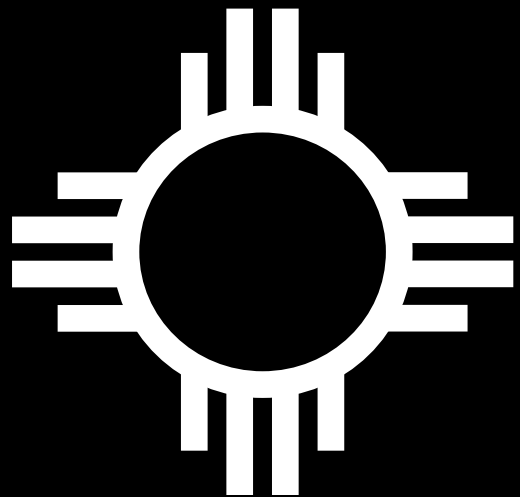


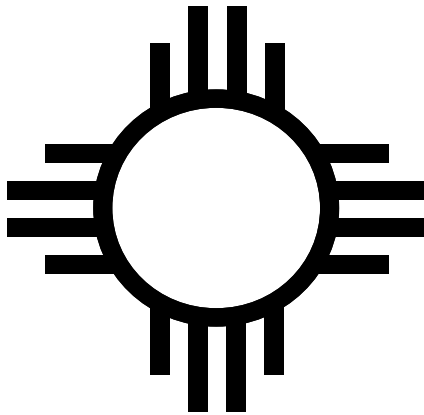
**NEW
MEXICO
REGISTER**



Volume XXV
Issue Number 24
December 30, 2014

New Mexico Register

**Volume XXV, Issue Number 24
December 30, 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 24

December 30, 2014

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

Notice of Hearing

New Mexico Department of Agriculture (NMDA) is proposing to pass a new rule:

- Creation of 19.15.112 NMAC, establishing the Retail Natural Gas (CNG/LNG) Regulations in order to set forth minimum standards for the operation of retail/wholesale natural gas fueling facilities, including mobile refueling vehicles and equipment as defined under the Petroleum Products Standards Act, Chapter 57, Article 19, Sections 23 through 38, New Mexico Statutes Annotated 1978 Compilation.

NMDA is holding four public hearings. The first will be held in Las Cruces, New Mexico, at the NMDA Conference Room (575-646-3007), 3190 South Espina Street (Corner of Espina and Gregg), at 9:00 a.m. on Monday, January 26, 2015. A second hearing will be held in Aztec, New Mexico, at the San Juan County Fire Department Conference Room (505-334-3239), 209 South Oliver Drive, at 9:00 a.m. on Tuesday, January 27, 2015. The third hearing will be held in Albuquerque, New Mexico, at the NMSU Albuquerque Center Visions Room (505-830-2856), 4501 Indian School Road NE, at 9:00 a.m. on Wednesday, January 28, 2015. The fourth hearing will take place in Lovington, New Mexico, at the Lea County Extension Office (575-396-2819), 100 North Main, Suite 10, at 9:00 a.m. on Thursday, January 29, 2015.

Written statements in support or opposition and signed by the submitting person will be accepted if received prior to 5:00 p.m. on January 29, 2015. Address written statements or inquiries to Joe Gomez at NMDA, Standards and Consumer Services Division, MSC 3170, P.O. Box 30005, Las Cruces, New Mexico 88003-8005 or telephone (575) 646-1616.

A copy of all proposed rules will also be posted on the NMDA website <http://nmdaweb.nmsu.edu/>.

NEW MEXICO DEPARTMENT OF GAME AND FISH

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

On **Thursday, January 15, 2015**, beginning at 9:00 a.m., at the **Santa Fe Community College Jemez Rooms**, located at **6401 Richards Avenue, Santa Fe, NM 87508**, the State Game Commission will meet in public session to hear and consider action as appropriate on the following: Election of Chair and Vice Chair of State Game Commission, Final Proposed Amendments to the Commission's Open Meeting Procedures, Future Meeting Schedule and Location, Revocations, Rancho de Chavez Shooting Preserve Application, Request from Vermejo Ranch to Import and Possess Black Footed Ferrets, Procedures to Decommission McGaffey Lake, Proposals for Updating the Hunter Education Program, New and Upcoming Public Outreach Efforts, Presentation of Fiscal Year 2014 Statement and Audit Report (tentative), Review of Oryx Management Relating to the Security Badged Hunts, Closed Executive Session, and Morphy Lake Commission Easement.

Obtain a copy of the agenda from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, or from the Department's website. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.30.12.1 NMAC – "Emergency Medications in Schools." The hearing will be held at 9:00 AM on February 3, 2015 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 emergency access to albuterol and epinephrine in the school setting pursuant to the 2014 Emergency Medications in Schools Act.

A copy of the proposed regulations can be obtained from:

Winona Stoltzfus MD
Office of School and Adolescent Health
New Mexico Department of Health
300 San Mateo Blvd., Suite 900
Albuquerque, New Mexico 87108
505-222-8684
Winona.Stoltzfus@state.nm.us

Please submit any written comments regarding the proposed regulations to the attention of Winona Stoltzfus MD at the above address or e-mail prior to the hearing. If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Winona Stoltzfus by telephone at 505-222-8684. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

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): 8.314.6 *Mi Via Home and Community-Based Services*. The register for the proposed amendment to this rule will be available December 29, 2014 on the HSD website: <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, the Department proposes to

amend the rule as follows:**Throughout the rule:**

- Adds language that clarifies an eligible recipient's Mi Via Employer of Record (EOR) roles, responsibilities and qualifications to ensure the EOR meets the MAD provider qualifications and understands the limits of his or her role.
- Adds language to ensure that services are delivered in the least restrictive environments and that the use of restraints, restrictive interventions or seclusions is not allowed in any Mi Via service.
- Adds language that providers and practitioners render services within their respective practice board's scope of practice or within their licensing agency's requirements.

Section 7

- **Subsection B** - aligns the term 'authorized representative' with MAD's current definition utilized in all other NMAC MAD rules.
- **Subsection L** - aligns the term 'legally responsible individual' with MAD's current definition utilized in all other NMAC MAD rules.
- **Subsection O** - defines the term 'personal representative' with MAD's current definition utilized in other NMAC MAD rules.

Section 11: The Department's proposed changes to this section will help to strengthen the caliber and accountability of Mi Via providers and update waiver service names.

- **Subsection A** - replacing 'homemaker/companion workers' with 'homemaker/direct support workers in order to be in line with the waiver service names included in the Mi Via 1915(c) waiver as approved by CMS.
- **Subsection B Paragraph (1)** - adding the requirement for providers to pass a nationwide caregiver criminal history screening prior to the initial hire and every three years after initial hire. The additional language aligns the rule with the Mi Via 1915(c) waiver as approved by CMS.
- **Subsection B Paragraph (2)** - adding new language to vendor qualifications and requirements. The additional language provides increased accountability from a vendor to a Mi Via eligible

recipient and aligns the rule with the Mi Via 1915(c) waiver as approved by CMS.

- **Subsection B Paragraph (5) (c)** - strengthening language prohibiting a provider from soliciting an eligible recipient in any manner concerning his or her Mi Via services and benefits. The additional requirement will provide a level of protection to Mi Via eligible recipients from unethical business practices and ensure unbiased freedom of choice of providers.
- **Subsection E Paragraph (3)** - removing "customized" in-home living supports to "in-home living supports" to be in line with the service name included in the Mi Via 1915(c) waiver as approved by CMS.
- **Subsection F Paragraph (1)(a-b) and (2)** - adding requirements that job developer providers have experience or knowledge of the Department of Health/ Developmental Disabilities Services Division resources, have substantial knowledge of the Americans with Disabilities Act, be at least of a specific age and have other job experience requirements. These updates to the qualifications reflect the need for job developers to have knowledge and resources specific to the Mi Via population.

Section 13

- **Eligibility Requirements for Recipient Enrollment in Mi Via** - removing Subsection A through C of the rule and inserting reference to 8.290.400 NMAC *Recipient Policies* for home and community-based services waiver eligibility requirements. The NMAC Medical Assistance Programs (MAP) recipient eligibility rule contains the exact language that is being proposed to be deleted from this rule. No changes have been made to the eligibility criteria for Mi Via services. The Department's attempt is to reduce the number of rules amended by not duplicating language in multiple rules and confining the language to one rule with references where to find that rule in other rules.

Section 15

- **Subsection C Critical incident management responsibilities and reporting requirements. Paragraph (3)** - adding (a) new responsible reporting individuals

and renaming state agencies with current titles, and (b) the term "*suspicious injury*." The additional language clarifies the process for critical incident management reporting and aligns the rule with the Mi Via 1915(c) waiver as approved by CMS.

- **Subsection C Paragraph (4) Conflict of Interest** - clarifies an eligible recipient's Consultant/ Consultant Agency's roles, responsibilities and qualifications to ensure the Consultant/ Consultant Agency meets the MAD provider qualifications, and understands the limits of his or her role, does not solicit an eligible recipient nor engage in activities where he or she may have a conflict of interest to the eligible recipient.
- **Subsection E Paragraph (2) Home health aide services** - adding language specifically stating a home health aide must meet new supervision requirements. In addition, new language requiring the registered nurse supervision of the home health aides at least once every 60 calendar days in the eligible recipient's home. The additional language affords an eligible recipient increased professional supervision over his or her home health aide's services and aligns the rule with the Mi Via 1915(c) waiver as approved by CMS.
- **Subsection E Paragraph (3) Assisted Living** - removes references to Mi Via assisted living services and providers throughout the rule. The Department proposes to end this service based upon non-utilization by the developmental disabilities and medically fragile populations during the past three waiver years. This change will also bring the waiver into alignment with CMS' final rule to maximize opportunities for an individual to have access to the benefits of community living and to receive services in the most integrated settings and aligns the rule with the Mi Via 1915(c) waiver as approved by CMS.
- **Subsection E Paragraph (4) In home living supports** - clarification that In Home Living Supports must be provided in the home or apartment owned or leased by the eligible recipient or in the eligible recipient's home, but excludes homes or apartments owned by agency providers. The additional language will

strengthen the service requirement to safeguard participant's freedom of choice when receiving this Mi Via service.

- **Subsection F Paragraph (2) Employment Supports** – providing additional detail into the function of employment supports, job development, job coaching, and related employment supports. The additional language will strengthen the service requirement to afford an eligible recipient a higher degree of professional support in entering the workforce and aligns the rule with the Mi Via 1915(c) waiver as approved by CMS.
- **Subsection F Paragraph (3) Customized Community Supports** – (a) renaming this service to *Customized Community Group Supports* in order to be in line with the waiver service names included in the Mi Via 1915(c) waiver as approved by CMS, and (b) proposing new language to have services provided in an integrated setting to support access to the eligible recipient's greater community. The Department is responding to CMS final regulations that require Mi Via services be rendered in integrated community settings whenever possible.
- **Subsection G Paragraph (1) Health and Wellness (d) Behavior support consultation** - adding "positive behavior support plan" to treatment plan development; and to (v) requiring the least restrictive environment and to prohibit of any form of restraints or seclusion of a Mi Via eligible recipient while services are rendered. The Department is responding to CMS final regulations that require Mi Via services be rendered in the least restrictive environment without the use of seclusion and restraints.
- **Subsection G Paragraph (2) Specialized Therapies (e) Hippotherapy** – clarification that hippotherapy must be performed by a Regulation and Licensing Department (RLD) licensed physical therapist, occupational therapist, or speech therapist. The additional language serves to bring the service in line with the providers' practice board's scope of practice or within their licensing agency's requirements.
- **Subsection H Paragraph (5) Environmental Modifications (f)** – reducing the available

allocation from \$7,000 to \$5,000 every five years to bring the rule in line with the Mi Via 1915(c) waiver as approved by CMS. The spending limit brings equity to the environmental modifications allocations among the Mi Via Waiver, the Developmental Disabilities Waiver, and the MAD Centennial Care Managed Care Self-Directed Community Benefit. HSD proposes to include any MAD reimbursed environmental modification the eligible recipient received from the previous five years into the five-year allocation limitations of \$5,000. A review of the utilization patterns for this service show that the proposed amount of \$5,000 is reasonable to meet the needs of Mi Via eligible recipients.

- **Subsection W** – including laptops or any electronic tablets to keep current with technological advances. HSD proposes to apply the three year replacement limit to eligible recipients transferring into Mi Via. This ensures equitable spending for these types of goods among all MAD programs that cover this benefit.

Section 17

- **Subsection F Modifications to the annual budget**- this section has been reformatted and edited in order to delete repetitive and lengthy language in order to clarify for recipients the requirements for modifications to the annual budget.

Section 21

- **Continuation of Benefits Pursuant to Timely Appeal** – adding language to bring rule into alignment with 8.352.2 NMAC HSD administrative hearing rights and responsibilities.

Section 22

- **Grievance/Complaint System:** removing of subsections A through D which describe the grievance and complaint process that only applies to consultant providers. Language in this section now affords participants and/or participant's families a primary contact to file complaints regarding any component of the program.

A public hearing to receive testimony on this proposed rule will be held in **Hearing Room 1, Toney Anaya Building, 2550 Cerrillos Road Santa Fe on January 29, 2015, 10:30 a.m.** Mountain Standard Time (MST).

Interested parties may submit written comments directly to: Brent Earnest, Secretary Designate, 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 January 29, 2015, 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 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):8.321.2 *Behavioral Health Specialized Services* specifically Section 10 Applied Behavior Analysis (ABA). The register for the proposed amendment to this rule will be available December 29, 2014 on the HSD website:<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.

The Department finalized Section 10 of 8.321.2 NMAC January 1, 2014, with the minimum of detail as it developed the service. The Department has completed a lengthy study and discussion of ABA services and is now promulgating amendments to this section of the rule. Throughout this section of the rule, the Department refers to ABA billing instructions. The Department proposing to include more detailed information in the rule while continuing to have

other information contained in the ABA billing instructions as appropriate. The Department will post for public comment the proposed amendments and the ABA billing instructions.

A public hearing to receive testimony on this proposed rule will be held in Hearing Room 1, Toney Anaya Building, 2550 Cerrillos Road Santa Fe on January 29, 2015, 1:30 p.m. Mountain Standard Time (MST).

Interested parties may submit written comments directly to: Brent Earnest, Secretary Designate, 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 January 29, 2015, 5:00 p.m. MST.

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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 HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend New Mexico Administrative Code (NMAC) rules: 8.206.400 Medicaid Eligibility; 8.291.410 Affordable Care General Recipient Requirements; 8.291.430 Affordable Care Financial Responsibility; 8.293.500 NMAC Pregnant Women Income and Resource Standard; and 8.295.400 NMAC Children Under 19 Recipient Requirements. The register for the proposed amendments to these rules will be available December 30, 2014 on the

HSD website: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD at (505) 827-7743. The Department is taking this opportunity to amend the rules for consistency of standard word usage which does not alter the manner in which eligibility is determined. **Specific proposed changes:**

8.206.400 NMAC Section 9 – the proposed amendment clarifies that Medical Assistance Programs (MAP) eligibility for this category is limited only to former New Mexico foster care recipients and does not include former foster care recipients from other states.

8.291.410 NMAC Section 18 – the proposed amendment implements a 90-day reconsideration period for recipients whose MAP eligibility closes due to failure to recertify or provide requested verification. The amended language allows for recipients to provide the requested verification or renewal form to have eligibility reinstated back to the closure month without requiring a new application.

8.291.430 NMAC

Section 14 – the proposed amendment will remove “*by another taxpayer outside of the household*” to provide clarification of the exceptions for an individual who is a tax dependent.

Section 15 – the proposed amendment provides clarification that federal deductions will only be utilized when it makes a difference whether an applicant may or may not qualify for a specific MAP category of eligibility.

8.293.500 NMAC Section 13 – the proposed amendment will allow an income disregard for an applicant whose countable income is at or above the income standard applying for the Affordable Care Act (ACA) MAP category of eligibility for pregnant women.

8.295.400 NMAC Section 12 – the proposed new language addresses the requirement that an applicant or recertifying recipient 18 years of age who is applying for (ACA) MAP category of Children's Medicaid eligibility must meet school attendance requirements.

The Department proposes to implement these rules effective March 1, 2015. A **public hearing** to receive testimony on these proposed rules will be held in **Hearing Room 1, Toney Anaya Building**, 2550 Cerrillos Road Santa Fe on **January 29, 2015, 1:30 p.m.** Mountain Standard Time (MST).

Interested parties may submit written comments directly to: Brent Earnest, Secretary Designate, 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 January 29, 2015, 5:00 p.m. MST.**

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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 REGULATION AND LICENSING DEPARTMENT BOARD OF PHARMACY

NEW MEXICO BOARD OF PHARMACY

REGULAR BOARD MEETING

NOTICE TO THE PUBLIC

The New Mexico Board of Pharmacy will convene on January 22nd & 23rd, 2015 at 9:00 a.m. and continue until finished in the Board of Pharmacy Conference Room located at 5200 Oakland Ave., NE, Albuquerque, NM for the purpose of conducting a regular board meeting. **Anyone who needs special accommodations for the meeting should contact the board office at (505) 222-9830 or contact Debra Wilhite, Administrative Secretary, at (505) 222-9835 or fax (505) 222-9845, e-mail debra.wilhite@state.nm.us as soon as possible.**

The agenda (tentative) will be available starting January 12, 2015 through the board's website: www.rld.state.nm.us/boards/pharmacy.aspx. **To obtain copies of the agenda and any proposed rule, you may access the links on the agenda for**

printing via the website listed.

Interested persons wishing to comment and/or present proposed language regarding rule hearings must submit documentation; via fax (505) 222-9845, mail or email to Ben Kesner, Ben.Kesner@state.nm.us or Debra Wilhite, debra.wilhite@state.nm.us no later than Monday, January 12, 2015, if in attendance must provide 12 copies of the documentation for distribution to board members.

*The board may go into executive session at any time to discuss licensee and/or personnel matters.

The Board will address:

Rule Hearings:

16.19.5 NMAC Internship Training Program
 16.19.6 NMAC Pharmacies – Section 23; Prescription Transfer
 16.19.6 NMAC Pharmacies - New section 27; Automated Drug Dist. Systems in Health Care Facilities
 16.19.12 NMAC Fees
 16.19.20 NMAC Controlled Substances
 16.19.29 NMAC Controlled Substances Prescription Monitoring Program
 16.19.36 NMAC Compounded Sterile Preparations

***Executive Director's Report:**

Petitioners must be in attendance or provide contact numbers to be available telephonically to present their request. Petitioners, if in attendance must provide 12 copies of the documentation regarding the request and/or any proposed language for distribution to board members for presentation. (*Board staff is not required to make copies.*)

Published in the Albuquerque Journal
 December 14, 2014

NEW MEXICO WATER TRUST BOARD

NEW MEXICO WATER TRUST BOARD NOTICE OF PUBLIC HEARINGS TO CONSIDER PROPOSED AMENDMENTS TO THE REGULATIONS FOR REVIEW AND ELIGIBILITY OF PROPOSED WATER PROJECTS, 19.25.10 NMAC

The New Mexico Water Trust Board (the

“Board”) will hold two public hearings to consider proposed amendments to 19.25.10 NMAC, Review and Eligibility of Proposed Water Projects. The Board is the proponent of the proposed amendments.

The proposed amendments relate to the review and eligibility of proposed water projects, to provide the appropriate means for approval of qualified water projects, to clarify terms and conditions of financial assistance, and to ensure that the Rules are compatible with the Water Project Finance Act, Section 72-4A-1 et seq., NMSA 1978.

The proposed amendments to the regulations may be reviewed during regular business hours at the office of the New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501. Copies of the proposed amendments may be obtained by contacting Marquita Russel at (505) 992-9619 or 1-877-ASK-NMFA, or by e-mail at mrussel@nmfa.net.

Hearings will be conducted at the following times and locations:

February 3, 2015, from 5:00 p.m. to 8:00 p.m. at the Nancy Rodriguez Community Center, 1 Prairie Dog Loop, Santa Fe, New Mexico 87507.

February 5, 2015, from 5:00 p.m. to 8:00 p.m. at the City of Las Cruces City Hall, 700 N. Main Street, Room 2007-B, Las Cruces, New Mexico 88001.

All interested persons are invited to attend any of the hearings and will be given reasonable opportunity to submit relevant evidence, data, views and comments, orally or in writing, and to introduce exhibits and examine witnesses. Any person who wishes to submit a written statement for the record in lieu of oral testimony must file such statement no later than 12:00 noon, MDT, on January 30, 2015. Written statements for the record should be submitted to:

Marquita Russel
 Chief of Programs
 New Mexico Finance Authority
 207 Shelby Street
 Santa Fe, New Mexico 87501

If you are an individual with a disability and require assistance or an auxiliary aid, such as a sign language interpreter, to participate in any of the hearings, please contact Yolanda Valenzuela at the New Mexico Finance Authority so that appropriate arrangements can be made. Yolanda Valenzuela can be reached at 207 Shelby Street, Santa Fe, New Mexico 87501, (505) 992-9632 or 1-877-ASK-NMFA, or by e-mail to yvalenzuela@nmfa.net. TDD

or TDY users may access these numbers via the New Mexico Relay Network (Albuquerque TDD users: 505-275-7333; outside of Albuquerque: 1-800-659-1779).

The Board will consider and take formal action on the proposed amendments at a duly called regular or special meeting following the conclusion of the hearings, taking into account the testimony, evidence and other materials presented during the hearing process.

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.15.2 NMAC, Sections 7 and 17, effective January 1, 2015.

8.15.2.7 DEFINITIONS:

A. "Attending a job training or educational program" means being physically present and actively participating in a job training or educational program.

B. "Child with special needs" means a child with a medically documented condition, which results in physical or mental incapacity requiring care and supervision by an adult.

C. "Child support enforcement division" means the child support enforcement program administered by New Mexico's human services department, which collects child support from non-custodial parents.

D. "Closure" means the child care case is closed due to the client no longer having a need for child care assistance in accordance with program policy, being determined ineligible due to receipt of income in excess of the income guideline, moving out of state, failing to recertify in accordance with program procedures, completing or withdrawing from an educational or training program or being disqualified from participation in the program.

E. "Co-payment" means the portion of the approved and agreed upon monthly child care cost for clients receiving child care assistance that the client is required to pay to the child care provider. The department's payment to the provider is reduced by the co-payment amount.

F. "Department" means the New Mexico children, youth and families department (CYFD).

G. "Earned income" means income received as wages from employment or as profit from self-employment.

H. "Homeless" means an individual who lacks a fixed, regular, and adequate nighttime residence; and an individual who has a primary nighttime residence that is:

(1) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(2) an institution that provides a temporary residence for

individuals intended to be institutionalized; or

(3) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

I. "Incidental money" means earnings of a minor child for occasional work performed such as baby-sitting, cutting lawns, and other similar activities.

