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 or the board's administrative staff. 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]~~ board's administrative staff 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.

J. Expedited licensure/certification by reciprocity for military

spouses licensed in another jurisdiction:
(1). If a military service member, the spouse of a military service member, or a recent veteran submits an application for a license or certification and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the license as soon as practicable. The terms "military service member" and "recent veteran" are defined in the Uniform Licensing Act, NMSA 1978, Section 61-1-34. Any qualified veteran applicant seeking expedited licensure pursuant to this section shall submit a copy of form DD214, Certificate of Release or Discharge from Active Duty, with the application.

(2) A license issued pursuant to this section shall not be renewed automatically, and shall be renewed only if the licensee satisfies all requirements for the issuance and renewal of a license pursuant to the 1999 Public Accountancy Act, including NMSA 1978, Section 61-28B-9 and 16.60.3.9(I) NMAC. [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; A, 12-01-2014]

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 four 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 and shall also submit a written request for an extension for completion of the required CPE.

(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.

(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 \$1,000.00.

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

(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 four 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 four 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 eight 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 two hours for subject preparation for each hour of teaching and one 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 three-year reporting period (shall not exceed 60 hours of CPE credit during a three-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 one 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 four 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 one 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] engagement 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 three-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 three-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 three-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 five 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 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 five 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 five 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; A, 12-01-2014]

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

**TITLE 14: HOUSING AND
CONSTRUCTION
CHAPTER 5: CONSTRUCTION
INDUSTRIES GENERAL PROVISIONS
PART 8: INVESTIGATIONS
AND ENFORCEMENT**

14.5.8.1 ISSUING AGENCY:
The Construction Industries Division of the Regulation and Licensing Department.
[14.5.8.1 NMAC - N, 12-13-2014]

14.5.8.2 SCOPE: Discipline for all licensees, applicants, certificate holders and unlicensed contractors.
[14.5.8.2 NMAC - N, 12-13-2014]

14.5.8.3 STATUTORY AUTHORITY: Sections 60-13-23, 60-13-23.1, 60-13-24 and Subsection C of 60-13-27 NMSA 1978.
[14.5.8.3 NMAC - N, 12-13-2014]

14.5.8.4 DURATION:
Permanent.
[14.5.8.4 NMAC - N, 12-13-2014]

14.5.8.5 EFFECTIVE DATE:
December 13, 2014, unless a later date is cited at the end of a section.
[14.5.8.5 NMAC - N, 12-13-2014]

14.5.8.6 OBJECTIVE: To provide administrative procedures for the discipline of licensees, applicants, certificate holders and unlicensed contractors.
[14.5.8.6 NMAC - N, 12-13-2014]

14.5.8.7 DEFINITIONS:
A. Authority Having Jurisdiction (AHJ): means the entity

with permitting authority in the political subdivision where the property is located, which may be the division, a municipality or a county.

B. Code: means the statewide construction codes adopted by the commission.

C. Code Bond: means the construction license bond required in Section 60-13-49 NMSA 1978, for correction of code violations certified by the division.

D. Completion: means the date of the issuance of a certificate of occupancy or the date of the final inspection by the governmental entity having jurisdiction over code enforcement.

E. Informal Hearing:
means a hearing held pursuant to Subsection C of Section 60-13-27 NMSA 1978.

F. Formal Hearing:
means a hearing held under the ULA, Section 60-1-1 through 60-1-33 NMSA 1978.

G. Notice of Contemplated Action (NCA): means the official notice to a licensee that the commission is seeking to take action against a licensee for alleged violations of the CILA or rules promulgated by the commission.

H. Prime contractor:
means the licensed contractor who contracted with the property owner to oversee the construction project and act as the owner's agent as defined in Subsection B of 14.6.6.8 and Subsection A of 14.6.6.9 NMAC.

I. Sub-contractor: means a licensed contractor who is hired by the prime contractor, regardless if the sub-contractor obtains its own permit or works under the permit obtained by the prime contractor.

J. Surety: means the insurance company authorized by the NM department of insurance to transact business in New Mexico and acts as the underwriter of a contractor's code bond.

K. CVD: means a code violation determination report prepared by a division employee.

L. NOI: means a notice of investigation prepared by a division employee.

M. ULA: means the Uniform Licensing Act, Sections 60-1-1 through 60-1-33 NMSA 1978.

N. Gross incompetence or gross negligence: means, but shall not be limited to, a significant departure from the prevailing industry standard, manufacturer specifications or any provision of CILA, ULA or rule adopted by the commission.
[14.5.8.7 NMAC - N, 12-13-2014]

14.5.8.8 VIOLATIONS:

A. An action by a licensee that is contrary to any of the following provisions, the CILA, the Liquefied Petroleum Gas and Compressed Natural Gas Act, Sections 70-5-1 through 70-5-23 NMSA 1978, the Manufactured Housing Act, Sections 60-14-1 through 60-14-20, NMSA 1978, or any rule promulgated by the commission, may subject the licensee to disciplinary action.

(1) Gross incompetence or gross negligence.

(2) Failure to maintain financial responsibility.

(3) Failure to maintain worker compensation insurance.

(4) Performing, or holding one- self out as able to perform, professional services beyond the scope of one's license and field or fields of competence.

(5) Contracting without displaying his/her full name as it appears on the license issued by the division.

(6) Advertising a classification or trade in which a contractor is not licensed by the division.

(7) Advertising a service in a false, fraudulent or misleading manner.

(8) The use of a false, fraudulent or deceptive statement in any document connected with construction bids, licensing, inspections or permitting.

(9) Fraud, deceit or misrepresentation in any application.

(10) Violation of any order of the commission.

(11) Cheating on an examination for licensure.