J. "Infant, toddler, preschool, school age" means the age categories used for assigning child care provider reimbursement rates, defined as follows:

(1) infant: 0-23 months;

(2) toddler: 24 -35 months;

(3) preschool: three to five year olds; and

(4) school age: six year olds and older.

K. "Job training and educational program" means participation in a short or long term educational or training program which provides specific job skills which allow the participant to enter the workforce and directly relates to enhancing job skills, including but not limited to the acquisition of a general equivalency diploma (GED), English as a second language, literacy training, vocational education training, secondary education including adult basic education and accredited high school programs, and post-secondary institutions.

L. "National accreditation status" means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. To determine approval of national accrediting bodies, the following standards are used: for center based programs, CYFD uses the 2007 national association for the education of young children (NAEYC) program standards and accreditation criteria as well as NAEYC's 2007 accreditation process criteria; for family child care, CYFD uses the CYFD family child care accreditation standards; for before and after school care, CYFD uses the CYFD before and after school accreditation standards.

(1) ~~[As of July 15, 2014 the]~~ The following are the only national accrediting bodies that are approved by CYFD:

(a) the association of Christian schools international (ACSI);

(b) the council on accreditation (COA) for early childhood education and after school programs;

(c) the international Christian accrediting association (ICAA);

(d) the national accreditation commission for early care and education programs (NAC);

~~[(d)]~~ (e) the national association for the education of young children (NAEYC) academy for early childhood program accreditation; or

~~[(e)]~~ (f) the national association of family child care (NAFCC).

(2) Effective July 15, 2014 accrediting bodies that have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies.

M. "Non-traditional hours of care" means care provided between the afterhours of 7:00 p.m. and 7:00 a.m. Monday through Friday or care provided during weekend hours between 12:00 a.m. Saturday morning and 12:00 a.m. Monday morning.

N. "Open case" means a case that has not been closed as a result of a failure to recertify, or that has not been closed due to becoming otherwise ineligible for child care assistance benefits.

O. "Overpayment" means a payment of child care assistance benefits received by a client or provider for which they are ineligible based on incomplete or inaccurate information provided by either the client or the provider, or agency error.

P. "Protective services child care" means child care services for children placed in the custody of the protective services of the department.

Q. "Provider types" means the characteristics of child care providers, which determine their approved reimbursement rate, capacity, staffing levels etc. as follows:

(1) "In-home" care means care provided in the child's own home.

(2) "Registered home" means child care provided in the home of a provider who is registered with the department's child and adult care food program to care for up to four children. All registered homes receiving child care assistance subsidies must be enrolled and participate in the child and adult care food program (CACFP), unless they are ineligible.

(3) "Licensed family child care home" means child care provided in the home of a provider who is licensed by the department to care for up to six children.

(4) "Licensed

group child care home” means child care provided in the home of a provider who is licensed by the department to care for up to 12 children.

(5) “Licensed center” means child care provided in a non-residential setting, which is licensed by the department to provide such care.

(6) “Out of school time care” means child care provided to a kindergartner or school age child up to age 13 immediately before or immediately after a regularly scheduled school day or when regular school is not in session.

R. “Recertification” means the process by which a client’s eligibility to continue to receive child care assistance benefits are determined.

S. “Registration/educational fee” means a fee charged to private pay and families receiving child care assistance for materials and supplies.

T. “Residing with” means living in a household which provides shelter and care to a child during the non-working hours of the child’s parent or guardian.

U. “SNAP” means the supplemental nutrition assistance program administered by the U.S. department of agriculture, which helps low-income families purchase healthy food. SNAP was previously referred to as food stamps employment and training program.

V. “Star level” means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality. ~~[The AIM-HIGH essential elements, as approved by the child development board, are the criteria that will be used for determining the number of stars.]~~

W. “Suspension” means that the child care case is kept open, but benefits are not paid.

X. “TANF” means the temporary assistance to needy families program administered by the U.S. department of health and human services. TANF is the successor to the aid to families with dependent children (AFDC) program and provides cash assistance to qualified low-income families with dependent children.

Y. “Teen parent” means a biological parent under the age of 20 who is attending high school, working towards a general equivalency diploma (GED) or attending any other job skills training or educational programs directly related to enhancing employment opportunities.

Z. “Termination” means the child care case is terminated due to cause.

AA. “Underpayment” means a payment made by the department for services provided which did not fully reimburse the client or provider.

BB. “Unearned income” means income in the form of benefits such as TANF, workmen’s compensation, social security, supplemental security income; child support, pensions, contributions, gifts, loans, and grants which does not meet the definition of earned income.

CC. “Waiting list” means a list of families who have applied for child care services during a period of lack of funding.

DD. “Working” means employment of any type, including self-employment. For TANF recipients, this includes work experience or community service or any other activity that meets the TANF work activity requirements.

EE. “CACFP” means the child and adult care food program, administered by the children, youth and families department.

[8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC, 02/14/05; A, 09/15/05; A, 08/31/06; A, 06/30/10; A, 11/30/12; A, 07/15/14; A, 01/01/2015]

8.15.2.17 PAYMENT FOR SERVICES: The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child’s enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. The following describes circumstances when placements may be closed and payment discontinued at a time other than the end of the month:

A. When the eligibility period as indicated by the child care placement agreement expires during the month, including the end of a school semester; or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. Upon a change of provider the client and former provider have three days after the 5th day of nonattendance to notify the department. If this requirement for notification was met, the provider will be paid through the 14th day following the first date of nonattendance. If notification requirement is not met, the provider will be paid through the last date of attendance. The agreement with the new provider shall become effective when payment to the previous provider ceases. If the client notifies the department of the change in providers fewer than 14 days before the change will take place or after the change has taken place, the client is responsible for payment to the new provider beginning on the start date at the new provider and continuing up until the final date of payment to the former provider, as described above. Payment to the former provider will be made through the last day that care is provided if the child is withdrawn from the provider because the health, safety or welfare of the child is at risk, as determined by a substantiated complaint against the child care facility.

C. The amount of the payment is based upon the average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

D. The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2 (only for split custody or in cases where a child may have two providers)	Part time 3
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Care provided for an average of 30 or more hours per week per month	Care provided for an average of 8-29 hours per week per month	Care provided for an average of 6-19 hours per week per month	Care provided for an average of 7 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

E. Hours of care shall be rounded to the nearest whole number.

F. Child care placement agreements for out of school time care shall be opened and closed concurrent with the beginning and end of summer vacations, with the exception of year round school.

G. Monthly reimbursement rates:

Licensed child care centers							
Infant		Toddler		Pre-school		School-age	
Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro
\$720.64	\$641.00	\$589.55	\$544.35	\$457.61	\$424.34	\$406.27	\$393.08
Licensed group homes (capacity: 7-12)							
Infant		Toddler		Pre-school		School-age	
Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro
\$586.07	\$554.21	\$487.11	\$477.47	\$398.40	\$390.84	\$393.67	\$383.27
Licensed family homes (capacity: 6 or less)							
Infant		Toddler		Pre-school		School-age	
Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro
\$566.98	\$535.74	\$463.50	\$457.19	\$383.94	\$376.57	\$378.85	\$368.83
Registered homes and in-home child care							
Infant		Toddler		Pre-school		School-age	
Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro
\$289.89	\$268.32	\$274.56	\$226.40	\$251.68	\$228.80	\$251.68	\$205.92]
Licensed child care centers							
Infant		Toddler		Pre-school		School-age	
\$720.64		\$589.55		\$457.61		\$406.27	
Licensed group homes (capacity: 7-12)							
Infant		Toddler		Pre-school		School-age	
\$586.07		\$487.11		\$398.40		\$393.67	
Licensed family homes (capacity: 6 or less)							
Infant		Toddler		Pre-school		School-age	
\$566.98		\$463.50		\$383.94		\$378.85	
Registered homes and in-home child care							
Infant		Toddler		Pre-school		School-age	
\$289.89		\$274.56		\$251.68		\$251.68	

H. The department pays a differential rate according to the [~~location of the provider,~~] license or registration status of the provider, national accreditation status of the provider if applicable, and Star level status of the provider if applicable [~~and in accordance with the rate established for metro or non-metro location of the provider.~~ Providers located in the metropolitan statistical areas of the state as determined by the U.S. census bureau receive the metropolitan rate. All other providers receive the non-metro rate].

I. Providers holding and maintaining CYFD approved national accreditation status will receive an additional \$250.00 per child per month for full time care above the [~~metro~~] base rate for type of child care (licensed center, group home or family home) and age of child. All providers who maintain CYFD approved national accreditation status will be paid at the [~~metro~~] accredited rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation

status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement.

(1) Providers who receive national accreditation on or before December 31, 2014 from an accrediting body that is no longer approved by CYFD will no longer have national accreditation status, but will remain eligible to receive an additional \$150.00 per child per month for full time care above the [metro] base rate for type of child care (licensed center, group home or family home) and age of child until December 31, 2017.

(a) In order to continue at this reimbursement rate until December 31, 2017 a provider holding accreditation from accrediting bodies no longer approved by CYFD must maintain licensing standards and maintain accreditation without a lapse;

(b) If the provider fails to maintain their accreditation, the provider reimbursement will revert to the base reimbursement rate unless they have achieved a FOCUS star level or regain national accreditation status approved by CYFD.

(2) The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee’s national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. All providers are required to notify the department immediately when a change in accreditation status occurs.

J. Effective July 15, 2014 the department will pay a differential rate to providers achieving higher Star levels by meeting FOCUS essential elements of quality as follows: 2+ star at \$88.00 per month per child for full time care above the base reimbursement rate; 3-Star at \$100.00 per month per child for full time care above the base reimbursement rate; 4-Star at \$180.00 per month per child for full time care above the base reimbursement rate, and 5-Star at \$250.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must meet and maintain the most recent FOCUS eligibility requirements and star level criteria. If the provider fails to meet the FOCUS eligibility requirements and star level criteria the provider reimbursement will revert to the FOCUS criteria level demonstrated. Differential rates determined by achieving higher star levels determined by AIM HIGH essential elements of quality will be discontinued effective December 31, 2017. The department will pay a differential rate to providers achieving higher star levels determined by the AIM HIGH essential elements of quality until December 31, 2017 as follows: 3-Star at \$88.00 per month per child for full time care above the base reimbursement rate; 4-Star at \$122.50 per month per child for full time care above the base reimbursement rate, and 5-Star at \$150.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent AIM HIGH star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the base reimbursement rate.

K. The department pays a differential rate equivalent to 5, 10, or 15% of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
After hours	5%	10%	15%
	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
Weekend hours	5%	10%	15%

L. If a significant change occurs in the client’s circumstances, (see Subsection G of 8.15.2.13 NMAC) the child care placement agreement is modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

M. The department may conduct provider or parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

N. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds, which may be shorter than the usual six to 12 month certification period. The client’s certification period may be established for a period less than six months, if applicable to their need for care.

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 02/14/05; A, 08/31/06; A/E, 08/15/07; A, 06/30/10; A/E, 11/01/10; Re-pr, 12/30/10; A/E, 12/01/11; Re-pr, 12/30/11; A, 7/1/12; A, 11/30/12; A, 7/1/13; A, 1/15/14; A, 7/15/14; A, 01/01/15]

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT**

**This is an amendment to 8.16.2 NMAC,
Section 7, effective January 1, 2015.**

8.16.2.7 DEFINITIONS:

A. “Abuse” means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:

(1) physical contact that harms or is likely to harm a

child;

(2) inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child; and

(3) an unlawful act, a threat or menacing conduct directed toward a child that results or might be expected to result in fear or emotional or mental distress to a child.

B. “Activity area” means space for children’s activities where related equipment and materials are accessible to the children.

C. “Adult” means a person

who has a chronological age of 18 years or older.

D. “AIM HIGH” is a voluntary quality child care improvement program that is no longer open to new registered or licensed child care programs. Recognition of AIM HIGH will terminate on December 31, 2017.

E. “Assessment of children’s progress” means children’s progress is assessed informally on a continuous basis using a series of brief anecdotal records (descriptions of the child’s behavior or skills in given situations). Children’s progress also can

be assessed formally at least twice a year using a developmental checklist (checklist of behaviors that indicate physical, motor, language, cognitive, social and emotional development/progress).

F. "Attended" means the physical presence of an educator supervising children under care. Merely being within eyesight or hearing of the children does not meet the intent of this definition (See Supervision, Subsection LLL, 8.16.2.7 NMAC).

G. "Capacity" means the maximum number of children a licensed child care facility can care for at any one time.

H. "Child" means a person who is under the chronological age of 18 years.

I. "Child care center" means a facility required to be licensed under these regulations that provides care, services, and supervision for less than 24-hours a day to children. A child care center is in a non-residential setting and meets the applicable state and local building and safety codes.

J. "Class A deficiency" means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible, which results in death or serious physical or psychological harm; or a violation or group of violations of applicable regulations, which results in death, serious physical harm, or serious psychological harm to a child.

K. "Class B deficiency" means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible; or a violation or group of violations of applicable regulations which present a potential risk of injury or harm to any child.

L. "Class C deficiency" means a violation or group of violations of applicable regulations as cited by surveyors from the licensing authority which have the potential to cause injury or harm to any child if the violation is not corrected.

M. "Clean" means to physically remove all dirt and contamination.

N. "Conditions of operation" means a written plan that applies to a licensed facility and is developed by the licensing authority when the licensing authority determines that provisions within these regulations have been violated. The plan addresses corrective actions that the licensee must take within a specified timeframe in order to come into compliance with licensing requirements. During this timeframe the licensing authority may increase its level of monitoring.

O. "Core hours" means the daily hours of operation of the child care facility.

P. "Corrective action plan" means the plan submitted by the licensee addressing how and when identified deficiencies will be corrected.

Q. "Curriculum" is what happens every day in the classroom and on the playground. It includes every aspect of the daily program. Curriculum derives from the program's mission statement, philosophy (which, in turn, is based on assumptions about young children's development and learning), and program goals and objectives. It includes how materials and equipment are used, activities that children and adults participate in, and interactions among children and between children and adults.

R. "Deficiency" means a violation of these regulations.

S. "Direct provider of care" means any individual who, as a result of employment or contractual service or volunteer service has direct care responsibilities or potential unsupervised physical access to any care recipient in the settings to which these regulations apply.

T. "Director" means the person in charge of the day-to-day operation and program of a child care center.

U. "Disinfect" means to destroy or inactivate most germs on any inanimate object, but not bacterial spores. Mix four tablespoons of bleach with one gallon of cool water or use an environmental protection agency (EPA) registered disinfectant.

V. "Drop-in" means a child who attends a child care facility on an occasional or unscheduled basis.

W. "Educator" means an adult who directly cares for, serves, and supervises children in a licensed child care facility.

X. "Environment" means that the environment meets all required local, state, and federal regulations. It includes space (both indoors and outdoors) with appropriate equipment and materials that encourage children to engage in hands-on learning.

Y. "Exploitation" of a child consists of the act or process, performed intentionally, knowingly, or recklessly, of using a child's property for another person's profit, advantage or benefit without legal entitlement to do so.

Z. "Facility" means any premises licensed under these regulations where children receive care, services, and supervision. A facility can be a center, home, program, or other site where children receive childcare.

AA. "Family child care home" means a private dwelling required to be licensed under these regulations that provides care, services and supervision for a period of less than 24 hours of any day

for no more than six children. The licensee will reside in the home and be the primary educator.

BB. "FOCUS" is a voluntary tiered quality rating and improvement program that is open to all registered and licensed child care programs.

CC. "Group child care home" means a home required to be licensed pursuant to these regulations, which provides care, services, and supervision for at least seven but not more than 12 children. The licensee will reside in the home and be the primary educator.

DD. "Guidance" means fostering a child's ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.

EE. "Home" means a private residence and its premises licensed under these regulations where children receive care, services, and supervision. The licensee will reside in the home and be the primary educator.

FF. "Infant" means a child age six weeks to 12 months.

GG. "License" means a document issued by CYFD to a child care facility licensed and governed by these regulations and granting the legal right to operate for a specified period of time, not to exceed one year.

HH. "Licensee" means the person(s) who, or organization which, has ownership, leasehold, or similar interest in the child care facility and in whose name the license for the child care facility has been issued and who is legally responsible for compliance with these regulations.

II. "Licensing authority" means the child care services bureau - licensing section of the early childhood services division of the New Mexico children, youth and families department which has been granted the responsibility for the administration and enforcement of these regulations by authority of Children, Youth and Families Department Act, Section 9-2A-1 to 9-2A-16 NMSA 1978, as amended.

JJ. "Mission statement," describes what the program aspires to do and whom the program aspires to serve.

KK. "National accreditation status" means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. To determine approval of national accrediting bodies, the following standards are used: for center based programs, CYFD uses the 2007 national association for the education of young children (NAEYC) program standards and accreditation criteria as well as NAEYC's 2007 accreditation process criteria; for family child care, CYFD uses the CYFD family child care accreditation standards; for before and after

school care, CYFD uses the CYFD before and after school accreditation standards.

(1) ~~As of July 15, 2014 the~~ The following are the only national accrediting bodies that are approved by CYFD:

(a) the association of Christian schools international (ACSI);

(b) the council on accreditation (COA) for early childhood education and after school programs;

(c) the international Christian accrediting association (ICAA);

(d) the national accreditation commission for early care and education programs (NAC);

~~(d)~~ (e) the national association for the education of young children (NAEYC) academy for early childhood program accreditation; or

~~(e)~~ (f) the national association of family child care (NAFCC).

(2) Effective July 15, 2014 accrediting bodies that have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies.

LL. "Night care" means the care, services and supervision provided by a licensed child care facility to children between the hours of 10:00 p.m. to 6:00 a.m.

MM. "Neglect" means the failure to provide the common necessities including but not limited to: food, shelter, a safe environment, education, emotional well-being and healthcare that may result in harm to the child.

NN. "Notifiable diseases" means confirmed or suspected diseases/ conditions as itemized by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

OO. "Orientation" means a process by which the employer informs each new employee, volunteer and substitute, in advance of assuming their duties, of the mission, philosophy, policies, and procedures of the program, including clear direction about performance expectations.

PP. "Out of school time program" means a school age program at a specific site, usually a school or community center, offering on a consistent basis a variety of developmentally appropriate activities that are both educational and recreational.

QQ. "Parent handbook" is a written communication tool that provides valuable information to families of the children the program serves. It includes all matters of relevance to family members regarding the program and is updated annually, or as needed.

RR. "Pest" means any living organism declared a pest pursuant to the Pesticide Control Act.

SS. "Pesticide" means any chemical substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

TT. "Philosophy statement" describes how the program's mission will be carried out. It reflects the values, beliefs, and convictions of the program about how young children learn and describes the components of the program that contribute to that learning. It provides the program's perspective on early care and education and the nature of how children learn. The program's philosophy is implemented through the curriculum.

UU. "Policy" is a written directive that guides decision-making. Policies form the basis for authoritative action.

VV. "Premises" means all parts of the buildings, grounds, and equipment of a child care facility licensed pursuant to these regulations.

WW. "Procedure" is a series of steps to be followed, usually in a specific order, to implement policies.

XX. "Professional development" is an on-going plan for continued professional development for each staff member, including the director.

YY. "Program administrator" means the person responsible for planning or implementing the care of children in the program. This includes but is not limited to making contact with parents, keeping appropriate records, observing and evaluating the child's development, supervising staff members and volunteers, and working cooperatively with the site director and other staff members toward achieving program goals and objectives. This definition applies to out of school time programs only.

ZZ. "Punishment" means the touching of a child's body with the intent of inducing pain. This includes but is not limited to pinching, shaking, spanking, hair or ear pulling. It also includes any action which is intended to induce fear, shame or other emotional discomfort.

AAA. "Requirements" means the criteria and regulations developed by children, youth and families department in 8.16.2 NMAC; to set minimum standards of care, education and safety for the protection and enhancement of the well-being of children receiving care, services or

supervision.

BBB. "Restriction" means to control enrollment, service type, capacity, activities, or hours of operation.

CCC. "Revocation" means the act of making a license null and void through its cancellation.

DDD. "Sanction" means a measure imposed by the licensing authority for a violation(s) of these standards.

EEE. "Sanitize" means to reduce germs on inanimate surfaces to levels considered safe by public health codes or regulations. Mix one and one half teaspoons of bleach with one gallon of cool water or use an EPA registered sanitizer.

FFF. "School-age" means a child in care who is age five to 18 years.

GGG. "Staff evaluation" means that each staff member is evaluated by the director, using criteria from the individual's job description. The individual being evaluated knows ahead of time the criteria and procedures (which may include self-evaluation) for which they are being evaluated. The director discusses evaluation results with each staff member, and results are considered when determining salary increments and are incorporated into the individual's professional development plan.

HHH. "Substitute" means an adult who directly cares for, serves, and supervises children in a licensed child care facility, who works in place of the regular educator, and who works less than an average of 40 hours per month in a six month period.

III. "Suspension" means a temporary cancellation of a license pending an appeal hearing or correction of deficiencies.

JJJ. "Site director" means the person at the site having responsibility for program administration and supervision of an out of school time program. This definition applies to out of school time programs only.

KKK. "Star level" means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

LLL. "Substantiated complaint" means a complaint determined to be factual, based on an investigation of events.

MMM. "Supervision" means the direct observation and guidance of children at all times and requires being physically present with them. The only exception is school-age children who will have privacy in the use of bathrooms.

NNN. "Survey" means a representative of the licensing authority enters a child care facility, observes activity, examines the records and premises, interviews parents and staff members and records deficiencies.

OOO. "Toddler" means a child age 12 months to 24 months.

PPP. "U/L" means the underwriters laboratory, which is a standards organization which tests electrical and gas appliances for safety.

QQQ. "Unattended" means an educator is not physically present with a child or children under care.

RRR. "Unsubstantiated complaint" means a complaint not determined to be factual based on an investigation of events.

SSS. "Variance" means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for the period of licensure. The granting of variances is at the sole discretion of the licensing authority.

TTT. "Volunteer" means a person who is not employed as a childcare educator, spends less than six hours per week at the facility, is under direct physical supervision and is not counted in the facility ratio. Anyone not fitting this description must meet all requirements for staff members.

UUU. "Waiver" means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for a specified, limited period of time. The granting of waivers is at the sole discretion of the licensing authority. [8.16.2.7 NMAC - Rp, 8.16.2.7 NMAC, 11/30/12; A, 7/15/14; A, 01/01/15]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

This in an amendment to 19.36.3 NMAC, Section 9, effective 12/30/2014.

19.36.3.9 TYPES OF COURSES:

A. A person under the age of eighteen (18) years who [satisfies] satisfies the requirements of either of the following training courses shall be issued a certificate following successful completion of a hunter training course:

(1) completion of a hunter training course comprised of class work and firearms proficiency training and testing; or

(2) completion of an abbreviated hunter training course comprised of written lessons and testing and current registration in the department's mentored-youth program.

B. Registration in the department's mentored-youth program is limited to first-time youth hunters, 10 to 17 years of age, for a period of two consecutive license years and a person shall only

register in the program once. Any mentored-youth hunter that is currently registered with the Department as of November 13, 2014 shall remain eligible to hunt the species listed in Subsection D. of 19.36.3.9 NMAC for the remaining two consecutive license year cycle.

C. Mentored-youth program hunters shall hunt with a firearm only after successful completion of the written lesson and testing portion of the course and while supervised by a licensed parent, guardian or another licensed adult with consent of the parent or guardian who is within unaided voice and sight distance.

D. Mentored-youth program hunters shall be limited to hunting small-game, turkey, deer and javelina for the license year beginning April 1, 2015 and continuing thereafter. [19.36.3.9 NMAC - N, 1/1/2013; A, 12/30/2014]

**NEW MEXICO PUBLIC
EDUCATION DEPARTMENT**

The Public Education Department repeals its rule entitled Nutrition: Competitive Food Sales, 6.12.5 NMAC (filed 02/14/2006), and is replacing it with Nutrition: Implementation of Federal Requirements for Competitive Foods, 6.12.5 NMAC, effective 12/30/2014.

**NEW MEXICO PUBLIC
EDUCATION DEPARTMENT**

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY
PART 5 NUTRITION: IMPLEMENTATION OF FEDERAL REQUIREMENTS FOR COMPETITIVE FOODS**

6.12.5.1 ISSUING AGENCY: Public Education Department. [6.12.5.1 NMAC - Rp, 6.12.5.1 NMAC, 12-30-14]

6.12.5.2 SCOPE: This rule applies to New Mexico schools that participate in programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 unless otherwise expressly limited. [6.12.5.2 NMAC - Rp, 6.12.5.2 NMAC, 12-30-14]

6.12.5.3 STATUTORY AUTHORITY: This rule is adopted pursuant to Sections 22-2-1 and 9-24-8,

NMSA 1978. [6.12.5.3 NMAC - Rp, 6.12.5.3 NMAC, 12-30-14]

6.12.5.4 DURATION: Permanent. [6.12.5.4 NMAC - Rp, 6.12.5.4 NMAC, 12-30-14]

6.12.5.5 EFFECTIVE DATE: December 30, 2014, unless a later date is cited at the end of a section. [6.12.5.5 NMAC - Rp, 6.12.5.5 NMAC, 12-30-14]

6.12.5.6 OBJECTIVE: This rule addresses the sale of competitive food sold to children attending New Mexico schools that participate in a United States department of agriculture school meal program. [6.12.5.6 NMAC - Rp, 6.12.5.6 NMAC, 12-30-14]

6.12.5.7 DEFINITIONS: [RESERVED] [6.12.5.7 NMAC - Rp, 6.12.5.7 NMAC, 12-30-14]

6.12.5.8 IMPLEMENTATION OF FEDERAL REQUIREMENTS FOR COMPETITIVE FOODS
A. Terms defined by federal laws and regulations. Terms defined in United States agriculture department competitive foods rules at 7 CFR 210.11 and 7 CFR 210.11a implementing the all foods sold in schools and smart snacks provisions of the Healthy, Hunger-Free Kids Act of 2010, the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 are incorporated for purposes of these rules.

B. Federal law, rule and guidance limitations regarding beverages and foods sold in schools shall govern the participation in and implementation of New Mexico school meal programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966, except that the public education department shall set a limit on the number of fundraisers permitted on a school campus during each school term. A fundraiser is a sale on a school campus to benefit a school or school organization of beverage or food products limited by a United States department of agriculture school meal program for use, consumption or sale during the school day. No fundraiser may be conducted in competition with school meals in the food service area during meal service. A fundraiser may be conducted only for up to one school day on two occasions per semester or trimester term in a school that participates in United States department of agriculture school meal programs.

C. A wellness policy created pursuant to requirements of 6.12.6 NMAC shall incorporate the limitations stated in Subsection B of this section in annual assurances by a school district or a charter school to the New Mexico public education department. Such assurances shall be reviewed in conjunction with the administrative review of a school food authority.
[6.12.5.8 NMAC - Rp, 6.12.5.8 NMAC, 12-30-14]

HISTORY OF 6.12.5 NMAC:

History of Repealed Material:

6.12.5 NMAC, Nutrition: Competitive Food Sales (filed 02-14-2006) repealed 12-30-14.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.12.6 NMAC, Sections 7 and 8, effective 12/30/14.

6.12.6.7 DEFINITIONS:

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

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

C. "Fund raiser" means a sale or sales on a school campus to benefit a school or school organization of beverage or food products limited by a United States department of agriculture school meal program for use, consumption or sale during the school day in competition with school meals. A fundraiser may be conducted only for up to one school day on two occasions per semester or trimester term in a school that participates in United States department of agriculture school meal programs. The wellness policy implemented through 6.12.6 NMAC shall include annual assurances to the New Mexico public education department of compliance with limitations on "fund raisers" pursuant to this subsection and subject to review as part of the administrative review of a school food

authority.

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

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

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

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

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

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

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

[~~J~~] K. "Staff wellness" means opportunities for school staff to improve their health status through activities such as health assessments, health education and health-related fitness activities. These

opportunities encourage school staff to pursue a healthy lifestyle that contributes to their improved health status, improved morale, and a greater personal commitment to the school's overall coordinated school health approach.

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

[6.12.6.7 NMAC - N, 02-28-06; A, 11-30-06; A, 05-15-14; A, 12-30-14]

6.12.6.8 REQUIREMENTS:

A. This section applies to local school boards, local school districts, and charter schools and governs policies to be implemented by local school districts with regards to student and school employee wellness.

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

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

(1) Sections of the wellness policy that meet the requirements set forth in Paragraphs (3), (4), (5) [~~;~~ (6) and (H)] and (10) of Subsection D and the requirements set forth in Subsection E of this section shall be submitted to the public education department on or before August 30, 2006.

(2) Sections of the wellness policy that meet the requirements set forth in Paragraphs (1), (2), [~~(7), (8), (9) and (10)] (6), (7), (8) and (9) of Subsection D of this section shall be submitted to the public education department on or before January 30, 2007.~~

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

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

(2) a planned,

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

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

(4) nutrition guidelines ~~[for a la carte offerings- minimally meeting guidelines set forth in Subsection B of 6.12.5.8 NMAC]~~ meeting standards established by federal rules at 7 CFR 210.11 and 7 CFR 210.11a, the Healthy Hunger-Free Kids Act of 2010, the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966;

(5) guidelines for ~~[school sponsored fund raisers during the normal school hours minimally meeting guidelines set forth in Paragraph (1) of Subsection C of 6.12.5.8 NMAC]~~ fund raisers established at 6.12.5 NMAC and an annual assurance of compliance with limitations on fund raisers established at 6.12.5 NMAC; (6) ~~[guidelines for school sponsored fund raisers before and after schools hours ensuring that at least fifty percent of the offerings shall be healthy choices in accordance with the requirements set forth in Paragraph (2) of Subsection C of 6.12.5.8 NMAC;~~

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

~~(8)]~~ (7) school safety plans at each school building focused on supporting healthy and safe learning environments; the school safety plan must be submitted to the public education department for approval on a three-year cycle and must include the following minimum components:

(a) introduction;

(b) school policies and procedures;

(c) prevention; and

(d) a school EOP;

(9) (8) a plan addressing the health services needs of students in the educational process;

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

(11) (10)

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

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

[6.12.6.8 NMAC - N, 02-28-06; A, 11-30-06; A, 05-15-14; A, 12-30-14]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

Notice of Repeal

1.18.550 NMAC, Executive Records Retention and Disposition Schedules for the Office of the State Engineer are being repealed and replaced with the new 1.18.550 NMAC, Executive Records Retention and Disposition Schedules for the Office of the State Engineer effective January 12, 2015. The State Commission of Public Records, at their December 9, 2014 meeting, repealed the current rules and approved the new rules.

Notice of Repeal

1.18.780 NMAC, Executive Records Retention and Disposition Schedules for the Crime Victims Reparation Commission are being repealed and replaced with the new 1.18.780 NMAC, Executive Records Retention and Disposition Schedules for the Crime Victims Reparation Commission effective January 12, 2015. The State Commission of Public Records, at their December 9, 2014 meeting, repealed the current rules and approved the new rules.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

December 12, 2014

Jackie Garcia, Agency Analysis Bureau Chief
State Commission of Public Records
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507

Ms. Garcia:

You recently requested to publish a synopsis in lieu of publishing the full content of the following rules:

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
1.18.550 NMAC ERRDS, Office
of State Engineer
1.18.780 NMAC ERRDS, Crime
Victims Reparation Commission

A review of the rules shows that their impact is limited to the individual agency to which it pertains, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for each of the rules listed is approved.

Sincerely,

Linda Trujillo
State Records Administrator

LT/jg

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.550 NMAC, ERRDS, Office of the State Engineer

1. Subject matter: 1.18.550 NMAC, Executive Records Retention and Disposition Schedules for the Office of the State Engineer. This is replacement to 1.18.550 NMAC, ERRDS, Office of the State Engineer. The records retention and disposition schedules are a timetable for the management of specific records series of the Office of the State Engineer. It describes each record series by record name, record function, record content, record filing system, record confidentiality,

and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Commission of Public Records and approved by the State Records Administrator, the State Commission of Public Records and the Office of the State Engineer.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Office of the State Engineer. Persons and entities normally subject to the rules and regulations of the Office of the State Engineer may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Office of the State Engineer.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Office of the State Engineer. Any person or entity outside the covered geographical area that conducts business with or through the Office of the State Engineer may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 is used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: January 12, 2015.

Certification

As counsel for the State Commission of Public Records, I certify that this synopsis provides adequate notice of the content of 1.18.550 NMAC, ERRDS, Office of the State Engineer.

/Jennifer N. Salazar/ /12/7/2015
State Commission of Date
Public Records
Legal Representative

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

SYNOPSIS

**1.18.780 NMAC, ERRDS, Crime Victims
Reparation Commission**

1. Subject matter: 1.18.780 NMAC, Executive Records Retention and Disposition Schedules for the Crime Victims Reparation Commission. This is a replacement to 1.18.780 NMAC, ERRDS, Crime Victims Reparation Commission. The records retention and disposition schedules are a timetable for the management of specific records series of the Crime Victims Reparation Commission. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Commission of Public Records and approved by the State Records Administrator, the State Commission of Public Records and the Crime Victims Reparation Commission.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Crime Victims Reparation Commission. Persons and entities normally subject to the rules and regulations of Crime Victims Reparation Commission may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Crime Victims Reparation Commission.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by Crime Victims Reparation Commission. Any person or entity outside the covered geographical area that conducts business with or through the Crime Victims Reparation Commission may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes

Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: January 12, 2015.

Certification

As counsel for the State Commission of Public Records, I certify that this synopsis provides adequate notice of the content of 1.18.780 NMAC, ERRDS, Crime Victims Reparation Commission.

/Jennifer N. Salazar/ /12/7/2015
State Commission of Date
Public Records
Legal Representative

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

SYNOPSIS

**1.18.333 NMAC, ERRDS, Taxation and
Revenue Department**

1. Subject matter: 1.18.333 NMAC, Executive Records Retention and Disposition Schedule for the Taxation and Revenue Department. This is an amendment to 1.18.333 NMAC, ERRDS, Taxation and Revenue Department amending Sections 3, 6-9, 53, 54, 60, 68, 74, 100, 101, 106, 108, 125, 171, 172, 174, 175, 187, 200, 221, 230, 232, 234, 246, 248 and 255. The records retention and disposition schedules are a timetable for the management of specific records series of the Taxation and Revenue Department. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the

State Commission of Public Records and approved by the State Records Administrator, the State Commission of Public Records and the Taxation and Revenue Department.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Taxation and Revenue Department. Persons and entities normally subject to the rules and regulations of the Taxation and Revenue Department may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Taxation and Revenue Department.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Taxation and Revenue Department. Any person or entity outside the covered geographical area that conducts business with or through the Taxation and Revenue Department may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 is used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: January 12, 2015.

Certification

As counsel for the State Commission of Public Records I certify that this synopsis provides adequate notice of the content of 1.18.333 NMAC, ERRDS, Taxation and Revenue Department.

/Jennifer N. Salazar/ /12/7/2015
State Commission of Date
Public Records
Legal Representative

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.350 NMAC, ERRDS, General Services Department

1. Subject matter: 1.18.350 NMAC, Executive Records Retention and Disposition Schedules for the General Services Department. This is an amendment to 1.18.350 NMAC, ERRDS, General Services Department amending Sections 3, 6-9, 127-129, 145, 152, 153, 162, 169, 170, 178, 180, 192, 199, 200, 201, 203, 212, 219-228 and 234-236. The records retention and disposition schedules are a timetable for the management of specific records series of the General Services Department. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Commission of Public Records and approved by the State Records Administrator, the State Commission of Public Records and the General Services Department.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the General Services Department. Persons and entities normally subject to the rules and regulations of the General Services Department may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the General Services Department.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the General Services Department. Any person or entity outside the covered geographical area that conducts business with or through the General Services Department may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes

Annotated 1978 is used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: January 12, 2015.

Certification

As counsel for the State Commission of Public Records, I certify that this synopsis provides adequate notice of the content of 1.18.350 NMAC, ERRDS, General Services Department.

/Jennifer N. Salazar/ /12/7/2015
State Commission of Date
Public Records
Legal Representative

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.369 NMAC, ERRDS, State Commission of Public Records

1. Subject matter: 1.18.369 NMAC, Executive Records Retention and Disposition Schedule for the State Commission of Public Records. This is an amendment to 1.18.369 NMAC, ERRDS, State Commission of Public Records, amending Sections 1-3, 6-9, 11, 17, 54, 56, 61 and 72; repealing Sections 16 and 63; and adding Section 16. The records retention and disposition schedules are a timetable for the management of specific records series of the State Commission of Public Records. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Commission of Public Records and approved by the State Records Administrator of the State Commission of Public Records.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the State Commission of Public Records. Persons and entities normally subject to the rules and regulations of the State Commission of Public Records may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the State Commission of Public Records.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the State Commission of Public Records. Any person or entity outside the covered geographical area that conducts business with or through the State Commission of Public Records may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 is used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: January 12, 2015.

Certification

As counsel for the State Commission of Public Records, I certify that this synopsis provides adequate notice of the content of 1.18.369 NMAC, ERRDS, State Commission of Public Records.

/Jennifer N. Salazar/ /12/7/2015
State Commission of Date
Public Records
Legal Representative

**NEW MEXICO
PUBLIC REGULATION
COMMISSION**

The New Mexico Public Regulation Commission repeals its rule entitled "Energy Efficiency", 17.7.2 NMAC (filed 4-16-10) repealed and replaced 17.7.2 NMAC, "Energy Efficiency", effective January 1, 2015.

The New Mexico Public Regulation Commission repeals its rule entitled "State

Rural Universal Service Fund", 17.11.10 NMAC (filed 11-30-05) repealed and replaced 17.11.10 NMAC, "State Rural Universal Service Fund", effective January 1, 2015.

The New Mexico Public Regulation Commission repeals its rules entitled "Pipeline Safety Excavation Damage Prevention", 18.60.5 NMAC (filed 6-27-06) repealed and replaced 18.60.5 NMAC, "Pipeline Safety Excavation Damage Prevention", effective December 30, 2014.

The New Mexico Public Regulation Commission repeals its rule entitled "One-Call Notification Systems Requirements For 811 Services", 18.60.6 NMAC (filed 2-15-07) repealed and replaced 18.60.6 NMAC, "One-Call Notification Systems Requirements For 811 Services", Effective December 30, 2014.

**NEW MEXICO
PUBLIC REGULATION
COMMISSION**

**TITLE 17 PUBLIC UTILITIES
AND UTILITY SERVICES
CHAPTER 7 ENERGY
CONSERVATION
PART 2 ENERGY EFFICIENCY**

17.7.2.1 ISSUING AGENCY:
The New Mexico Public Regulation Commission.
[17.7.2.1 NMAC - Rp, 17.7.2.1 NMAC, 1-1-15]

17.7.2.2 SCOPE: This rule applies to all electric, gas and distribution cooperative utilities subject to the commission's jurisdiction.
[17.7.2.2 NMAC - Rp, 17.7.2.2 NMAC, 1-1-15]

**17.7.2.3 STATUTORY
AUTHORITY:** Sections 8-8-16, 63-3-1, 62-8-6, 62-17-1 *et. seq.* NMSA 1978.
[17.7.2.3 NMAC - Rp, 17.7.2.3 NMAC, 1-1-15]

17.7.2.4 DURATION:
Permanent.
[17.7.2.4 NMAC - Rp, 17.7.2.4 NMAC, 1-1-15]

17.7.2.5 EFFECTIVE DATE:
January 1, 2015, applications filed prior to this effective date shall be governed by the specific orders related to those applications.
[17.7.2.5 NMAC - Rp, 17.7.2.5 NMAC, 1-1-15]

17.7.2.6 OBJECTIVE: The purpose of this rule is to implement the

Efficient Use of Energy Act and establish criteria to evaluate and implement cost-effective measures or programs that reduce energy demand and energy consumption. The rule also specifies how annual program funding is to be determined; how the public utility's prior commission approved total portfolio of programs will be cost-effective; how the public utility's total new portfolio of programs will be cost-effective; and establishes annual incentive criteria for a public utility.
[17.7.2.6 NMAC - Rp, 17.7.2.6 NMAC, 1-1-15]

17.7.2.7 DEFINITIONS: In addition to the definitions used in Section 62-17-4 NMSA 1978, the following definitions apply to this rule:

A. application means an annual utility application for commission approval of proposed energy efficiency measures or programs and load management measures or programs;

B. estimate or estimated means a projection or forecast utilizing well known, commercially available or standard engineering, economic and financial calculations, ratings and simulations, or other reasonable means;

C. life-cycle basis means utilizing the expected useful life of the energy efficiency and load management measures or programs and applying the net present value methodology in order to estimate the associated monetary costs and avoided monetary costs of the measure or program being evaluated;

D. low income customer means a customer with an annual household income at or below 200% of the federal poverty level, as published annually by the United States Department of Health and Human Services;

E. measure or program means an energy efficiency measure or program or a load management measure or program;

F. measurement and verification means an analysis performed by an independent evaluator that estimates, consistent with 17.7.2.7.B NMAC, reductions of energy usage or peak demand and determines any actual reduction of energy usage or peak demand that directly results from the utility's implementation of particular energy efficiency measures or programs or of particular load management measures or programs;

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

H. plan year overage means the public utility's actual prior plan year expenditures that exceeded the same plan year's actual commission authorized funding;

I. plan year underage

means the public utility’s actual prior plan year commission authorized funding that exceeded the same plan year’s actual expenditures.

[17.7.2.7 NMAC - Rp, 17.7.2.7 NMAC, 1-1-15]

17.7.2.8 PUBLIC UTILITY FILING REQUIREMENTS FOR ANNUAL APPLICATIONS AND ANNUAL REPORTS:

A. Timing. Each year, each public utility and natural gas utility shall simultaneously file an annual application and annual report, in the same docket, with the commission’s records’ bureau. Public Service Company of New Mexico (and its successors) shall file its application and report annually on March 1, beginning in 2015. Southwestern Public Service Company (and its successors) shall file its application and report annually on May 1, beginning in 2015. El Paso Electric Company (and its successors) shall file its application and report annually on July 1, beginning in 2015. A natural gas utility shall file its application and report annually on January 1, beginning in 2015. If a specified filing date falls on a weekend or holiday, the public utility shall file on the next business day.

B. Compliance with pre-filing requirements. Applications shall describe how the public utility has met the pre-filing requirements of Section 62-17-5 (E) NMSA 1978, including descriptions of the process used to solicit non-binding recommendations, and any competitive bids required by the commission for good cause. The public utility shall identify by name, association, and contact information, each interested party that participated in the process, including commission staff, the attorney general, and the energy, minerals and natural resources department. The public utility shall summarize each participant’s non-binding recommendation on the design, implementation, and use of third-party energy service contractors through competitive bidding for programs and measures.

C. The public utility shall identify within its application its estimated plan year funding for energy efficiency and load management program costs.

(1) Estimated plan year funding for electric public utilities’ energy efficiency and load management program costs shall be three percent (3%) of billing revenues from all of its customers’ bills that the public utility estimates to be billed during the plan year, excluding:

(a) gross receipts taxes and franchise and right-of-way access fees;

(b) revenues that the public utility estimates to bill during the plan year to any single customer that exceed \$75,000;

(c) any customer’s plan year self-directed program credits approved by the public utility or by a commission approved self-direct administrator; and

(d) any customer’s plan year self-directed program exemptions approved by the public utility or by a commission approved self-direct administrator.

(2) Estimated plan year funding for gas public utilities’ energy efficiency and load management program costs shall not exceed three percent (3%) of customers’ bills that the public utility estimates to be billed during the plan year, excluding:

(a) gross receipts taxes and franchise and right-of-way access fees;

(b) revenues that the public utility estimates to bill during the plan year to any single customer that exceed \$75,000;

(c) any customer’s plan year self-directed program credits approved by the public utility or by a commission approved self-direct administrator; and

(d) any customer’s plan year self-directed program exemptions approved by the public utility or by a commission approved self-direct administrator.

D. The public utility’s application shall calculate and provide the difference between its actual prior plan year expenditures for measures and programs and the same plan year’s commission authorized funding. At the end of each plan year, the public utility shall calculate the following applicable values:

(1) any plan year overage; or

(2) any plan year underage.

E. In each plan year, a public utility shall make its best efforts to expend its plan commission authorized funding as calculated in 17.7.2.8.C NMAC above subtracting any applicable prior plan year overage or adding any applicable prior plan year underage.

F. The application shall include an executive summary to facilitate commission review.

G. The utility shall utilize well known, commercially available or standard engineering, economic and financial calculations, ratings, and simulations, or other reasonable methods, to determine monetary costs and avoided monetary costs of measures and programs.