(12) Failure to cooperate in an investigation.

(13) Aiding and abetting unlicensed contracting.

(14) Contract or job abandonment activity as determined by a court of competent jurisdiction.

(15) Failure to meet and maintain requirements for crossover licensure for multidisciplinary registration, certificates or licenses.

(16) Failure to be in compliance with the Parental Responsibility Act.

B. If the commission or an informal hearing officer determines that a licensee violated any provision of this subsection, the commission or an informal hearing officer may: issue letter of reprimand, deny, revoke, suspend, or otherwise limit a license; assess an administrative penalty; require licensees to fulfill continuing education hours within limited time constraints; or any combination of the above.

[14.5.8.8 NMAC - N, 12-13-2014]

14.5.8.9 ADMINISTRATIVE INVESTIGATIONS AND ENFORCEMENT:**A. Complaints:**

Administrative disciplinary proceedings may be initiated by the filing of a complaint by any person, including members of the commission or division staff, against any licensee, registrant or certified holder. The division will assign an employee to investigate the alleged violations.

B. Notice of

Investigations (NOI): A NOI shall be sent to the address on record according to the licensee's file. The licensee is required to respond within 15 calendar days from the date the NOI was sent by the division and provide the information or documents requested by the commission or division. Failure to respond in writing and supply information or documentation requested may subject the licensee to disciplinary actions.

C. Investigative

subpoenas: The division director or the commission is authorized to issue investigative subpoenas and to employ experts with regard to pending investigations. The recipient of an investigative subpoena is obligated to reply with the requested information no later than 30 calendar days after receipt of the subpoena unless otherwise specified in the subpoena. Failure to comply with the subpoena may subject a licensee or certificate holder to disciplinary action or be cause for the division or the commission to seek enforcement of the subpoena in a court of law.

[14.5.8.9 NMAC - N, 12-13-2014]

14.5.8.10 INFORMAL HEARING:**A. Requesting an**

informal hearing: Pursuant to the CILA, complaints may be resolved at the request of the complainant, the licensee or the commission through an informal hearing. Although a complainant is not a party to the matter, the complainant may request an informal hearing.

B. Acceptance of an informal hearing:

(1) The commission and licensee must agree to the hearing.

(2) The commission and licensee must agree that the decision of the hearing officer is final and not subject to review by the commission or a court of law.

(3) Written acceptance must be received by the division within 30 calendar days of approval of the informal hearing by the commission. Failure to provide written acceptance will result in the issuance of a NCA against the

licensee or the qualifying party.

C. Notice:

(1) Upon receipt of a written acceptance of the informal hearing, the division shall issue a notice of informal hearing.

(2) The informal hearing will be set within 15 and 90 calendar days of the receipt of the written acceptance.

D. Venue: The informal hearing will be held at the department office in Albuquerque or Santa Fe. The licensee may request to appear telephonically or to have the informal hearing in the county in which the licensee resides by submitting such a request in writing within 15 calendar days of receipt of the notice of hearing.

E. Informal hearing procedures:

(1) The commission shall designate a hearing officer to preside over the informal hearing.

(2) The division employee presenting the case may also be the investigator assigned to the complaint and shall be allowed to testify.

(3) The hearing officer will rule on the admissibility of all evidence and testimony and those rulings shall be final and not subject to review.

(4) The hearing officer may ask questions of either party or the witnesses at any time during the hearing.

(5) The hearing officer may request a recess at any time during the proceedings to discuss the possibility of resolving the matter by agreement. The hearing officer will attempt to facilitate a binding resolution that is acceptable to both parties, however, if an agreement cannot be reached, the hearing officer's decision will be final and not subject to the commission's review or judicial review.

F. Final Decisions: The hearing officer will announce the terms of the agreement or the hearing officer's final decision orally at the conclusion of the informal hearing. A written decision that includes all terms to be fulfilled as stated at the conclusion of the hearing shall be sent to the licensee and the division within 30 days. At the next regularly scheduled commission meeting, the division staff shall inform the commission of the final decisions for each informal hearing. The written decision shall state that the terms of the agreement or the hearing officer's final decision is final and not subject to the commission's review or judicial review pursuant to Subsection C of Section 60-13-27 NMSA 1978.

G. Disciplinary

Authority: A hearing officer may, in the hearing officer's discretion, assess

any discipline, administrative penalty or combination thereof allowed under the ULA, CILA or rules promulgated under the CILA.

[14.5.8.10 NMAC - N, 12-13-2014]

14.5.8.11 FORMAL HEARING:

Every licensee, certificate holder or applicant shall be afforded notice and the opportunity to be heard in accordance with the ULA before the commission may take any adverse action against the licensee, applicant, or certificate holder, or before an application may be denied.

[14.5.8.11NMAC - N, 12-13-2014]

14.5.8.12 UNLICENSED

ACTIVITY: If the division does not criminally prosecute an individual suspected of unlicensed activity under Section 60-13-52 NMSA 1978, the commission may take administrative action under the ULA and seek an administrative penalty in the amount of \$1,000.00 per violation.

[14.5.8.12 NMAC - N, 12-13-2014]

HISTORY of 14.5.8 NMAC: [RESERVED]

End of Adopted Rules Section

Submittal Deadlines and Publication Dates 2014

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Issue Number 5	March 2	March 16
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 14
Issue Number 10	May 15	May 29
Issue Number 11	June 1	June 16
Issue Number 12	June 17	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	July 31	August 14
Issue Number 16	August 17	August 28
Issue Number 17	August 31	September 15
Issue Number 18	September 16	September 29
Issue Number 19	September 30	October 15
Issue Number 20	October 16	October 29
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Issue Number 23	December 1	December 15
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