H. For each proposed measure or program, including previously approved measures and programs submitted for reauthorization, the application shall provide:

(1) the public utility’s statement that the measure or program is estimated to be cost-effective and meets the utility cost test;

(2) a detailed description of the proposed measure or program;

(3) the expected useful life of the measure or program;

(4) any participation requirements and restrictions of the measure or program;

(5) the time period during which the measure or program will be offered;

(6) a description of any competitive bid process for utility measures or programs;

(7) the estimated number of measure or program participants, supported by written testimony and exhibits;

(8) the estimated economic benefit to the participants attributable to the measure or program, supported by written testimony and exhibits;

(9) the estimated annual energy savings and the estimated energy savings over the useful life for the measure or program (expressed in kilowatt hours and dollars), supported by written testimony and exhibits;

(10) the estimated annual demand savings and the estimated demand savings over the useful life for the measure or program (expressed in kilowatts and dollars), supported by written testimony and exhibits;

(11) the proposed program costs to be incurred by the utility to support more than one measure or program, along with the associated allocation of this cost to each measure or program, and the method used to determine each allocation, supported by written testimony and exhibits;

(12) a detailed separate measure or program budget that identifies the estimated monetary program costs to be incurred by the public utility in acquiring, developing, and operating each measure and program on a life cycle basis, for each year of the expected useful life of the measure or program;

(13) the estimated monetary program costs to be incurred by the public utility in acquiring, developing, and operating each measure or program on a life cycle basis, supported by written testimony and workpapers that:

(a)

demonstrate and justify how the estimated monetary program costs will be equal to or greater than the actual monetary program costs; and

(b)

explain the public utility's rationale and methodology used to determine the estimated monetary program costs.

(14) the estimated

avoided monetary cost associated with developing, acquiring and operating associated supply side resources, supported by written testimony and exhibits that:

(a)

demonstrate and justify how the estimated avoided monetary cost will be equal to or greater than the actual avoided monetary cost; and

(b)

explain the public utility's rationale and methodology used to estimate the avoided monetary cost associated with acquiring, developing, and operating the associated supply side resource.

(15) supporting

documentation, underlying data, calculations, estimates and other items shall be presented in a manner that facilitates the preparation of a measurement and verification report by an independent program evaluator, along with compilation and preparation of the public utility's reporting requirements, and that facilitates a simple comparison of measure or program estimated results to actual results, including the public utility's cost of capital and discount rate; and

(16) if the utility

cost test is not met, justify why the utility is proposing to implement the program within its portfolio of proposed programs.

I. The public utility

shall demonstrate, and has the burden to demonstrate, that it has evaluated and determined that the proposed measure or program is cost-effective and will reduce energy usage or energy demand or both, if approved by the commission and implemented by the utility.

J. The public utility shall

demonstrate that its portfolio of proposed measures and programs are cost-effective, meets the utility cost test as defined by Section 62-17-4 (C) NMSA 1978 and are designed to provide every affected customer class with the opportunity to participate and benefit economically.

K. The public utility

shall demonstrate that no less than five percent (5%) of the funding for measure and program costs shall be specifically directed to measures or programs for low-income customers.

L. As stated in Section

62-17-5 (F) NMSA 1978, applications may include a proposal for an opportunity

to earn a profit on cost effective energy efficiency and load management resource development that, with satisfactory program performance, is financially more attractive to the public utility than a supply-side utility resource. Accordingly, any application that includes a proposed annual incentive award shall:

(1) be based on

the utility's costs;

(2) be based on

satisfactory performance of measures and programs;

(3) be supported

by written testimony and exhibits; and

(4) shall not

exceed the product (expressed in dollars) of:

(a)

its weighted cost of capital (expressed as a percent), and

(b) its

approved annual program costs.

M. For each approved large customer self-directed program, the utility's application shall describe, in an annual report, the process that enabled the utility to determine that a large customer self-directed program met the cost-effective definition set forth in Section 62-17-9 (B) NMSA 1978 and merited the credit or exemption.

N. The commission shall act expeditiously on the public utility's request for approval of its energy efficiency and load management measures and programs.

[17.7.2.8 NMAC - Rp, 17.7.2.8 NMAC, 1-1-15]

17.7.2.9 RESIDENTIAL PROGRAMS:

A. The programs should enable residential customers or households to conserve energy, reduce demand, or reduce residential energy bills.

B. Provided that the public utility's total portfolio of programs remains cost-effective, no less than five percent (5%) of the amount received by the public utility for program costs shall be specifically directed to energy efficiency programs for low-income customers.

(1) A public utility may coordinate with existing community resources, including affordable housing programs, and low-income weatherization programs managed by federal, state, county, or local governments. This section does not preclude the public utility from designing and proposing other low-income programs.

(2) Whenever possible, providers of low-income energy efficiency measures or programs should have demonstrated experience and

effectiveness in the design, administration and provision of low-income measures and programs, along with experience in identifying and conducting outreach to low-income households. In the absence of qualified independent agencies, a public utility that does not provide measures or programs directly, may solicit qualified competitive bids for these services.

(3) Public utilities

shall notify customers experiencing ability-to-pay problems of the availability of energy efficiency and load management measures and programs, as well as hardship funds.

(4) In developing

the utility cost test for energy efficiency and load management measures and programs directed to low-income customers, unless otherwise quantified in a commission proceeding, the public utility shall assume that twenty percent (20%) of the calculated energy savings is the reasonable value of reductions in working capital, reduced collection costs, lower bad-debt expense, improved customer service, effectiveness, and other appropriate factors qualifying as utility system economic benefits.

[17.7.2.9 NMAC - Rp, 17.7.2.9 NMAC, 1-1-15]

17.7.2.10 SELF-DIRECTED PROGRAM CREDITS FOR LARGE CUSTOMERS:

The following criteria apply to large customer utility credits for self-directed programs.

A. The expenditures made by the large customer at its facilities shall be cost-effective according to the utility cost test.

B. Projects that have received rebates, financial or other program support from a utility are not eligible for a credit.

C. Eligible expenditures must have a simple payback period of more than one year (1), but less than seven (7) years.

D. Large customers shall seek and receive approval for credits from the utility or a commission-approved self-direct administrator.

E. Large customers applying for an investor-owned electric utility bill credit must meet the electricity consumption size criteria set forth in Section 62-17-4 (G) NMSA 1978 and the utility cost test.

F. Large customers applying for gas utility bill credit must meet the gas consumption criteria as set forth in Section 62-17-4 (G) NMSA 1978 and the utility cost test.

G. Large customers seeking a credit shall provide, to the public utility or the commission-approved

self-direct program administrator, access to all relevant engineering studies and documentation needed to verify energy savings of the project, and allow access to its site for reasonable inspections, at reasonable times. All records relevant to a self-direct program shall be maintained by the large customer for the duration of that program, which shall be evaluated in accordance with 17.7.2.15 NMAC, subject to appropriate protections for confidentiality.

H. The utility shall designate a qualified representative to review, approve, or disapprove large customer requests for credits.

I. The commission may appoint a "commission-approved" self-direct program administrator to review, approve, or disapprove large customer requests for credits.

J. Approvals or disapprovals by the utility representative or administrator shall be subject to commission review. Within thirty (30) business days of the action, the utility representative or administrator shall file and serve notice of each self-direct program review, approval, or disapproval with the commission, and on all interested parties. Notice of an appeal of a utility or administrator approval or disapproval of a large customer credit request shall be filed with the commission within thirty (30) calendar days of the approval or disapproval action by Staff, the large customer or any interested party.

K. Once approved, the credit may be used to offset up to seventy percent (70%) of the tariff rider authorized by the Efficient Use of Energy Act, until said credit is exhausted.

L. Any credit not fully utilized in the year it is received shall carry over to subsequent years.

M. Implementation of credits shall be designed to minimize utility administrative costs.

N. Self-direct program participants, or large customers seeking exemption, shall submit qualified in-house or contracted engineering studies, and such other information as may be reasonably required by the utility or program administrator, to demonstrate qualification for self-direct program credits.

O. Large customers must respond to reasonable utility or administrator information requests and allow the utility or an administrator to perform necessary site visits.

P. The utility or administrator shall act in a timely manner on requests for self-direct program approval.

Q. For investor-owned electric utilities, the equivalent amount

of energy savings associated with a large customer's self-directed program will be accounted for in calculating its compliance with minimum required energy savings.

R. Large customer expenditures incurred to produce electric energy savings or electric demand savings are only eligible for an electric utility bill credit. Large customer expenditures incurred to produce natural gas energy savings or natural gas demand savings are only eligible for a gas utility bill credit. Large customer expenditures incurred to produce both electric and natural gas energy savings, both electric and natural gas demand savings, or any combination of energy savings and demand savings for both electric and natural gas are eligible for both an electricity bill credit and a gas utility bill credit, provided that the same energy efficiency expenditures or load management expenditures cannot be accounted for twice.

S. Upon written request by the large customer, the information provided by that customer to the utility or program administrator, program evaluator, or others, shall remain confidential, except as otherwise ordered by the commission. [17.7.2.10 NMAC - Rp, 17.7.2.10 NMAC, 1-1-15]

17.7.2.11 SELF-DIRECTED PROGRAM EXEMPTIONS FOR LARGE CUSTOMERS: The following criteria apply to utility exemptions to large customers for self-directed programs.

A. To receive approval for an exemption to paying seventy percent (70%) of the tariff rider, a large customer must demonstrate to the reasonable satisfaction of the utility or self-direct program administrator that it has exhausted all cost-effective energy efficiency measures at its facility.

B. Projects that have received rebates, financial or other program support from a utility are not eligible for an exemption.

C. Eligible expenditures must have a simple payback period of more than one (1) year but less than seven (7) years.

D. Large customers shall seek and receive approval for exemptions from the utility or a commission-approved self-direct administrator.

E. Large customers applying for an investor-owned electric utility bill exemption must meet the electricity consumption size criterion set forth in Section 62-17-4 (G) NMSA 1978.

F. Large customers applying for a gas utility bill exemption must meet the gas consumption criterion set forth in Section 62-17-4 (G) NMSA 1978.

G. The utility shall designate a qualified representative to review and approve, or disapprove, large customer requests for exemptions.

H. The commission may appoint a "commission-approved" self-direct program administrator to review and approve, or disapprove, large customer requests for exemptions.

I. Approvals or disapprovals by the utility representative or administrator shall be subject to commission review. Within thirty (30) business days of the action, the utility representative or administrator shall file and serve notice of each self-direct program approval or disapproval with the commission, and on all interested parties. Notice of an appeal of a utility or administrator approval or disapproval of a large customer exemption request shall be filed with the commission within thirty (30) calendar days of the approval or disapproval action by staff, the large customer or any interested party.

J. Self-direct program participants, or large customers seeking an exemption shall provide, to the public utility or the commission approved self-direct program administrator, access to all relevant engineering studies and documentation needed to verify energy saving of the project, and allow access to its site for reasonable inspections, at reasonable times. All records relevant to a self-direct program shall be maintained by the large customer for the duration of that program, which shall be evaluated in accordance with 17.7.2.15 NMAC, subject to appropriate protections for confidentiality.

K. Self-direct program participants, or large customers seeking exemption, shall submit qualified in-house or contracted engineering studies, and such other information as may be reasonably required by the utility or program administrator, to demonstrate qualification for self-direct program exemptions.

L. Large customers must respond to reasonable utility or administrator information requests and allow the utility or an administrator to perform necessary site visits.

M. The utility or administrator shall act in a timely manner on requests for self-direct program approval.

N. For investor-owned electric utilities, the equivalent amount of energy savings associated with a large customer's self-directed program will be accounted for in calculating its compliance with minimum required energy savings.

O. Large customer expenditures incurred to produce electric energy savings or electric demand savings

are only eligible for an electric utility bill credit. Large customer expenditures incurred to produce natural gas energy savings or natural gas demand savings are only eligible for a gas utility bill credit. Large customer expenditures incurred to produce both electric and natural gas energy savings, both electric and natural gas demand savings or any combination of energy savings and demand savings for both electric and natural gas are eligible for both an electricity bill credit and a gas utility bill credit, provided that the same energy efficiency expenditures or load management expenditures cannot be accounted for twice.

P. Upon written request by the large customer, the information provided by large customers to the utility or program administrator, program evaluator or others shall remain confidential, except as otherwise ordered by the commission. [17.7.2.11 NMAC - Rp, 17.7.2.11 NMAC, 1-1-15]

17.7.2.12 MODIFICATION OR TERMINATION OF PROGRAMS:

The utility, commission staff, attorney general, energy, minerals and natural resources department, or any other interested party, may petition the commission to modify or terminate a measure or program for good cause. Program modification or termination shall not nullify any preexisting obligations of the utility, alternative energy efficiency provider, or contractor, for performance or failure to perform. Termination of a program or programs shall be accomplished in a manner that allows the utility to fully recover its prudent and reasonable program costs.

[17.7.2.12 NMAC - Rp, 17.7.2.12 NMAC, 1-1-15]

17.7.2.13 FILING REQUIREMENTS FOR COST RECOVERY:

A. Public utility recovery of program costs shall only be from customer classes with an opportunity to participate in approved measures and programs and shall be three percent (3%) of customers' bills or seventy-five thousand dollars (\$75,000) per customer per plan year, whichever is less.

B. The public utility, at its option, may recover its prudent and reasonable program costs and approved incentives, either through an approved tariff rider, in base rates or by combining recovery through a tariff rider and base rates.

C. If a public utility seeks recovery of costs through a tariff rider, a utility shall present the proposed ratemaking treatment to the commission

for approval. The proposal shall reconcile recovery of any costs currently being recovered through a tariff rider or in base rates, or by a combination of the two, as well as any new costs proposed to be recovered through a tariff rider or in base rates, or by a combination of the two.

(1) The tariff rider shall be applied on a monthly basis, unless otherwise allowed by the commission.

(2) Unless otherwise ordered by the commission, a tariff rider approved by the commission shall require language on customer bills explaining program benefits.

(3) A public utility seeking approval of a tariff rider shall file an advice notice containing the information required by 17.1.2.210.11 NMAC and served upon the individuals and entities set forth in that rule. The proposed tariff rider shall go into effect thirty (30) days after filing, unless suspended by the commission for a period not to exceed one hundred eighty (180) days. If the commission has not acted to approve or disapprove the tariff rider by the end of an ordered suspension period, or within thirty (30) days of filing, it shall be deemed approved as a matter of law.

D. If base rate recovery of costs is sought, a utility shall present the proposed ratemaking treatment to the commission for approval. The proposal shall reconcile recovery of any costs currently being recovered through a tariff rider or in base rates, or by a combination of the two, as well as any new costs proposed to be recovered through a tariff rider or in base rates, or by a combination of the two.

E. Program costs and incentives may be deferred for future recovery through creation of a regulatory asset. Prior commission approval is required for the public utility to create a regulatory asset and to establish any associated carrying charge. [17.7.2.13 NMAC - Rp, 17.7.2.13 NMAC, 1-1-15]

17.7.2.14 ANNUAL REPORT:

A. Annual reports shall provide information relating to the public utility's actions to comply with the Efficient Use of Energy Act.

B. Each public utility shall post its annual report on a publicly accessible website.

C. Annual reports shall include the following for each measure and program:

- (1)** documentation of program expenditures;
- (2)** estimated and

- actual customer participation levels;
- (3)** estimated and actual energy savings;
- (4)** estimated and actual demand savings;
- (5)** estimated and actual monetary costs of the public utility;
- (6)** estimated and actual avoided monetary costs of the public utility;
- (7)** an evaluation of its cost-effectiveness; and
- (8)** an evaluation of the cost-effectiveness and pay-back periods of self-directed programs.

D. Annual reports also shall include the following:

- (1)** the most recent measurement and verification report of the independent program evaluator, which includes documentation, at both the portfolio and individual program levels of expenditures, savings, and cost-effectiveness of all energy efficiency measures and programs and load management measures and programs, expenditures, savings, and cost-effectiveness of all self-direct programs, and all assumptions used by the evaluator;
- (2)** a listing of each measure or program expenditure not covered by the independent measurement and verification report and related justification as to why the evaluation was not performed;
- (3)** a comparison of estimated energy savings, demand savings, monetary costs and avoided monetary costs to actual energy savings, demand savings, actual monetary costs, and avoided monetary costs for each of the utility's approved measures or programs by year;
- (4)** a listing of the number of program participants served for each of the utility's approved measures or programs by year;
- (5)** a listing of the calculated economic benefits for each of the utility's approved measures or programs by year;
- (6)** information on the number of customers applying for and participating in self-direct programs, the number of customers applying for and receiving exemptions, measurement and verification of self-direct program targets, payback periods and achievements, customer expenditures on qualifying projects, oversight expenses incurred by the utility representative or administrator; and
- (7)** any other information required by the commission. [17.7.2.14 NMAC - Rp, 17.7.2.14 NMAC, 1-1-15]

17.7.2.15 MEASUREMENT AND VERIFICATION:

A. Every energy efficiency and load management program shall be independently evaluated at least every three years. Every year, a public utility shall submit to the commission a comprehensive measurement, verification and program evaluation report prepared by an independent program evaluator.

(1) The independent program evaluator shall, at a minimum determine and verify energy and demand savings;

(a) determine and verify energy and demand savings;

(b) determine program cost effectiveness by applying the monetary values contained in the utility's approved plan year application;

(c) assess the public utility's performance in implementing energy efficiency and load management programs;

(d) assess whether the utility has failed to meet its requirements under the Efficient Use of Energy Act or has not operated in good faith;

(e) provide recommended improvements on program performance for commission directed modification;

(f) confirm that commission approved measures and programs were installed or implemented, meet reasonable quality standards, and are operating fully and correctly;

(g) utilize applicable international performance measurement and verification protocols, describe any deviation from those protocols, and explain the reason for that deviation; and

(h) fulfill any other measurement and verification statutory requirements not specifically delineated herein.

(2) The public utility shall cooperate with the independent program evaluator and commission staff in making information and personnel available to facilitate the independent program evaluator's proper evaluation of each public utility and completion of a comprehensive measurement, verification and program evaluation report.

B. The commission, through its staff, will select and direct an independent program evaluator to prepare and submit a comprehensive measurement, verification and program evaluation report to the commission. Staff, to fulfill its obligation under

subsection B of this section, may consult with public utilities and other interested parties.

C. Staff shall:

(1) undertake a competitive bid process and abide by state purchasing rules and commission policies in selecting a sole independent program evaluator to evaluate public utility compliance with the Efficient Use of Energy Act;

(2) develop a request for proposals ("RFP"), including the scope, terms of work, and evaluation process to score the RFP responses;

(3) receive, review, score and rank the RFP responses;

(4) subsequently rank and recommend competitive qualified bidders to the commission;

(5) negotiate a contract with the competitive bidder awarded the contract; and

(6) administer the contract, including: confirming that contract deliverables are met, reviewing invoices and related contract performance, and approving utility invoices after staff's review and approval.

D. Funding for services of the independent program evaluator's completion of a comprehensive measurement and verification report will be paid initially by the public utility and treated as a regulatory asset; to be recovered through rates established in the public utility's next general rate proceeding.

E. Self-direct measures, programs, expenditures, credits and exemptions shall be evaluated and reported in the utility's annual report by the independent program evaluator using the same measurement and verification standards applied to utility measures and programs by the utility or commission-approved self-direct program administrator.

F. Upon written request by the large customer, the information provided by large customers to the utility or program administrator, program evaluator, or others, shall remain confidential except as otherwise ordered by the commission.

G. The commission may require other information. [17.7.2.15 NMAC - Rp, 17.7.2.15 NMAC, 1-1-15]

17.7.2.16 RURAL ELECTRIC COOPERATIVES:

A. Distribution cooperative utilities shall, within twenty-four (24) months after the effective date of this rule, and every twenty-four (24) months thereafter, examine potential customer assistance in reducing energy consumption or peak electricity demand in

a cost-effective manner. Based on these studies, distribution cooperative utilities shall establish and implement energy efficiency and load management targets and programs that are economically feasible and practical for their members and customers. Approval for such programs shall reside with the governing body of each distribution cooperative utility rather than the commission.

B. Each distribution cooperative utility shall simultaneously file with the commission its annual report by May 1st, along with a report describing the cooperative's examination of efficiency potential set forth in Section 17.7.2.18(A) NMSA 1978. The distribution cooperative utility's report will also address all of its programs or measures that promote energy efficiency, conservation or load management. The report shall set forth the costs of each of the programs or measures for the previous calendar year and the resulting effect on electricity consumption. In offering or implementing energy efficiency, conservation or load management programs, a distribution cooperative utility shall attempt to minimize any cross-subsidies between customer classes.

C. Each distribution cooperative utility shall include in the report required by Section 17.7.2.18(B) NMSA 1978, a description of all planned programs or measures to promote energy efficiency, conservation or load management and the anticipated implementation date.

D. Costs resulting from programs or measures to promote energy efficiency, conservation or load management may be recovered by the distribution cooperative utility through its general rates. In requesting approval to recover such costs in general rates, the distribution cooperative utility may elect to use the procedure set forth in Section 62-8-7(G) NMSA 1978.

E. The commission may develop necessary compliance forms.

[17.7.2.16 NMAC - Rp, 17.7.2.16 NMAC, 1-1-15]

17.7.2.17 REGULATORY

DISINCENTIVES: The commission shall, upon petition or its own motion, identify regulatory disincentives or barriers for public utility expenditures on energy efficiency and load management measures and ensure that they are removed in a manner that balances the public interest, consumers' interests and investors' interests. Public utility petitions for regulatory disincentive removal shall be supported by testimony and exhibits.

[17.7.2.17 NMAC - Rp, 17.7.2.17 NMAC, 1-1-15]

17.7.2.18 AUDIT: The commission may order a public utility to submit to an audit that examines whether the public utility's energy efficiency and load management program costs are prudent, reasonable and being properly assigned to programs in accordance with this rule, commission orders, and other applicable requirements and standards. The cost of such audit shall be considered recoverable program costs, unless it results in a commission order containing findings of the public utility's malfeasance, in which case, audit costs shall not be recoverable from the public utility's customers.

[17.7.2.18 NMAC - Rp, 17.7.2.18 NMAC, 1-1-15]

17.7.2.19 VARIANCES: Written applications for a variance from any of the provisions of this guideline shall:

A. state the reason(s) for the variance request;

B. identify each of the sections of this guideline for which a variance is requested;

C. describe the effect the variance will have, if granted, on compliance with this guideline;

D. describe how granting the variance will not compromise, or will further, the purposes of this guideline; and

E. indicate why the proposed variance is a reasonable alternative to the requirements of this guideline.

[17.7.2.19 NMAC - Rp, 17.7.2.19 NMAC, 1-1-15]

HISTORY OF 17.7.2 NMAC:

Pre NMAC History: none.

History of Repealed Material:

17.7.2 NMAC, Energy Efficiency (filed 02-02-2007), repealed 05-3-2010.

17.7.2 NMAC, Energy Efficiency (filed 04-16-2010), repealed 01-15-2015.

NMAC History:

17.7.2 NMAC, Energy Efficiency (filed 02-02-2007) was replaced by 17.7.2 NMAC, Energy Efficiency, effective 05-3-2010.

17.7.2 NMAC, Energy Efficiency (filed 04-16-2010) was replaced by 17.7.2 NMAC, Energy Efficiency, effective 01-15-2015.

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES

CHAPTER 11 TELECOMMUNICATIONS PART 10 STATE RURAL UNIVERSAL SERVICE FUND

17.11.10.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission.

[17.11.10.1 NMAC - Rp, 17.11.10.1
NMAC, 01-01-15]

17.11.10.2 SCOPE: This rule
applies to all entities that provide intrastate
retail public telecommunication services
and comparable retail alternative services in
New Mexico.

[17.11.10.2 NMAC - Rp, 17.11.10.2
NMAC, 01-01-15]

**17.11.10.3 STATUTORY
AUTHORITY:** Sections 8-8-4 and 63-9H-
6 NMSA 1978.

[17.11.10.3 NMAC - Rp, 17.11.10.3
NMAC, 01-01-15]

17.11.10.4 DURATION:
Permanent.

[17.11.10.4 NMAC - Rp, 17.11.10.4
NMAC, 01-01-15]

17.11.10.5 EFFECTIVE DATE:
January 1, 2015, unless a later date is cited
within a section.

[17.11.10.5 NMAC - Rp, 17.11.10.5
NMAC, 01-01-15]

17.11.10.6 OBJECTIVE: The
purpose of this rule is to provide procedures
for administering and implementing the
New Mexico state rural universal service
fund to maintain and support at affordable
rates those public telecommunications
services and comparable retail alternative
services provided by telecommunications
carriers that have been designated as
eligible telecommunications carriers,
including commercial mobile radio
services carriers, as are determined by the
commission.

[17.11.10.6 NMAC - Rp, 17.11.10.6
NMAC, 01-01-15]

17.11.10.7 DEFINITIONS: In
addition to the definitions contained in
Section 63-9H-3 NMSA 1978, as used in
this rule:

A. "access line" means the
connection of the end-user customer to the
public switched network, and is not limited
to wireline or any other technology;

B. "administrator" means
the person designated by the commission to
administer the fund;

C. "basic local exchange
rate" means an incumbent local exchange
carrier's tariffed, monthly, flat single-line
rate charged to its retail customers for the
provision of local exchange service; for
the purposes of this rule, the "residential"
and "business" basic local exchange rates
shall include any commission-mandated
subscriber line charges or extended area
service charges;

D. "carrier" means an
entity that provides intrastate retail public
telecommunications services or comparable
retail alternative services in New Mexico;

E. "commercial
mobile radio service (CMRS)" means a
designation by the federal communications
commission for any carrier or licensee
whose wireless network is connected to the
public switched telephone network or is
operated for profit;

F. "commission"
means the New Mexico public regulation
commission;

G. "contributing
company" means any carrier that provides
intrastate retail public telecommunications
services or comparable retail alternative
services in New Mexico;

H. "eligible
telecommunications carrier (ETC)"
means an entity with New Mexico
operations that provides retail
telecommunications services that has been
designated by the commission as eligible
to receive disbursements from the fund or
from the federal universal service fund;

I. "exempt customer"
means an end-user of telecommunications
service that is the state of New Mexico,
a county, a municipality or other
governmental entity; a public school
district; a public institution of higher
education; an Indian nation, tribe, or
pueblo; a private telecommunications
network; or a person eligible to receive
reduced rates under a low-income telephone
assistance plan created by the federal
government or the state of New Mexico;

J. "FCC" means the
federal communications commission;

K. "Form 481" means
the FCC's Form 481, 54.313/54.422 Data
Collection Form, which is an annual
report containing a carrier's financial and
operational data used by the FCC to validate
the support, if any, that a recipient company
is eligible to receive from the high-cost
support mechanism and/or the Lifeline
and Link Up support mechanism; carriers
that receive federal high-cost support must
complete the 54.313 portion of Form 481,
and carriers that receive Lifeline and Link
Up must complete the 54.422 portion of the

form;

L. “fund” or “State Rural Universal Service Fund (SRUSF)” means the state of New Mexico universal service fund established pursuant to Section 63-9H-6 NMSA 1978 and this rule;

M. “historical access rate” means the composite per-minute intrastate switched access charge in effect for a carrier as of July 1, 2005;

N. “historical collection factor” means the ratio, for calendar year 2004, of intrastate switched access charge revenue collected by a carrier to its gross charges for intrastate switched access, except that the historical collection factor may not exceed 1.0;

O. “imputed benchmark revenue” means the difference between the affordability benchmark rates established by the commission pursuant to this rule and the carrier’s current basic local exchange residential and business rates, multiplied by the number of basic local exchange residential and business lines served by the carrier as of December 31 of the year that corresponds to the applicable intrastate access minutes used to derive the revenue requirement pursuant to subparagraph E of 17.11.10.19 NMAC; imputed benchmark revenue shall not be less than zero;

P. “interexchange carrier (IXC)” means an entity that provides intrastate toll services in New Mexico;

Q. “intrastate retail telecommunications revenue” means the revenue collected from the sale of intrastate telecommunications services to end users; for voice over internet protocol (VOIP) and similar services, the portion of total retail revenues attributable to intrastate retail telecommunications shall be equal to the proportion of calls originating and terminating in New Mexico to all calls originating in New Mexico;

R. “intrastate retail telecommunications services” means services including, but not limited to, all types of local exchange service; non-basic, vertical or discretionary services, also known as advanced features, or premium services, such as, but not limited to, call waiting, call forwarding, and caller ID; listing services; directory assistance services; cellular telephone and paging services; commercial mobile radio services; personal communications services (PCS); both optional and non-optional operator services; wide area telecommunications services (WATS) and WATS-like services; toll-free services; 900 services and other informational services; message telephone services (MTS) or toll; CENTREX, Centron and centron-like services; video conferencing and teleconferencing services; the resale of intrastate telecommunications services; payphone services; services that

provide telecommunications through a New Mexico telephone number using voice over internet protocol (VOIP) or comparable technologies; any services regulated by the commission; and such other services as the commission may by order designate from time to time as equivalent or similar to the services listed above, without regard to the technology used to deliver such services;

S. “intrastate switched access charge” means a charge levied by a carrier for the availability and use of its facilities for origination and termination of intrastate interexchange calls as contained in tariffs approved by the commission;

T. “local exchange carrier (LEC)” means an entity that provides local exchange service in New Mexico;

U. “New Mexico operations” means intrastate retail public telecommunications services and comparable retail alternative services provided in New Mexico;

V. “New Mexico telephone number” means a North American numbering plan (NANP) number that provides the ability to receive calls from the public switched telephone network; and is within an area code designated to New Mexico or is a non-geographic numbering plan area (NPA) (e.g. 900) number associated with a New Mexico physical address;

W. “rural area” means a local exchange carrier’s study area that (1) does not include either: (a) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the bureau of the census; or (b) any territory, incorporated or unincorporated, included in an urbanized area as defined by the bureau of census; (2) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (3) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (4) has less than 15 percent of its access lines in communities of more than 50,000;

X. “service area” means a geographic area established by the commission in accordance with Section 214(e)(5) of the federal act (47 U.S.C. Section 214(e)(5)).
[17.11.10.7 NMAC - Rp, 17.11.10.7 NMAC, 01-01-15]

17.11.10.8 REDUCTION OF INTRASTATE SWITCHED ACCESS CHARGES: The commission may, upon motion of a carrier or the administrator, or upon the commission’s own motion, authorize further intrastate switched access charge reductions for a carrier to correspond to any changes in that carrier’s tariffed

interstate switched access service charge rates, elements or structure subsequent to January 1, 2006.

[17.11.10.8 NMAC - Rp, 17.11.10.8 NMAC, 01-01-15]

17.11.10.9 AFFORDABILITY BENCHMARK RATES:

A. Effective July 1, 2015, the residential and business affordability benchmark rates to be utilized in determining the level of support available from the fund are as follows:

(1) the residential benchmark rate shall be equal to the rate required by the FCC to maintain federal high cost support, as such rate may change from time to time;

(2) the business benchmark rate shall be carrier-specific and shall be equal to the business basic exchange rate of each local exchange carrier on July 1, 2015, plus the amount required to increase the carrier’s residential basic local exchange rate to match the new residential benchmark rate set forth above, up to a limit of \$35.96;

(3) each local exchange carrier shall, on or before May 1 of each year, advise the commission and the administrator in writing of its residential and business basic local exchange rates to be in effect on July 1 of that year and how they were determined;

(4) increases in the residential basic local exchange rates of incumbent rural telecommunications carriers toward the residential benchmark rate established in this section shall be implemented by timely filing of tariff revisions with the commission and shall be effective after ten (10) days’ notice to the carrier’s customers and the commission;

B. The commission may conduct a proceeding to establish new affordability benchmark rates upon its own motion.

[17.11.10.9 NMAC - Rp, 17.11.10.9 NMAC, 01-01-15]

17.11.10.10 SELECTION OF ADMINISTRATOR:

The commission will designate a third-party administrator who will be subject to the supervision and control of the commission for a four-year term. The administrator shall perform services under the terms of a written contract to be entered into between the commission and the administrator. The commission shall procure the services of a subsequent administrator before the expiration of the term of each such contract, or in the event of early termination of such contract, as soon as practicable before or after the early termination.

A. Criteria for selection: the commission will issue a request for

proposals to select the administrator; the commission shall consider whether the bidder has demonstrated the competence needed to administer the fund and the rate of compensation proposed; the commission shall also consider at a minimum whether the bidder:

- (1) is able to be neutral and impartial;
- (2) is a member of a trade association that advocates positions before this commission or other state commissions in administrative proceedings related to telecommunications issues;
- (3) is an affiliate of any contributing company;
- (4) has a substantial financial interest in any entity or affiliate that provides telecommunications services or comparable retail alternative services; and
- (5) has a board of directors that includes any member with direct financial interests in entities that contribute to or receive support from the fund in this state or any other state.

B. Termination of administrator's contract: the commission may terminate the administrator's contract with the commission before the expiration of the term of the contract upon such notice, and under such conditions, as are set forth in the contract.

[17.11.10.10 NMAC - Rp, 17.11.10.10 NMAC, 01-01-15]

17.11.10.11 EXPENDITURE

AUTHORIZATION: The commission shall approve an annual budget for administration of the fund. The reasonable expenses incurred in the administration of the fund, in accordance with the terms of the contract between the commission and the administrator, shall be a cost of the fund and shall be recovered from contributions to the fund.

[17.11.10.11 NMAC - Rp, 17.11.10.11 NMAC, 01-01-15]

17.11.10.12 RESPONSIBILITIES OF ADMINISTRATOR:

The administrator shall manage the day-to-day operation of the fund in accordance with this rule, applicable law, and the overall supervision and direction of the commission. The administrator shall:

A. fairly, consistently, and efficiently administer fund collections and disbursements in accordance with commission rules and subject to commission oversight;

B. establish an account or accounts in one or more independent financial institutions and ensuring that the monies deposited in the fund are insured to the maximum extent permitted by law and

that they earn a return commensurate with that of state funds held on deposit in banks or other financial institutions;

C. ensure that the fund complies with all necessary requirements for exemption from federal, state and local taxes;

D. establish procedures, consistent with the commission's procedural rules and law, and with the commission's approval, for protecting the confidentiality of information submitted pursuant to this rule;

E. report to the commission on fund activities at least once each year; the report shall include fund collections and disbursements, administrative expenditure information, budget projections and such other information as the commission may require;

F. prepare an annual proposed budget for administration of the fund and submit it to the commission for review, revision, rejection or approval at such time in advance of the need for commission approval as the commission may direct, or absent such direction, at a reasonable time;

G. propose to the commission uniform procedures, and develop forms, to identify exempt customers, in consultation with contributing companies;

H. create and maintain the databases necessary to administer the program and account for the funds;

I. develop appropriate forms for use in collecting information from contributing companies and ETCs;

J. pay administrative expenses out of the fund in accordance with the budget approved by the commission;

K. petition the commission to institute an enforcement or other action when the administrator finds that it is otherwise unable to collect amounts properly due from a contributing company under these rules, or when it appears to the administrator that any contributing company or ETC carrier is otherwise out of compliance with these rules or applicable law;

L. conduct, not less than once every year, such reviews as are necessary to ensure that each contributing company is making its required contributions to the fund and that support from the fund is used for the purpose of the fund.

[17.11.10.12 NMAC - Rp, 17.11.10.12 NMAC, 01-01-15]

17.11.10.13 DISPUTE

RESOLUTION: The commission may refer any disputed case between the administrator and a contributing company or between contributing companies to

alternative dispute resolution if it finds that doing so would encourage the settlement of the dispute.

A. Mediation:

(1) if any of the parties or staff makes a request for mediation, the commission may, in its discretion, designate a mediator consistent with Subsection B of 17.1.2.20 NMAC;

(2) the mediator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties and staff; if the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services; the mediator shall not be the hearing examiner who is assigned to the case; the mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and staff at the time the mediator is assigned by the commission and unless all parties agree that the mediator may serve; the mediator shall not subsequent to serving as a mediator participate in the proceeding as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding;

(3) the mediator may be assigned by the commission at the same time as the commission assigns the case to a hearing examiner; the mediator shall not discuss the mediation conference with any commissioner or hearing examiner hearing the case;

(4) the mediator shall notify the parties and staff by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator; the notice may direct the parties and staff to send the mediator, but not other parties or staff, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the complaint;

(5) if the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution; if the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file a formal complaint with the commission;

(6) nothing shall preclude the commission from using different mediation procedures.

B. Arbitration:

(1) a party may request arbitration of any dispute; the party's request shall be in writing to the commission and shall include a concise statement of the grounds for the complaint, the remedy sought, and an acknowledgment that the party has read 17.1.2.22 NMAC and agrees to be bound by its terms;

(2) the commission or its authorized representative shall forward the request for arbitration to the other party together with a copy of Subsection A of 17.1.2.16 NMAC and 1.2.18 NMAC and require that the other party submit a written response within ten (10) days of the date of the commission's letter forwarding the request;

(3) if the responding party agrees to arbitration of the dispute, he shall include in his response to the complainant's request a concise statement of his position with regard to the merits of the complaint and an acknowledgment that he has read 17.1.2.22 NMAC and agrees to be bound by its terms; if the responding party will not agree to arbitration, he shall so state in the response;

(4) if the responding party either fails to respond to a request for arbitration or does not agree to arbitration, the initiating party retains the right to proceed with a formal complaint;

(5) if both the initiating party and the responding party agree to arbitration, the commission shall designate an arbitrator; the arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the complaint; the designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve; the parties shall be required to indicate their consent in writing to the designated arbitrator within ten (10) days of the date of the commission's letter of designation; if the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear the costs as their own pursuant to Sections 8-8-4 and 62-13-3 NMSA 1978;

(6) any employee of the commission designated to arbitrate the matter under these provisions shall not participate in a subsequent proceeding on the complaint as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding;

(7) the

commission may assign docket numbers to arbitration proceedings for purposes of record management but the proceeding remains an informal proceeding;

(8) nothing shall preclude the commission from using different arbitration procedures.

C. Arbitration Procedures:

(1) once designated and approved by the parties, the arbitrator shall proceed to render a decision in the arbitration proceeding within sixty (60) days of the date the responding party agreed to arbitration except for good cause; if the arbitrator at any time determines that it is unlikely that the dispute can be resolved without substantially affecting the interests of other ratepayers or the public, he may so inform the parties and staff and terminate the proceeding without prejudice to the initiating party's right to file a formal complaint;

(2) the arbitrator shall fix a time and place for an informal hearing and shall serve notice of the hearing on both parties and on staff at least ten (10) days in advance of the hearing; he may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths; the parties and staff may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute; the arbitrator shall decide the relevancy and materiality of the evidence offered, and conformity to the New Mexico rules of evidence or to rules of evidence contained in the commission's rules, is not necessary; no stenographic or electronic record will be made of the testimony at hearing unless requested by a party, who shall bear the cost of the record, or by staff;

(3) discovery will be permitted but only with leave of the arbitrator who shall not allow discovery which unduly complicates, burdens, or impedes the expeditious and informal nature of the proceeding;

(4) whenever the arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall so advise the parties and staff, who may be present at the inspection or investigation; in the event that one or both of the parties or the staff are not present, the arbitrator shall make an oral or written report to the parties and staff and afford them an opportunity to comment;

(5) at the close of or soon after the hearing, the arbitrator will issue a brief written decision; findings of fact and conclusions of law are not necessary; the arbitrator's decision will be binding on the parties and can be

implemented by the commission to the extent such implementation is necessary; however, the decision will not be a decision of the commission and shall have no precedential effect;

(6) unless agreed to by all the parties and staff, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process; nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them;

(7) nothing in this rule shall be construed to mean that the commission has waived its review of any decision or that the commission consents to be bound by arbitration.

[17.11.10.13 NMAC - Rp, 17.11.10.13 NMAC, 01-01-15]

17.11.10.14 VARIANCES AND

WAIVERS: Any person may petition the commission for variance or waiver of any provision of this rule for good cause shown.

A. General requirements:

(1) a contributing company or ETC may petition for an exemption or a variance from any of the requirements of this rule;

(2) such petition may include a motion that the commission stay the affected portion of this rule for the transaction specified in the motion;

(3) petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by an officer of the contributing company or ETC or someone with authority to sign for the contributing company or ETC;

(4) the commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

B. Contents of the petition. A petition for an exemption or variance shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the contributing company or ETC and its customers, or on its competitive affiliates and their customers, if the exemption or variance is not granted;

(4) describe the result the request will have if granted;

(5) state how the exemption or variance will achieve the purposes of this rule and the Rural Telecommunications Act of New Mexico;

(6) state why the proposed alternative is in the public interest and is a better alternative than that provided by this rule;

(7) state why the exemption or variance would have no anticompetitive effect; and

(8) state why the requested exemption or variance would not place an undue burden on the fund.
[17.11.10.14 NMAC - Rp, 17.11.10.14 NMAC, 01-01-15]

17.11.10.15 GENERAL REPORTING REQUIREMENTS:

A. Reports require declaration: all reports filed with the commission or the administrator must be filed with a declaration from the chief financial officer of the entity or the person who prepared the reports on behalf of the entity that the information is correct and the filing is made subject to the penalty of perjury provided for in Section 30-25-1 NMSA 1978.

B. Time for reporting: where no date is specified for a report, or when a request is made by the administrator for information necessary for the administration of the fund, the administrator shall specify when the report must be filed.

C. Reporting forms: contributing companies and ETCs shall report information in the manner prescribed by the administrator. The administrator shall not require reporting that will be unduly burdensome.

D. Electronic filing: the administrator shall accept electronic reporting when practicable.

E. Confidentiality: the commission shall have access to all information reported to the administrator. Contributing companies may request that company-specific information required by the reporting requirements of this rule be treated as confidential by so indicating at the time the information is submitted. The commission shall make all decisions regarding disclosure of company-specific information and may request further information or justification from the contributing company to ensure uniformity of confidential treatment of all information submitted by contributing companies. Nothing in this rule shall preclude commission issuance of an umbrella protective order identifying what reported data shall be, or shall not be, deemed confidential. The administrator shall keep confidential all company-specific information obtained from contributing companies for which confidential treatment

is requested, shall not use such information except for purposes of administering the fund, and shall not disclose such information in company-specific form unless directed to do so by the commission.

F. The commission may require the administrator to modify any of its report formats to solicit additional information necessary for the administration of the state universal service program, or to delete information that is not necessary.
[17.11.10.15 NMAC - Rp, 17.11.10.15 NMAC, 01-01-15]

17.11.10.16 REVENUE

REPORTS: Each ETC and contributing company shall submit on or before April 1 of each year a revenue report on the form prescribed by the administrator detailing its intrastate retail public telecommunications revenues for the prior calendar year.
[17.11.10.16 NMAC - Rp, 17.11.10.16 NMAC, 01-01-15]

17.11.10.17 OTHER REPORTS:

ETCs shall comply with the reporting requirements established by the commission as set forth in 17.11.27 NMAC. In addition, on or before May 1 of each year, carriers shall report the following information to the administrator in a form prescribed by the administrator, regarding facilities and activities during the preceding calendar year:

A. contributing companies, including ETCs, shall report the number and type of access lines or New Mexico telephone numbers subscribed to in total and within rural areas;

B. ETCs that are local exchange carriers shall report their number of intrastate switched access minutes;

C. contributing companies shall report the cost of collecting universal service fund (USF) surcharges, fulfilling reporting requirements, and other administrative costs of complying with this rule;

D. ETCs shall report:
(1) all revenues, compensation, payments, or subsidies received from all sources, including, but not limited to end-user customers, the state, and the federal government;

(2) all dividends or equivalents paid to shareholders, cooperative members, or others holding an ownership interest in the ETC; and
(3) compensation, including value of benefits, paid to the five highest-compensated employees of the carrier.

E. Concurrently with the annual federal ETC reporting deadline, ETCs (other than those receiving only support pursuant to 17.11.11 NMAC) shall file with the commission a report that

includes information supplied by Form 481 plus New Mexico-specific Form 481 information if the Form 481 is consolidated, modified to demonstrate whether the ETC's payments from the fund were used for the purpose stated in Subsection A of 17.11.10.27 NMAC. The report shall also include maintenance and build-out plans showing how the payments were used for the purpose stated in Subsection A of 17.11.10.27 NMAC and how they were used in conjunction with federal high cost support.

[17.11.10.17 NMAC - Rp, 17.11.10.17 NMAC, 01-01-15]

17.11.10.18 CONTACT

PERSONS: All contributing companies and ETCs shall file with the administrator the name, address, phone number and e-mail address of a contact person and shall keep the information current.
[17.11.10.18 NMAC - Rp, 17.11.10.18 NMAC, 01-01-15]

17.11.10.19 ANNUAL DETERMINATION OF FUND:

A. The administrator shall determine the amount of the fund annually, subject to commission approval, on or before October 1 of each year in order to provide carriers with sufficient time to implement any change in the surcharge rate.

B. In the event the commission orders a change in fund support, pursuant to 17.11.10.14 or 17.11.10.25 NMAC of this rule or otherwise, that necessitates a fund size greater than that which the commission has previously established, the commission may order an adjustment to the size of the fund.

C. The amount of the fund shall be equal to the sum of each ETC's revenue requirements, calculated pursuant to this section, plus any other support requirements determined by the commission pursuant to 17.11.11 NMAC, plus projected administrative expenses and a prudent fund balance.

D. Only carriers holding state ETC status as of October 1 shall be included in the calculation of funding requirements for the subsequent calendar year.

E. Except where the commission has established support based on need pursuant to 17.11.10.25 NMAC, the revenue requirement for each ETC that was eligible as of July 1, 2005 and is a local exchange carrier shall be equal to the carrier's applicable intrastate access minutes multiplied by the difference between the allowable intrastate access rate established by Section 63-9H-6(I) NMSA 1978 and the carrier's historical intrastate access rate, with the product of this computation multiplied by the carrier's historical

collection factor, and then reduced by the carrier's imputed benchmark revenue. The applicable intrastate access minutes to be used for 2015 and 2016 shall be the ETC's 2004 minutes adjusted by 50% of the total increase or decrease in the ETC's minutes between 2004 and 2012. For subsequent years, the applicable access minutes shall be the ETC's intrastate access minutes for the calendar year that is two years prior to the year for which the calculation is made. The formula stated arithmetically is as follows: ((Historical Rate Minus Allowable Rate) Times applicable minutes Times Collection Factor) Minus Imputed Benchmark Revenue.

F. The revenue requirement for an ETC that became an ETC after July 1, 2005 or that became an ETC prior to July 1, 2005, but is not a local exchange carrier, shall be determined annually by the administrator in conjunction with the administrator's determination of fund size, and shall be in accordance with the support rate determined by the commission pursuant to 17.11.10.23 NMAC.

[17.11.10.19 NMAC - Rp, 17.11.10.19 NMAC, 01-01-15]

17.11.10.20 SRUSF SURCHARGE CAP AND DETERMINATION OF RATE AND CONTRIBUTION:

A. Effective as of January 1, 2015, the SRUSF surcharge rate is capped at 3.0%. The administrator shall recommend the amount of the SRUSF surcharge rate annually, on or before September 1 to enable commission approval on or before October 1, based upon monthly and annual reports filed by ETCs and contributing companies and any other pertinent and reliable information available to the administrator or the commission, and applying the cap.

B. The rate recommended by the administrator shall go into effect unless modified or disapproved by the commission.

C. The surcharge rate shall be equal to the annual fund requirement determined by the commission divided by the sum of intrastate retail telecommunications revenue for all contributing carriers in New Mexico, and may be adjusted to account for any material deficit or surplus projected to exist at the start of the fund year, subject to the cap.

D. Each contributing company's monthly contribution shall equal the state USF surcharge rate multiplied by its intrastate retail telecommunications revenues in New Mexico for the month.

E. If, for any month the administrator finds that the fund balance is insufficient to meet the sum of all ETCs' revenue requirements (including

support pursuant to 17.11.10.25 NMAC) and 17.11.11 NMAC plus administrative expenses and maintain a prudent fund balance, the administrator shall prorate all payments to each ETC. Any reduction in payments to ETCs resulting from prorated disbursements shall be paid out only during the calendar year when such insufficiency occurred and only if sufficient monies have been paid into the fund in that calendar year. If the fund accumulates a surplus beyond what the administrator and the commission believes is prudent under the circumstances, the administrator may, with the commission's approval, decrease contribution requirements so as to lower the fund balance to an appropriate level.

F. Each contributing company shall remit its monthly contribution to the administrator on a schedule to be determined by the administrator.

G. The cap shall remain in effect for three years. The commission shall evaluate and redetermine the cap in an appropriate proceeding to be completed two and one-half years following the effective date. The commission shall notify all contributing companies, ETCs, and the administrator of any adjustment to the cap at least three months prior to expiration of the three-year effective period, and the new SRUSF surcharge rate cap shall be in effect for a three-year period commencing upon expiration of the prior three-year effective period. Each succeeding evaluation and redetermination shall occur in the same manner as described above.

[17.11.10.20 NMAC - Rp, 17.11.10.20 NMAC, 01-01-15]

17.11.10.21 RECOVERY OF CONTRIBUTIONS:

A. A contributing company shall recover the amount of its contributions to the fund from its end-user customers in a manner that is not, either by act or omission, deceptive or misleading. Such recovery shall be made in a fair, equitable and nondiscriminatory manner, and no over-recovery of contributions shall be permitted.

B. A contributing company required to provide service in accordance with commission approved tariffs shall not recover contributions from its end-user customers except as permitted under commission approved modifications to those tariffs.

C. The commission may, after notice and hearing, order modifications to a contributor's method of recovering contributions from its end-user customers. [17.11.10.21 NMAC - Rp, 17.11.10.21 NMAC, 01-01-15]

17.11.10.22 FUND DISBURSEMENTS:

A. The administrator shall make a monthly disbursement to each ETC eligible to receive such a payment from collected revenues in the fund, on a schedule to be determined by the administrator.

B. The amount of each ETC's monthly disbursement shall be one-twelfth of its revenue requirements computed in accordance with 17.11.10.19 NMAC, subject to proration as provided in Subsection E of 17.11.10.20 NMAC.

C. Only carriers holding ETC status as of October 1 shall be eligible to receive disbursements from the fund during the year that begins the following January 1.

D. The administrator shall not pay, and shall hold in escrow, any disbursements otherwise due to an ETC that is also a contributing company, if that company shall not be in compliance with its contribution requirements.

[17.11.10.22 NMAC - Rp, 17.11.10.22 NMAC, 01-01-15]

17.11.10.23 DESIGNATION OF ETCs:

A. Any carrier operating in New Mexico and designated as a state ETC as of July 1, 2005 and which has not lost that designation is automatically designated as an ETC for the purposes of this rule. If at any subsequent time a carrier loses ETC designation status, it shall no longer be eligible to receive support from the fund.

B. Other carriers may file a petition for designation as an ETC in accordance with 17.11.10.24 NMAC.

C. On its own motion or in response to a petition, the commission may, after notice and hearing and for good cause shown, modify, suspend, or revoke an ETC designation.

D. Upon approval of a carrier for ETC status under these rules, the commission may, if requested, establish the carrier's support rate in accordance with the requirements of 17.11.10.25 NMAC. In determining a just and reasonable support rate for an ETC, the commission shall:

(1) consider the cost of efficiently providing services to the proposed service area, including a rate of return determined by the commission to be reasonable, using the most cost-effective technologies, but also taking into consideration existing infrastructure;

(2) consider the amount of support available to the ETC through the federal universal service funds;

(3) ensure that the support rate for a competitive carrier not exceed the equivalent support received through these rules by the incumbent carrier or carriers serving the proposed service area.

E. On its own motion or in response to a petition, the commission may modify an ETC's support rate to reflect more current cost information or changes in service volumes.

[17.11.10.23 NMAC - Rp, 17.11.10.23 NMAC, 01-01-15]

17.11.10.24 PETITIONS FOR ETC DESIGNATION AND SUPPORT RATES:

A. Any entity seeking designation as a state or federal ETC must file a petition with the commission. In the case of a petition for ETC designation and support rate, the petition shall:

(1) include a description of the proposed service area for which it seeks designation that is consistent with the federal requirements relating to service areas set forth in 47 C.F.R. Section 54.207;

(2) demonstrate that the entity meets the requirements in Section 214(e) of the federal act (47 U.S.C. Section 214(e)) to be designated as a federal ETC;

(3) demonstrate that the proposed designation is in the public interest;

(4) include the information required by 17.11.10.25 NMAC;

(5) provide a five-year plan demonstrating how support from the fund will be used to improve the petitioner's coverage, service quality or capacity throughout the service area for which it seeks designation;

(6) demonstrate the petitioner's ability to remain functional in emergency situations;

(7) demonstrate that the petitioner will satisfy consumer protection and service quality standards;

(8) offer local usage plans comparable to those offered by incumbent local exchange carriers in the areas for which the petitioner seeks designation;

(9) acknowledge that the petitioner may be required to provide equal access if all other ETCs in the designated area relinquish their designations;

(10) demonstrate that granting ETC status to the petitioner in the designated area is likely to result in more customer choice;

(11) address the impact of designation of the petitioner on the size of the fund;

(12) address the unique advantages and disadvantages of the petitioner's service offering;

(13) demonstrate the petitioner's willingness and ability to

offer service throughout the designated service area within a reasonable time frame; and

(14) provide such other information as the commission or the administrator may find appropriate.

B. A petition by an existing ETC for a support rate shall demonstrate that granting the proposed support rate is in the public interest and shall include the information required by 17.11.10.25 NMAC.

C. Consideration of the public interest will apply in all ETC designation and support rate proceedings. The commission is not required to designate additional ETCs in any service area, if not in the public interest.

D. The commission shall, after such notice and hearing as the commission shall prescribe, enter its written order approving or denying a company's petition. An order approving a petition for ETC designation shall specify the service area for which designation is made and an order approving either a petition for ETC designation or a petition for a support rate shall state the approved support rate.

E. The commission may approve a petition for designation as a federal ETC in conjunction with a petition for designation as a state ETC.

F. The commission shall require annual verification from each ETC that it continues to meet the requirements herein for designation as an ETC and for provision of support from the fund. [17.11.10.24 NMAC - Rp, 17.11.10.24 NMAC, 01-01-15]

17.11.10.25 PETITION FOR SUPPORT BASED ON NEED:

A. An ETC serving in a high-cost area of the state may petition the commission for support from the fund when such payments are needed to ensure the widespread availability and affordability of residential local exchange service in the high-cost area of the state served by the ETC.

B. In addition to establishing need as described in Subsection A of this section, a petition for support based on need shall demonstrate with particularity how the proposed payments from the fund will be used in a manner consistent with the use of fund support requirements set forth in 17.11.10.27 NMAC.

C. In support of the petition, the ETC must make available to the commission all information supplied by Form 481 (or a similar abbreviated form) for the four quarters prior to the petition filing date, plus New Mexico-specific Form 481 information if the Form 481 information is consolidated. The

commission may also require additional information from the ETC that it deems necessary, including but not limited to information relating to the ETC's revenues, expenses, and investments, to determine whether support is needed to ensure the widespread availability and affordability of residential local exchange service in the ETC's high cost area in the state.

D. The commission shall resolve each petition for support based on need with or without a hearing no later than six (6) months following the filing date of the petition, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.

[17.11.10.25 NMAC - Rp, 17.11.10.25 NMAC, 01-01-15]

17.11.10.26 COMPLIANCE WITH CONTRIBUTION REQUIREMENTS:

A. If the administrator finds that a contributing company has not contributed the amount required by this rule, the administrator shall notify the contributing company in writing. The administrator shall request the company to pay the deficiency in its contribution.

B. The contributing company shall pay the requested amount within twenty-one (21) days of the date of the notice or seek dispute resolution as provided in this rule.

C. If attempts by the administrator to collect the total requested amount from a contributing company or to resolve a dispute are unsuccessful, the administrator shall notify the commission in writing.

D. Upon request by the administrator, a complaint filed by an interested party, or on its own motion, the commission, after providing notice and an opportunity for a hearing in accordance with 17.1.2 NMAC, may issue an order requiring a contributing company to pay any arrearage in contributions that the commission finds to exist and may also impose interest, a fine or other appropriate administrative penalties or requirements or bonding to assure future compliance with contribution requirements. In the event that a contributing company fails or refuses to comply with a commission order issued pursuant to this provision, the commission may petition the appropriate district court for appropriate injunctive relief and for enforcement of the commission's order.

E. The commission may take the same types of action set forth in Subsection D of 17.11.10.26 NMAC in the event that it finds, after a proceeding of the type specified in Subsection D of 17.11.10.26 NMAC, that a contributing company or an ETC has, in any other way,

violated any provision of this rule or of the rural telecommunications act of New Mexico, Sections 63-9H-1 et seq. NMSA 1978.

[17.11.10.26 NMAC - Rp, 17.11.10.26 NMAC, 01-01-15]

17.11.10.27 USE OF FUND SUPPORT:

A. An ETC shall use fund support in a manner consistent with the rural telecommunications act, Sections 63-9H-1 et seq. NMSA 1978, Section 254 of the federal telecommunications act (47 U.S.C. 254), and commission rules and orders. Fund support must be used to preserve and advance universal service, that is, to provide, at reasonable and affordable rates, access by consumers in all regions, including low-income consumers and those in rural, insular and high cost areas, to quality telecommunications and information services, including interexchange services and advanced telecommunications and information services that are reasonably comparable to services provided in other areas.

B. If the commission finds, in a proceeding on its own motion or on the motion of the administrator or an interested party, that an ETC has used fund support for purposes other than to preserve and advance universal service, the commission may impose an appropriate administrative remedy, which may include, but need not be limited to, ordering the ETC to refund amounts paid to it from the fund.
[17.11.10.27 NMAC - Rp, 17.11.10.27 NMAC, 01-01-15]

17.11.10.28 ACCESS TO BOOKS, RECORDS AND PROPERTY:

A. The administrator or the commission shall have access to the books of account, records and property of all contributing companies and ETCs to the extent necessary to verify information reported or required to be reported pursuant to this rule. The administrator or commission may direct a contributing company or ETC to send copies of records to the administrator or commission or may inspect records at the offices of the contributing company or ETC, at the administrator's or commission's discretion.

B. In the normal course of business, the administrator will give at least three (3) days' notice of its plans to inspect records in the offices of a contributing company or ETC. The administrator may apply to the commission to procure a subpoena in order to inspect records without notice.

[17.11.10.28 NMAC - Rp, 17.11.10.28 NMAC, 01-01-15]

17.11.10.29 REVIEW AND

AUDIT OF ADMINISTRATOR AND

FUND: The administrator shall provide the commission with a financial statement of the fund and the administration of the fund on an annual basis by May 1. The commission shall engage a qualified independent auditor to audit each such financial statement and to submit a written opinion to the commission.

[17.11.10.29 NMAC - Rp, 17.11.10.29 NMAC, 01-01-15]

17.11.10.30 ADVISORY BOARD:

A. The commission shall establish and appoint an advisory board composed of representatives from participating contributing companies and ETCs, the attorney general, the commission staff, and any representative(s) of one (1) or more consumer groups or organizations that the commission may choose to appoint. The members shall include no more than one (1) representative from each of the following types of telecommunications carriers and entities providing comparable intrastate retail services: rural incumbent telecommunications carriers; incumbent local exchange carriers other than incumbent rural telecommunications carriers; interexchange carriers; competitive local exchange carriers not ETC-designated; ETC-designated competitive local exchange carriers; commercial mobile radio service providers not-ETC-designated; and ETC-designated commercial mobile radio service providers. Any other type of telecommunications carriers or providers of comparable intrastate retail service may petition the commission for representation by no more than one member of that type of carrier or service provider on the advisory board, which the commission may grant by order. The commission shall resolve any dispute among the carriers or service providers of each type as to who shall be the member of the advisory board. The members representing participating contributors shall each be appointed for a term of three (3) years. Members of the board may be reappointed to subsequent terms with the approval of the commission. Expenses incurred by a member in connection with participation on the advisory board shall not be reimbursed from the fund.

B. The advisory board shall meet periodically with the administrator and shall provide advice and consultation to the administrator as provided under this rule. Where deemed necessary by the advisory board, it shall make recommendations to the commission or the administrator, or both, relating to potential matters related to administration of the fund. Should the members of the advisory board not agree on a recommendation to the commission

or administrator on any particular matter, the advisory board may provide a majority recommendation as well as a minority recommendation as to the resolution of any such identified issue. In addition, any member of the advisory board may, with advance written notice to the other members of the advisory board, provide individual recommendations or other information to the commission and the administrator that it deems appropriate. The advisory board is intended to be a forum within which to build consensus on matters relating to the administration of the fund, while not deterring any interested party from communicating its concerns relating to the administration of the fund to the advisory board, or, subject to advance written notice to the other members of the advisory board, directly to the commission.

C. The advisory board members shall elect a chair, vice-chair, and secretary to serve on the board for one (1) year, subject to additional terms as elected from within the board. For the purpose of conducting business, a majority of the board members present at any meeting shall constitute a quorum.

[17.11.10.30 NMAC - Rp, 17.11.10.30 NMAC, 01-01-15]

HISTORY OF 17.11.10 NMAC:

[RESERVED]

Pre-NMAC History: None.

History of Repealed Material:

17 NMAC 13.10, State Rural Universal Service Fund (filed 11/15/2005) repealed effective 01/01/15.

Other History:

17 NMAC 13.10, State Rural Universal Service Fund (filed 12/15/1999) was replaced by 17.11.10 NMAC, State Rural Universal Service Fund, effective 01/01/15.

**NEW MEXICO
PUBLIC REGULATION
COMMISSION**

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 60 PIPELINE
CONSTRUCTION AND
MAINTENANCE
PART 5 PIPELINE SAFETY
EXCAVATION DAMAGE
PREVENTION**

18.60.5.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission.

[18.60.5.1 NMAC - Rp, 18.60.5.1 NMAC,
8-15-12; Rp, 18.60.5.1 NMAC, 12-30-14]

18.60.5.2 SCOPE: This rule

applies to all one-call notification systems, excavators, and owners and operators of pipelines and other underground facilities in New Mexico subject to the jurisdiction of the commission.

[18.60.5.2 NMAC - Rp, 18.60.5.2 NMAC, 8-15-12; Rp, 18.60.5.2 NMAC, 12-30-14]

18.60.5.3 STATUTORY

AUTHORITY: Sections 8-8-4, 62-14-7.1, 62-14-10, 70-3-4, and 70-3-13 NMSA 1978.

[18.60.5.3 NMAC - Rp, 18.60.5.3 NMAC, 8-15-12; Rp, 18.60.5.3 NMAC, 12-30-14]

18.60.5.4 DURATION:

Permanent.

[18.60.5.4 NMAC - Rp, 18.60.5.4 NMAC, 8-15-12; Rp, 18.60.5.4 NMAC, 12-30-14]

18.60.5.5 EFFECTIVE DATE:

August 15, 2012, unless a later date is cited at the end of a section.

[18.60.5.5 NMAC - Rp, 18.60.5.5 NMAC, 8-15-12; Rp, 18.60.5.5 NMAC, 12-30-14]

18.60.5.6 OBJECTIVE:

The purpose of this rule is to implement Chapter 62, Article 14 NMSA 1978 by providing procedures for preventing excavation damage and for dealing with damage when it occurs.

[18.60.5.6 NMAC - Rp, 18.60.5.6 NMAC, 8-15-12; Rp, 18.60.5.6 NMAC, 12-30-14]

18.60.5.7 DEFINITIONS:

In addition to the definitions in Section 62-14-2 NMSA 1978, 18.60.2.7 NMAC and 18.60.4.7 NMAC, as used in this rule:

A. access information means a telephone number, a facsimile number, an email address, and, if available, a web site address;

B. bid locate means the marking of underground facilities at the request of a project owner for the purpose of providing information to persons bidding on a project;

C. design locate means the marking of underground facilities at the request of a project owner for the purpose of providing information to persons designing a project;

D. emergency locate means the marking of underground facilities at the request of a person for an underground facility owner as soon as practical, ideally within 2 hours for the purpose of an emergency excavation;

E. excavation locate means the marking of underground facilities at the request of an excavator for the purpose of providing information to an excavator working on a project;

F. holiday means the day New Mexico state government observes New Year's Day, Martin Luther King, Jr's, Birthday, Memorial Day, Independence

Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, President's Day, and Christmas Day;

G. incorporated area means any area within the limits of any incorporated city, town or village with a population of ten thousand or greater;

H. non-member UFO means a private underground facility owned by a homeowner and operated and located on a residential property or not subject to the jurisdiction of the commission;

I. project owner means the owner of a project involving excavation or the person designated by the owner to be in charge of the project involving excavation;

J. road maintenance means routine grading and resurfacing of the earth and gravel surface, but not the subbase, of a roadway for the purpose of maintaining the surface condition of the road and includes recovery of material from a borrow ditch but does not include road construction or reconstruction and shall entail moving no more than four (4) inches of earth; road maintenance does not include street sweeping or road milling and resurfacing as long as the subsurface is not disturbed;

K. underground facility operator (UFO) means a person who operates an underground facility; and

L. working day means a twenty-four (24) hour period excluding weekends and holidays.

M. mechanical vacuum excavation is deemed an appropriate non-mechanical method of excavating safely around underground facilities provided that the equipment has been specifically designed and built for this purpose [and] is operated in accordance with practices that provide appropriate levels of worker and public safety and prevent damage to buried facilities.

[18.60.5.7 NMAC - Rp, 18.60.5.7 NMAC, 8-15-12; Rp, 18.60.5.7 NMAC, 12-30-14]

18.60.5.8 RESPONSIBILITIES OF ONE-CALL NOTIFICATION SYSTEMS:

A one-call notification system shall:

A. provide toll-free access;

B. provide to the commission quarterly the name, contact person, and access information for each member of the one-call notification system;

C. notify the commission of the service area in which the one-call notification system operates;

D. have a written coordination agreement with other one-call notification systems operating in New Mexico;

E. keep a record of all locate requests, tickets, and clears for five

(5) years and make such records available to the commission upon request;

F. report to the commission quarterly the:

(1) average wait time for answered calls for each month in the quarter;

(2) number of calls received for each month in the quarter;

(3) number of tickets generated for each month in the quarter;

(4) number of requests by type (regular, priority, emergency) for each month in the quarter;

G. report any changes in access information to the commission on or before the date the information will change;

H. establish a registry of non-member UFOs that voluntarily provide their contact and underground facility information for excavation purposes; and

I. establish a positive response registry system; and

J. inform any person who calls with a complaint that he or she may file a complaint with the commission, and provide the commission's access information, if the one-call system is unable to satisfactorily resolve the matter.

K. Processing Locate Requests.

(1) A one-call notification system may hold a locate request in suspension until it is complete. The one-call notification system shall contact an excavator within three (3) hours to request any missing information that prevents the one-call notification system or non-member UFO from processing the request.

(2) A one-call notification system shall process all complete locate requests within three (3) hours of receipt. A one-call notification system shall deem locate requests received on a weekend or holiday, or after 4:00 p.m. on a working day, to have been received at 7:00 a.m. on the next working day and shall deem locate requests received before 7:00 a.m. on a working day to have been received at 7:00 a.m. on that working day.

(3) Upon receipt of a complete locate request, a one-call notification system shall issue a ticket with a unique number to the requesting excavator as confirmation, and shall send a ticket to all members of the system that have underground facilities in the excavation area, or notify the members by telephone. A ticket shall become effective at the date and time a one-call notification system issues a ticket number; if the ticket is for a conference, the ticket shall be marked "wide area conference," "bid conference," or "design conference," as appropriate.

[18.60.5.8 NMAC - Rp, 18.60.5.8 NMAC,

8-15-12; Rp, 18.60.5.8 NMAC, 12-30-14]

18.60.5.9 RESPONSIBILITIES OF UFOs:

A. UFO shall report any changes in access information to the commission on or before the date the information will change.

B. A UFO shall retain records of locate requests, excavation notices and underground facility damage information for a period of five (5) years and make such records available to the commission upon request..

C. A UFO that utilizes contractors to perform locate and excavation activities or damage investigations on its behalf shall be responsible for compliance with the law and these rules.

[18.60.5.9 NMAC - Rp, 18.60.5.9 NMAC, 8-15-12; Rp, 18.60.5.9 NMAC, 12-30-14]

18.60.5.10 LOCATE

REQUESTS: An excavator shall make an excavation locate request for all projects involving excavation, including road maintenance, with the exception of subsurface potholing or vacuum excavation activities conducted solely for the purpose of physically exposing or locating underground facilities. However, this exception does not preclude compliance with 18.60.5.18 NMAC. Although not required under the Excavation Damage Law, Sections 62-14-1, et seq. NMSA 1978, or this rule, locate requests are encouraged for excavation projects involving purely non-mechanical means.

A. Submittal.

(1) An excavator shall submit an excavation locate request to each one-call notification system:

(a)

by telephone or in person during normal business hours Monday to Friday, excluding holidays; or

(b)

by facsimile or electronically twenty-four hours a day, seven days a week.

(2) An excavator shall also submit an excavation locate request to each non-member UFO.

B. Size of locate requests.

(1) An excavator shall determine the maximum area that he can reasonably expect to excavate within a ten (10) working day period and shall request an excavation locate for that area only. In every incorporated area, or when an excavation site cannot be clearly and adequately identified on the locate ticket, the excavator shall pre-mark the actual intended excavation route or site(s) in that area in accordance with American public works association (APWA) marking guidelines to communicate to facility

owners where the actual excavation will take place for standard ten (10) working day ticket requests only.

(2) An excavator may request relocates for the same area only if justified by the circumstances and nature of the work; such justification shall be made part of the relocate request.

C. Minimum information required. When requesting an excavation locate or a locate conference, an excavator shall comply with the requirements of the one-call notification system or non-member UFO operating in the intended excavation area and shall provide accurate and truthful information. A locate request shall be deemed incomplete if it does not contain, at a minimum:

(1) the name and contact information of the excavator;

(2) if available, an alternate name and contact information of the excavator;

(3) a description and the purpose of the type of work to be done;

(4) the name of the person for whom the work is being done;

(5) whether or not the excavation site is pre-marked in white;

(6) an accurate physical description of the location and size of the excavation site; reference to a plat of a subdivision shall not by itself be sufficient description;

(7) driving instructions to a rural excavation site;

(8) spotting instructions;

(9) any appropriate remarks regarding access to or hazards at the site.

[18.60.5.10 NMAC - Rp, 18.60.5.10 NMAC, 8-15-12; Rp, 18.60.5.10 NMAC, 12-30-14]

18.60.5.11 WIDE AREA

LOCATE REQUESTS: An excavator who expects a project to take more than ten (10) working days to complete shall either request separate locates which meet the requirements of Subsection B of 18.60.5.10 NMAC or follow the conference procedure set forth in this section.

A. If an excavator expects that an excavation will take more than ten (10) working days to complete, the excavator shall contact the one-call notification system to request a wide area conference and provide the proposed date, time, and location for the conference. The one-call notification system shall process the request as provided in Subsection D of 18.60.5.10 NMAC.

B. A UFO shall contact

an excavator who requests a wide area conference within two (2) working days of the issuance of the conference ticket and confirm proposed conference schedule, and if necessary, make arrangements to reschedule the conference not to exceed five (5) working days of the issuance of the conference ticket.

C. At the conference, the excavator shall develop a written work plan [that includes the minimum information required under Subsection C of 18.60.5.10 NMAC] in consensus with each UFO, which shall be signed by all parties. Updates or revisions to the work plan shall also be in writing and signed by all parties.

D. After the work plan has been signed by all parties, an excavator shall request a wide area excavation locate. The one-call notification system shall process the request as provided in Subsection D of 18.60.5.10 NMAC. The excavation ticket shall reference the wide area conference ticket number and cite the work plan as the description of the work to be performed.

E. An excavator working pursuant to a wide area excavation locate ticket shall request reaffirmation of the wide area locate ticket every ten (10) working days. For the purpose of reaffirmation, a working day begins on the date and time stamped on the ticket and ends ten (10) working days from such date and time. The excavator and UFO(s) shall continue to comply with the approved work plan established per 18.60.5.11(C) NMAC. [18.60.5.11 NMAC - Rp, 18.60.5.11 NMAC, 8-15-12; Rp, 18.60.5.11 NMAC, 12-30-14]

18.60.5.12 DESIGN AND BID

LOCATE REQUESTS: A project owner shall request information regarding the location of underground facilities in accordance with either Subsection A or B of this section, but may not switch methods once having made an election.

A. Physical locates.

(1) A project owner may request from one-call notification systems and non-member UFOs a design locate or a bid locate.

(2) The one-call notification system and non-member UFOs for the intended excavation area shall issue a ticket marked "bid locate" or "design locate" as appropriate.

(3) UFOs shall physically mark the location of underground facilities on the site within two (2) working days from the date of the ticket.

(4) Designers or bidders, as appropriate, shall capture data from the site within ten (10) working days from the end of the two day marking period.

(5) A project

owner shall not request relocates or time extensions.

B. Conferences.

(1) A project owner may request from the one-call notification system for the intended excavation area and non-member UFOs a design conference or bid conference with UFOs and provide the proposed date, time, and location for the conference.

(2) A UFO shall contact an excavator who requests a conference within two (2) working days of the issuance of the conference ticket and confirm the proposed conference schedule, and if necessary, make arrangements to reschedule the conference not to exceed five (5) working days from the proposed conference schedule on the conference ticket.

(3) The one-call notification system for the intended excavation area shall process the request as provided in Subsection D of 18.60.5.10 NMAC.

(4) UFOs shall contact the project owner within two (2) working days to arrange to provide information to designers or bidders within a reasonable time.

(5) A project owner and UFOs shall continue coordinating until the bid for the project has been awarded and an excavator requests an excavation locate.

[18.60.5.12 NMAC - Rp, 18.60.5.12 NMAC, 8-15-12; Rp, 18.60.5.12 NMAC, 12-30-14]

18.60.5.13 MARKING EXCAVATION SITES:

A. Excavators. As provided under Subsection B of 18.60.5.10 NMAC, excavators shall mark all proposed excavation sites in accordance with American public works association (APWA) standards to improve communication between the excavator and UFO. In assessing administrative penalties for violation of the Excavation Damage Law, NMSA 1978, Section 62-14-1 et seq. and this rule, the commission may consider whether and how well an excavator marked a proposed excavation site.

B. UFOs.

(1) A UFO shall mark underground facilities for excavation purposes in accordance with the APWA standards.

(2) A UFO shall locate and mark its underground facilities within two (2) working days from the effective date of the ticket in accordance with Subsection A of 62-14-5 NMSA 1978.

(3) If a UFO determines it does not have underground facilities within the proposed limits

of the excavation site, a UFO shall provide positive response to the one-call notification's positive response registry system and may write "clear" or "no underground facilities" and the UFO's name at the site in the appropriate color.

(4) The locate markings shall be valid for ten (10) working days from the end of the two (2) day marking period. For the purpose of excavation, a working day begins on the date and time stamped on the ticket and ends twelve (12) working days from such date and time.

(5) A UFO shall provide appropriate positive response to the one-call notification's positive response registry system for all advance notifications, including wide area, design, bid, standard, and road maintenance locate requests or conferences.

(6) If a UFO fails to mark its underground facility in accordance with the requirements of applicable laws, the UFO may be liable to the excavator in accordance with Subsection C of 62-14-5 NMSA 1978.

[18.60.5.13 NMAC - Rp, 18.60.5.13 NMAC, 8-15-12; Rp, 18.60.5.13 NMAC, 12-30-14]

18.60.5.14 IDENTIFYING UNDERGROUND FACILITIES FOR ROAD MAINTENANCE:

In response to an excavation locate request for road maintenance, a UFO shall physically mark its underground facilities that are parallel to the road, as provided in Subsection A, and shall either physically mark or locate by marker its underground facilities that cross the road, as provided in Subsection B.

A. Underground facilities parallel to road. A UFO shall physically mark the location of all underground facilities located parallel to the road to be maintained if the UFO deems the facilities to be in conflict with the road maintenance activity. If the UFO deems the facilities not to be in conflict with the road maintenance activity, then the UFO may "clear" the ticket with the excavator using the procedure set forth in 18.60.5.13 NMAC.

B. Underground facilities that cross the road.

(1) **Physical locate.** A UFO may physically mark the location of all underground facilities that cross the road to be maintained if the UFO deems the facilities to be in conflict with the road maintenance activity. If the UFO deems the facilities not to be in conflict with the road maintenance activity, then the UFO may "clear" the ticket with the excavator using the procedure for positive response set forth in 18.60.5.13 NMAC.

(2) **Locate by marker.** Alternatively, a UFO may use a

system of markers to indicate the location of underground facilities that cross the road to be maintained. Such markers shall:

(a) only be used to mark underground facilities that cross the road to be maintained and only for the purposes of road maintenance;

(b) be durable enough to withstand normal weathering;

(c) be the same APWA color as is designated for marking the UFO's type of underground facility; and

(d) have a decal on the marker specifying the depth of the underground facility at the marker.

C. Maintenance of markers. A UFO shall be deemed to have failed to correctly mark its underground facility that crosses a road to be maintained unless it:

(1) ensures that the markers are in place;

(2) maintains a minimum twenty-four (24) inches of coverage over the underground facility that crosses the road;

(3) verifies the depth of its underground facilities at the markers at least annually; and

(4) ensures that the decal is visible and the information on it is readable.

[18.60.5.14 NMAC - Rp, 18.60.5.14 NMAC, 8-15-12; Rp, 18.60.5.14 NMAC, 12-30-14]

18.60.5.15 EXCAVATION PROCEDURES:

A. Pre-excavation. Before excavating, an excavator shall determine whether all underground facilities have been marked.

(1) If all underground facilities have been marked and the two (2) working day marking period has expired, the excavator may begin excavating.

(2) If one or more underground facilities have not been marked and positive response has not been provided, an excavator shall, prior to commencing excavation, call the one-call notification system for verification that advance notice was transmitted to the UFO and to provide notice that the underground facilities have not been located or cleared.

B. Excavation.

(1) If, while excavating, an excavator observes evidence that an unmarked underground facility may exist, the excavator shall, before excavating in the immediate area of such evidence: location of underground facilities that cross the road to be maintained. Such markers

shall:

(a) make a reasonable effort to identify and contact the UFO and wait until the UFO marks or clears the immediate area of the evidence; the UFO shall mark or clear the area within two (2) hours of contact or as expeditiously as possible if the excavation site is in a rural area; or location of underground facilities that cross the road to be maintained. Such markers shall:

(b) expose the underground facility by non-mechanical means or mechanical vacuum excavation methods.

(2) If excavation activity encroaches within eighteen (18) inches either side of a marking made by a UFO, an excavator shall, prior to excavating, expose the underground facility by non-mechanical means or mechanical vacuum excavation methods.

(3) If excavation activity cannot proceed without obliterating all or some of the markings made by a UFO, an excavator shall provide temporary offset marks or stakes to retain the information regarding the location of each UFO's underground facilities.

(4) The requirement to provide positive response for a facility does not apply to the homeowner of a residential property.

C. Temporary suspension of excavation activity. If staff determines that an excavation activity is not in compliance with the requirements of this rule, and that continued noncompliance may result in injury to persons or damage to property, staff may suspend the excavation activity until the excavation activity is brought into compliance with the requirements of this rule and excavation conditions are safe.

[18.60.5.15 NMAC - Rp, 18.60.5.15 NMAC, 8-15-12; Rp, 18.60.5.15 NMAC, 12-30-14]

18.60.5.16 EMERGENCY EXCAVATION AND DAMAGE REPORTING PROCEDURE:

This section applies whenever failure of or damage to underground facilities or public infrastructure requires emergency excavation as defined in NMSA 1978, Section 62-14-2(E).

A. Excavators. An excavator who damages an underground facility while excavating shall exercise prudence and shall:

(1) stop excavating immediately;

(2) call 911 if appropriate and the operator of the damaged underground facility and 811 to report the damaged facility;

(3) secure the site and direct people and traffic a safe distance away from the site of the damage;

(4) not leave the scene until authorized by an emergency responder or the operator of the damaged underground facility; an excavator may leave the scene without such authorization only if the excavator has made reasonable, if unsuccessful, efforts to contact the affected UFOs and has safely secured the site;

(5) not resume work within an unsafe distance of the damage until authorized by the operator of the damaged underground facility.

B. Operators of failed or damaged underground facilities. The operator of a failed or damaged underground facility shall exercise prudence and shall:

(1) promptly respond to a report of damage or failure to its underground facilities and travel to the site;

(2) prior to traveling to the site or upon arrival, call the one-call notification system for the excavation area to request an emergency locate;

(3) make the site safe and get the emergency situation under control;

(4) locate its own underground facilities as soon as practical, ideally within two (2) hours; and

(5) obtain an excavation locate ticket for repair work beyond resolution of the emergency situation.

C. Operators of failed or damaged public infrastructure. The entity responsible for the failed or damaged public infrastructure shall:

(1) call the one-call notification system for the excavation area to request an emergency locate;

(2) obtain an excavation locate ticket for repair work beyond resolution of the emergency situation.

D. One-call notification system. A one-call notification system shall upon request:

(1) issue an emergency excavation notice which shall be valid until the emergency is resolved, or for forty-eight (48) hours, whichever is longer;

(2) issue a notice of a reported damage to each affected UFO. [18.60.5.16 NMAC - Rp, 18.60.5.16 NMAC, 8-15-12; Rp, 18.60.5.16 NMAC, 12-30-14]

18.60.5.17 ABUSE OF THE LAW: A person shall be deemed to have willfully failed to comply with this rule or

Chapter 62, Article 14 NMSA 1978 and shall be subject to the penalties in Section 62-14-8 NMSA 1978 if the person:

A. requests a locate for an area that cannot reasonably be excavated in ten (10) working days;

B. provides misinformation or withholds information regarding the size of an excavation area;

C. requests locates that unduly burden a one-call notification system or UFO;

D. requests a locate for fraudulent reasons;

E. fails to process locate requests within the requisite timeframe;

F. fails to mark, or provide positive response for its underground facilities within the requisite timeframe;

G. commences excavation prior to the expiration of the two (2) day notice period;

H. obliterates markings at an excavation site without providing temporary offset marks or stakes;

I. alters any record relating to excavation activity;

J. fails to pre-mark the actual intended excavation route or site(s) as required;

K. fails to report or file a report of damage within requisite time frame; or

L. commits any other act that the commission determines violates Chapter 62, Article 14 NMSA 1978 or this rule.

[18.60.5.17 NMAC - Rp, 18.60.5.17 NMAC, 8-15-12; Rp, 18.60.5.17 NMAC, 12-30-14]

18.60.5.18 REPORTS OF THIRD PARTY DAMAGE:

A. A UFO shall report to the director any incident in which the owner or operator's underground facility is damaged by excavation activities. Such report, where practicable, shall be submitted using the commission's website at: www.nmprc.state.nm.us. For purposes of this subsection, incident is to be taken in its general sense and is not to be restricted to the definition given in 49 CFR 191.3.

B. The report shall be filled out in its entirety.

C. The report shall be submitted within thirty (30) calendar days of occurrence.

D. The UFO shall make available to the director within a reasonable time such other information or documentation as the director may require regarding any incident reportable under this section.

[18.60.5.18 NMAC - Rp, 18.60.5.18 NMAC, 8-15-12; Rp, 18.60.5.18 NMAC, 12-30-14]

18.60.5.19 ALTERNATIVE DISPUTE RESOLUTION:

A. The commission encourages owners and operators of underground facilities and excavators to privately negotiate and settle disputes arising from excavation damage to underground facilities.

B. In the event the parties are unable to resolve such disputes privately, any owner or operator of underground facilities or any excavator may request mediation or arbitration from the commission.

C. Staff may participate in mediation or arbitration proceedings.

D. In mediation and arbitration proceedings, persons shall be represented in accordance with the requirements of 18.60.4.11 NMAC. [18.60.5.19 NMAC - Rp, 18.60.5.19 NMAC, 8-15-12; Rp, 18.60.5.19 NMAC, 12-30-14]

18.60.5.20 MEDIATION OF EXCAVATION DAMAGE DISPUTES:

A. Designation of mediator. If any of the parties request mediation, the commission shall designate a mediator. The mediator may be a permanent or temporary employee of the commission or another state agency or any other individual acceptable to the parties. If the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services. The mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time the mediator is assigned by the commission and all parties agree that the mediator may serve. The mediator shall not, subsequent to serving as a mediator in an excavation damage dispute, participate in any subsequent proceeding in the same cause as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding.

B. Duties of mediator. The mediator shall notify the parties by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator. The notice may direct the parties to send the mediator, but not other parties, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the damage. In addition, the mediator may require counsel to have their clients present at the mediation conference or

accessible by telephone. The mediation conference shall be held within twenty (20) days of the date of the notice unless good cause is shown for an extension. If the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution. If the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file an action for civil liability for damages in district court.

C. Inadmissibility of settlement offers. Offers of settlement and statements in furtherance of settlement made in the course of mediation are privileged and, except by agreement among all parties, shall not be admissible as evidence in any formal hearing before the commission nor disclosed by the mediator voluntarily or through discovery or compulsory process. [18.60.5.20 NMAC - Rp, 18.60.5.20 NMAC, 8-15-12; Rp, 18.60.5.20 NMAC, 12-30-14]

18.60.5.21 BINDING ARBITRATION OF EXCAVATION DAMAGE DISPUTES:

A. Request for arbitration. Any party to a dispute arising from excavation damage to underground facilities may request binding arbitration of the dispute. The request shall be in writing to the commission and shall include a concise statement of the grounds for the dispute, the remedy sought, and an acknowledgment that the requesting party agrees to be bound by the decision of the arbitrator. The commission shall forward the request for arbitration to all other parties and require that they submit a written response within ten (10) days of receipt of the commission's letter forwarding the request.

(1) If the other parties agree to arbitration of the dispute, they shall include in their response to the commission a concise statement of their position with regard to the merits of the dispute and an acknowledgment that they agree to be bound by the decision of the arbitrator.

(2) If the other parties will not agree to arbitration, they shall so state in their response.

(3) If the other parties either fail to respond to a request for arbitration or do not agree to arbitration, the requesting party retains the right to proceed with an action for civil liability for damages in district court.

B. Designation of arbitrator. If all parties agree to arbitration, the commission shall designate an arbitrator. The arbitrator may be a

permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the dispute. The designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve. The parties shall be required to indicate their consent in writing to the designated arbitrator within ten (10) days of the date of the commission's letter of designation. If the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the arbitrator's services. Any employee of the commission designated to arbitrate a dispute under these provisions shall not participate in any subsequent proceeding in the same cause regarding excavation damage to underground facilities as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding.

C. Duties of arbitrator.

(1) The arbitrator shall render a decision in the arbitration proceeding within sixty (60) days of the date the parties approved the arbitrator, unless good cause exists to extend the time.

(2) The arbitrator shall fix a time and place for an arbitration and shall serve notice of arbitration on all parties at least ten (10) days in advance of the arbitration. The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths. The parties may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator shall decide the relevancy and materiality of the evidence offered. The arbitrator shall give consideration to but shall not be bound by the New Mexico rules of evidence. No stenographic or electronic record will be made of the testimony at the hearing unless requested by a party, who shall bear the cost of the record.

(3) The arbitrator shall permit discovery only if it will not unduly complicate, burden, or impede the expeditious and informal nature of the proceeding.

(4) At the close of or soon after the hearing, the arbitrator will issue a brief written decision, which need not contain findings of fact and conclusions of law. The arbitrator's

decision will be binding on the parties, but will not be deemed a decision of the commission and shall have no precedential effect.

D. Inadmissibility of settlement offers. Unless agreed to by all the parties, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process. Nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them.

[18.60.5.21 NMAC - Rp, 18.60.5.21 NMAC, 8-15-12; Rp, 18.60.5.21 NMAC, 12-30-14]

18.60.5.22 WAIVER OR VARIANCE FROM RULE REQUIREMENTS:

A. The commission may, in its discretion, waive or vary any requirement of this rule whenever the commission finds that such waiver or variance would be in the public interest.

B. An excavator, one-call notification system, or UFO that cannot meet one or more of the requirements of this rule may petition the commission for a waiver or variance. The petition shall be in writing and shall include:

(1) a list of those requirements which the excavator, one-call notification system, or UFO wishes to have waived or varied;

(2) an explanation and description of the specific conditions which prevent the requirement from being met; and,

(3) a statement of steps already taken and to be taken, with projected time limits for each step, in attempting to meet the requirements.

C. The commission may order a hearing on the merits of the petition.

D. An excavator, one-call notification system, or UFO shall be required to comply with requirements it has petitioned to have waived or varied until the commission has issued an order on the merits of the petition, unless the commission or its designee grants an interim waiver of or variance from one or more of the requirements that are the subject of the petition.

[18.60.5.22 NMAC - Rp, 18.60.5.22 NMAC, 8-15-12; Rp, 18.60.5.22 NMAC, 12-30-14]

HISTORY OF 18.60.5 NMAC:

Pre-NMAC History: The material in this rule was derived from that previously filed with the State Records Center.

SCC 69-29, Order No. 2966, Cause No.516, filed 9-24-69.

SCC 71-2, Amended Order No. 2966, Cause No.516, filed 3-18-71.

SCC 72-1, Amended Order No. 3096, Cause No.516, filed 1-12-72.

SCC 77-2, Order No. 3096-C, Docket No.750, filed 3-4-77.

SCC 79-4, Regulations Relating to Minimum Safety Standards for the Transportation of Natural and other Gas by Pipeline, filed 6-27-79.

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84.

History of Repealed Material: 18 NMAC 60.1, General Provisions; 18 NMAC 60.2, Reports Required for New Master Meters and Third Party Damage; 18 NMAC 60.3, Requirement of Filing of Procedural Manual; 18 NMAC 60.4, Classification and Repair of Leaks; 18 NMAC 60.5, Pipeline Safety Program Procedures; 18 NMAC 60.6, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards: Annual and Incident Reports; 18 NMAC 60.7, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 18 NMAC 60.8, Transportation of Hazardous Liquids by Pipeline; 18 NMAC 60.9, Pipeline Safety Regulations: Drugs & Alcohol Testing; 18 NMAC 60.10, Procedures for Transportation Workplace Drug & Alcohol Testing Programs (all filed 5-1-96) repealed 7-1-03.

18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, filed 6-27-06 - Repealed effective 8-15-12.

18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, filed 8-15-12- Repealed effective 12-30-14.

Other History:

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84, was renumbered into first version of the New Mexico Administrative Code as 18 NMAC 60.1 through 18 NMAC 60.10, effective 6-5-96.

18 NMAC 60.1 through 18 NMAC 60.10 (all filed 5-1-96), were replaced by 18.60.2 NMAC, Pipeline Safety, effective 7-1-03. Those **applicable portions** of 18.60.2 NMAC, Pipeline Safety (filed 6-16-2003) replaced by 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, effective 7-17-06.

**NEW MEXICO
PUBLIC REGULATION
COMMISSION**

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 60 PIPELINE
CONSTRUCTION AND
MAINTENANCE
PART 6 ONE-CALL
NOTIFICATION SYSTEMS
REQUIREMENTS FOR 811 SERVICES**

18.60.6.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission.

[18.60.6.1 NMAC - N, 2-28-07; Rp,
18.60.6.1 NMAC, 12-30-14]

18.60.6.2 SCOPE: This rule
applies to one-call notification systems
subject to the jurisdiction of the commission
pursuant to applicable laws.
[18.60.6.2 NMAC - N, 2-28-07; Rp,
18.60.6.2 NMAC, 12-30-14]

**18.60.6.3 STATUTORY
AUTHORITY:** NMSA 1978, Sections
8-8-4 and 62-14-7.1.

[18.60.6.3 NMAC - N, 2-28-07; Rp,
18.60.6.3 NMAC, 12-30-14]

18.60.6.4 DURATION:
Permanent.
[18.60.6.4 NMAC - N, 2-28-07; Rp,
18.60.6.4 NMAC, 12-30-14]

18.60.6.5 EFFECTIVE DATE:
December 15, 2014, unless a later date is
cited at the end of a section.
[18.60.6.5 NMAC - N, 2-28-07; Rp,
18.60.5.6.5 NMAC, 12-30-14]

18.60.6.6 OBJECTIVE:
The purpose of this rule is to impose
requirements on one-call notification
systems regarding the implementation of
811 as the toll-free, abbreviated dialing
code to be used by the public to provide
advance notice of excavation activities
and report damages to one-call notification
systems and thereby to underground
facilities operators as required by federal
law.
[18.60.6.6 NMAC - N, 2-28-07; Rp,
18.60.6.6 NMAC, 12-30-14]

18.60.6.7 DEFINITIONS: In
addition to the definitions in Section 62-14-
2 NMSA 1978 and 18.60.4.7 NMAC, and
18.60.5.7 NMAC, as used in this rule, **non-
jurisdictional entity** means an underground
facility operator not subject to federal
and state excavation laws. Generally,
non -jurisdictional entities are operators

specifically exempt in federal or state excavation law or exempt operators with facilities in geographical areas where state and federal excavation law does not apply as a matter of law.

[18.60.6.7 NMAC - N, 2-28-07]; Rp, 18.60.6.7 NMAC, 12-30-14

18.60.6.8 RELATIONSHIP TO OTHER COMMISSION RULES:

Unless otherwise specified, this rule is not intended to supersede any other rule of the commission but to supplement such rules. Nevertheless, if any provision of this rule is inconsistent with the provisions of any other commission rule, the provisions of this rule shall apply. The responsibilities of telecommunications carriers relating to 811 implementation are prescribed in 17.11.26 NMAC.

[18.60.6.8 NMAC - N, 2-28-07]; Rp, 18.60.6.8 NMAC, 12-30-14]

18.60.6.9 RESPONSIBILITIES OF ONE-CALL NOTIFICATION SYSTEMS:

During normal working hours, one-call notification systems shall follow the following procedures.

A. Emergency calls.

One-call notification systems shall instruct callers that emergency calls should be made directly to 911, and when necessary, shall conference the caller directly into 911. One-call notification systems shall process emergency calls made by underground facility operators in accordance with Subsection B of 18.60.5.16 NMAC.

B. Calls intended for other states.

One-call notification systems shall provide direct phone numbers for any calls intended for a one-call notification system located in an adjacent state to the appropriate state one-call notification system.

C. Non Jurisdictional Entities.

One-call notification systems shall establish a registry of volunteer non-jurisdictional entities in accordance with 18.60.5.8 (H) NMAC. One-call notification systems shall provide the following procedures for excavation locate requests and reporting of damages.

(1) the one-call notification system shall forward free of charge a locate or damage ticket to the non-jurisdictional entity when incoming calls are related to excavation work intended for the geographical area of the non-jurisdictional entity;

(2) the one-call notification system shall instruct the caller that the locate or damage ticket will be sent to the appropriate non-jurisdictional entity;

(3) the one-call notification system shall instruct the caller that non-member underground facility operators may exist within the geographical

area of the intended excavation and that the caller is required to directly contact and notify any non-member underground facility operators of the intended excavation; and (4)

the one-call notification system shall issue tickets to any member underground facility operator operating within the geographical boundaries of the non-jurisdictional entity. [18.60.6.9 NMAC - N, 2-28-07]; Rp, 18.60.6.9 NMAC, 12-30-14]

18.60.6.10 OPERATOR OR RECORDED MESSAGE REQUIRED:

For 811 calls received after normal working hours, one-call notification systems shall process phone emergency or damage requests immediately. For all other 811 calls have either an operator or a recorded message that provides the following information to callers:

A. a statement the call is being received after normal working hours and that the caller should call back during specified normal working hours;

B. a statement that locate requests can be made by either a specified fax number or by a specified web address; and

C. a statement that locate requests made either via fax or via the specified web address will be considered received at 8:00 a.m. on the next working day.

[Rp, 18.60.6.10 NMAC, 12-30-14]

HISTORY OF 18.60.6 NMAC:

[RESERVED]

History of Repealed Material:

18.60.6 NMAC, One Call Notification Systems Requirements for 811 Services, filed 2-15-07- Repealed effective 12-30-14.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT ATHLETIC COMMISSION

This is an amendment to 15.6.1 NMAC, Sections 7, 11, 13 and 15, effective 01/15/2015.

15.6.1.7 DEFINITIONS:

A. "Amateur contest" means any boxing, wrestling, martial arts, or mixed martial arts event, contest or exhibition, whether or not an admission fee is charged to the public, where the participants are licensed as amateurs with the commission in their field of unarmed combat. The terms "amateur contest" and "smoker" are used interchangeable, both terms have the same meaning.

[A:] B. "Board" means the

medical advisory board of the New Mexico athletic commission.

~~[B.] "Commission"~~ means the New Mexico athletic commission.]

C. "Broadcast" means any audio or visual image sent by radio, television or internet signals including podcast, webcast, streaming media, internet and any other electronic transmission.

D. "Closed circuit telecast" means any telecast that is not intended to be available for viewing without the payment of a fee for the privilege of viewing the telecast and includes, but is not limited to, the term "pay-per-view". This definition includes, but is not limited to, telecasts, podcast, webcast, streaming media, internet or any electronic transmission to arenas, bars, lounges, clubs, entertainment or meeting centers and private residences.

~~E. "Commission"~~ means the New Mexico athletic commission.

~~[E:] F. "Contact exhibition"~~ [means any exhibition in which the participants intend, are allowed, or are expected to hit, punch or contact each other in any way.] means any contest or portion of a fight card, bout, or event in any form of unarmed combat, including but not limited to boxing, wrestling, martial arts, or mixed martial arts regulated by the commission, conducted, held, televised on closed circuit, or given within New Mexico.

~~G. "Contest"~~ means any event or portion of a fight card, bout or exhibition in any form of unarmed combat, including but not limited to boxing, wrestling, martial arts, or mixed martial arts regulated by the commission, conducted, held, televised on closed circuit, or given within New Mexico.

~~[F:] H. "Counted out"~~ means that a participant has been knocked down and the referee and knockdown timekeeper have performed the appropriate count as set forth in the rules, and the completion of such count signifies that the participant has been knocked out.

~~[G.] [RESERVED]~~

~~[H:] I. "Department"~~ means the New Mexico regulation and licensing department.

~~[I:] J. "Event"~~ means any contest or portion of a fight card, bout, or exhibition in any form of unarmed combat, including but not limited to boxing, wrestling, or martial arts regulated by the commission, conducted, held, televised on closed circuit, or given within New Mexico.

K. "Exhibition" means any contest or portion of a fight card, bout, or event in any form of unarmed combat, including but not limited to boxing, wrestling, martial arts, or mixed martial arts regulated by the commission, conducted, held, televised on closed circuit, or given

within New Mexico.

[F:] L. “Face value” means the dollar value of a ticket that the customer is required to pay or, for complimentary tickets, would have required payment. It shall include any charges or fees, such as dinner, gratuity, parking, surcharges, or any other charges or fees that must be incurred in order to be allowed to view the match. However, if the ticket specifies the amount of admission charges attributable to state or federal taxes, such taxes shall not be included in the face value.

[K:] M. “Fight card” means a program of ~~[unarmed contests.]~~ an event, contest, or exhibition of unarmed combat.

[L:] N. “Foreign co-promoter” means a promoter who has no physical place of business in ~~[this state].~~ New Mexico or who’s business is incorporated in a state other than New Mexico.

[M.] — [RESERVED]

[N:] O. “He” or “his” shall also mean “she” or “her”.

[O:] P. [RESERVED]

[P:] Q. “Main event” means the principal match or matches within a program of matches.

[Q:] R. “Mixed martial arts” means unarmed combat involving the use, subject to any applicable limitations set forth in this chapter, of a combination of techniques from different disciplines of the martial arts, including, without limitation, grappling, kicking and striking.

S. “Official duty” means any person who performs a task belonging to the commission during an event, contest, or exhibition of unarmed combat.

[R:] T. “Professional contest” means any [professional] boxing, wrestling, or martial arts, or mixed martial arts event, contest or exhibition, whether or not an admission fee is charged for admission of the public, where the participants are licensed as professionals with the commission in their field of unarmed combat.

[S:] U. “Promoter” means any person, and in the case of a corporate promoter includes any officer, director or stockholder of the corporation, who produces or stages any unarmed combat, including but not limited to boxing, wrestling or martial arts contest, exhibition or closed circuit television show.

[T.] — [RESERVED]

[U.] — Official” means any person who performs an official function during the progress of a contest or exhibition: V. “Sham or fake” means a professional event, contest, or exhibition that is unsanctioned or features participants who are not licensed professionals with the commission in their respective form of unarmed combat.

[V:] W. “Technical zone” means the area between the ring, cage or fenced area and ~~[fans]~~ public seating. The area must have a separate divider and be at least 8 but preferably 12 feet from the ring, cage or fenced area. If there is not a solid barrier, ~~[then uniform]~~ uniformed security must be present.

[W:] X. “Timekeeper signal” means the appropriate mechanism used to signal the end of the round.

[X:] Y. “Unarmed combat” means boxing, wrestling, martial arts, mixed martial arts or any form of competition in which a blow is usually struck which may reasonably be expected to inflict injury.

[Y:] Z. “Unarmed contest” means an unarmed combatant competing in an unarmed combat approved and sanctioned by a state commission or a duly constituted and functioning tribal commission which provides the unarmed combatants with the minimum protection afforded by the commission.

[15.6.1.7 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

15.6.1.11 MINUTES OF COMMISSION MEETINGS: The minutes of all commission meetings shall be transcribed and kept on file at the commission’s office and placed online, at http://www.rld.state.nm.us/boards/athletic_commission_members_and_meetings.aspx. [15.6.1.11 NMAC - N, 03-23-2002; A, 01-15-2015]

15.6.1.13 AMENDMENT OF RULES: The commission may suspend, amend, revise or re-codify the rules in compliance with the Uniform Licensing Act (NMSA 1978 Sections 61-1-1 through 61-1-33). Any amendment of the rules shall be published by the commission as required by law, ~~[and in a bulletin]~~, and shall be available ~~[at the commission office]~~ for public inspection. [15.6.1.13 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

15.6.1.15 OPEN MEETINGS NOTICES: Commission meetings shall be open to the public and shall be ~~[legally]~~ noticed [in compliance with] pursuant to the Open Meetings Act, NMSA 1978, Sections 10-15-1 to 10-15-4, and in accordance with [an] the commission’s annual Open Meetings Resolution [adopted annually by the commission.] [15.6.1.15 NMAC - N, 03-23-2002; A, 01-15-2015]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT ATHLETIC COMMISSION

This is an amendment to 15.6.2 NMAC, Sections 9, 15, 19 and 20, effective 01/15/2015.

15.6.2.9 AGE REQUIREMENTS: The commission may require a birth certificate or equally bona fide certification of age.

A. Professional unarmed combatants must be at least eighteen (18) years of age at the time they execute their professional contract.

B. Managers must be at least twenty-one (21) years of age at the time of their licensure with the commission.

C. Seconds must be at least eighteen (18) years of age at the time of their licensure with the commission. [15.6.2.9 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

15.6.2.15 EXECUTION OF THE CONTRACT BY ~~[BOXER]~~ UNARMED COMBAT MANDATORY: ~~[A boxer]~~ An unarmed combatant must carry out all the terms and conditions of the contract to which he is a party. Any ~~[boxer]~~ unarmed combatant failing to fulfill the terms of any such contract will be subject to disciplinary action by the commission. [15.6.2.15 NMAC - N, 03-23-2002; A, 01-15-2015]

15.6.2.19 TIME LIMITS FOR FILING UNARMED COMBAT CONTEST CONTRACTS: The promoter must meet the following conditions for filing boxing contest contracts with the commission.

A. All main events and semi-main event contracts between a promoter and any unarmed combatant or manager of a unarmed combatant, effecting or calling for the services of a main event or semi-main event unarmed combatant, shall be filed with the commission within seven (7) days after the execution of the contract, and at least seven (7) days prior to any unarmed combat contest to which the contract relates.

B. All contracts for preliminary unarmed combatants shall be filed no later than twenty-four (24) hours prior to any match to which they relate. [15.6.2.19 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

15.6.2.20 COMPENSATION OF PROFESSIONAL UNARMED COMBAT IS REQUIRED:

A. Payment may be made

only to persons set forth by the commission unless the commission has approved, in advance, all the details of payment to another party.

B. All unarmed combatants participating in a professional unarmed combat contest shall be paid, directly or through their licensed managers, who shall issue a receipt for such payment.

C. Payment shall be made only to the duly recognized manager or to the [~~contestant~~] unarmed-combatant himself, if he has no recognized manager.

D. Unless otherwise agreed to by the commission, all participants must be paid immediately following the conclusion of the final bout.

E. Promoters shall pay the agreed amount to the contestants.

F. No professional [~~contestant~~] unarmed combatant shall be paid less than \$25.00 for each round scheduled in any contest.

G. [~~Contestants~~] Unarmed combatants shall not kickback any part of the amount paid them to any manager, second, promoter, or matchmaker.

H. None of the parties involved in an event or match shall accept a kickback offered to him by any [~~contestant~~] unarmed combatant.

[15.6.2.20 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

[Continued on page 817]

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This is an amendment to 15.6.4 NMAC, Sections 12, 20 and 23, effective 01-15-2015.

**15.6.4.12 DUTY
TO COMPENSATE EVENT**

PARTICIPANTS: The promoter of an event will be required to pay all fees due to event participants and personnel.

A. Fees set by the commission: The commission shall annually adopt a policy to set fees to be paid to referees, judges, deputy inspectors and timekeepers.

B. Fees set by the medical advisory board: With the approval of the commission, the medical advisory board shall determine fees to be paid to ringside physicians.

C. Negotiated fees: The promoter shall negotiate fees with other event personnel (e.g. security officers, announcers, ticket sellers, ticket takers, doormen, etc.) on an individual basis. [15.6.4.12 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

**15.6.4.20 DUTY TO OBTAIN
EVENT PERMITS:** A licensed promoter must obtain an event permit prior to each professional and amateur program, match, event, contest or exhibition.

A. The commission will issue a permit upon receipt from the promoter of a completed commission-approved application, and all other required documentation.

B. The application and attachments must be approved with the commission not later than seventy-two hours prior to the regularly scheduled meeting before the contest. The application must contain the following information and documentation:

- (1) evidence of a current promoter's license;
- (2) date of the contest;
- (3) copy of the contract for the event location;
- (4) proof of contest insurance;
- (5) name of the main event participants;
- (6) number of scheduled rounds of all unarmed combatant contests on the event card;
- (7) verification of adequate security;
- (8) verification of ambulance and medical technicians; and

(9) report on all unarmed combatants from fightfax.com or mixedmartialarts.com, or other nationally or industry recognized reporting service.

C. The promoter must provide the commission with the signed and witnessed formal contracts for the main event boxing contest executed on forms supplied by the commission and executed in accordance with 15.6.2 NMAC.

D. Each applicant for an event permit agrees to grant the commission, or its authorized representative, the right to examine the books of accounts and other records of the applicant relating to each event for which an event permit application is made. [15.6.4.20 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

**15.6.4.23 DUTIES
REGARDING SCHEDULING OR
CANCELING OF EVENTS:**

A. Scheduled events may not be cancelled or adjourned without the consent of the commission.

B. ~~[Advertisement for an event may not be paid for until and unless the event has been approved by the commission, as set forth in 15.6.4.21 NMAC;~~

~~—C.]~~ If the commission, for any reason, does not approve an event for which any tickets have been sold, the promoter shall cause all ticket holders to receive a full refund. [15.6.4.23 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

**NEW MEXICO
REGULATION AND
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This is an amendment to 15.6.5 NMAC, Sections 7, 8, 12 and 22, effective 01-15-2015.

15.6.5.7 DEFINITIONS:
[RESERVED] “Medical Professional” means a physician, physician’s assistant, emergency medical technician, registered nurse, or paramedic licensed in the state of New Mexico.

[15.6.5.7 NMAC - N, 03-23-2002; A, 01-15-2015]

**15.6.5.8 MEDICAL
EXAMINATION AND
CERTIFICATION OF CONTESTANTS
REQUIRED:**

A. Medical examination of non-main event or non-championship bout contestants: It shall be the duty of the licensed promoter, whether a person, party, or corporation, conducting a professional; (1) boxing, (2) sparring, (3) wrestling, [or] (4) martial arts, or (5) mixed martial arts event, contest, or exhibition of unarmed combat to arrange for the contestants to undergo a uniform pre-bout medical examination performed by a New Mexico licensed physician approved by the commission's medical advisory board.

(1) The pre-bout medical examination shall be conducted within twenty-four (24) hours prior to the contestant's entering the ring in the scheduled match or exhibition.

(2) The pre-bout medical examination shall include:

(a) negative HIV;
 (b) negative hepatitis B, surface antigen (SA);
 (c) negative hepatitis C antibody; and
 (d) professional contestants must submit a dilated eye exam performed no later than 24 hours prior to any competition by an ophthalmologist, optometrist or qualified physician;

(3) The commission shall require proof of compliance with any medical requirements previously imposed on a participant by another commission prior to giving medical approval for a bout.

(4) Immediately following the examination, the physician shall file with the commission a written report of the results of the examination on a form prescribed by the commission. The physician shall certify as to the physical fitness of each contestant scheduled to participate in the match or exhibition; and deliver the completed examination report to the commission's representative and made available to the promoter of the match or exhibition before the commencement of the event

(5) The promoter of the match or exhibition shall prohibit any unarmed combatant from entering the ring unless he has been certified by the examining physician to be physically fit to engage in the match or exhibition.

(6) It shall be unlawful for any physician to certify falsely to the physical condition of any contestant in a professional boxing or sparring match or martial arts exhibition.

(7) Any unarmed combatant who participates in a non-commission sanctioned event in another jurisdiction must submit to a new array of blood tests, described in Paragraph (2) of this rule, unless the unarmed combatant can prove to the commission that the non-commission sanctioned event required all combatants to submit to pre-bout blood testing in a manner similar to the commission's. Violation of this rule could result in a fine, license suspension, or license revocation.

B. Electrocardiogram, MRI or MRI/MRA: The commission or ringside physician may order an electrocardiogram or MRI or MRI/MRA examination when a contestant:

(1) has lost three or more bouts in a row by KO or TKO;
 (2) has lost six bouts in a row; or
 (3) has an extensive losing record in the last two years.

C. Test results: The results

of an MRI or MRI/MRA examination will be accepted if conducted within the last five years.

(1) When a neurological clearance is needed for a pre-fight examination.

(2) When competing in a five round title fight.

(3) A contestant that is thirty-five years old or older.

D. The commission will not issue or renew the license of any applicants who wishes to compete in any sport regulated by the New Mexico athletic commission who has suffered from any type of cerebral hemorrhage.

E. If any applicant applying for a contestant's license has suffered a serious head injury including but not limited to concussions the applicant must have their application for license reviewed by the commission before any license is issued or renewed.

F. Medical examination of main event or championship bout contestants: All contestants scheduled for main event or championship professional boxing contests shall undergo a uniform medical examination at least five days prior to the date of the contest in the same manner and procedure as set forth in Subsection A of this rule, 16.6.5.8 NMAC.

G. Medical examination on the day of the [boxing] unarmed combat event: All unarmed combatants scheduled for unarmed combat contests in an event shall [be] have their medical examinations conducted [on the day of the] within forty-eight (48) hours of the bout.

H. Cost of the medical examination: The cost of any physical examination shall be prescribed by a schedule of fees established by the commission.

(1) The cost of any medical examinations of event contestants shall be paid directly to the commission by the promoter of the event.

(2) The physician will be paid directly by the promoter in accordance with the fees established by rule by the commission.

I. Female unarmed combatants' pregnancy test. All female unarmed combatants must provide a negative pregnancy test prior to each event, contest, or exhibition. Such pregnancy test shall be taken the day prior to the event, contest, or exhibition.

[15.6.5.8 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

15.6.5.12 PHYSICIAN IN ATTENDANCE:

A. It shall be the duty of every promoter to have in attendance at every (1) professional unarmed [combatant]

combat event, contest, or exhibition, (2) amateur mixed martial arts event, contest, or exhibition, or (3) any amateur event in which protective headgear in not worn by the amateur combatants, a physician licensed by the state of New Mexico and designated by the commission.

B. It shall be the duty of every promoter to have in attendance at every amateur unarmed combat event, contest, or exhibition, not fitting into Section A, above, a medical professional.

~~[B-]~~ **C.** The commission may establish a schedule of fees to be paid by the promoter to cover the cost of the [physician's] medical professional's attendance.

~~[C-]~~ **D.** The promoter shall pay the [physician] medical professional directly, in accordance with rules established by the commission. [15.6.5.12 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

15.6.5.22 AMBULANCE AT LIVE EVENTS: The promoter shall ensure that there is an ambulance on stand-by at all [live unarmed combatant, boxing, wrestling, or full contact karate or kickboxing events] professional and amateur mixed martial arts events, contests, or exhibitions. [15.6.5.22 NMAC - N, 03-23-2002; A, 8-16-2012; A, 01-15-2015]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT ATHLETIC COMMISSION

This amendment to 15.6.6 NMAC, Section 8, effective 01-15-2015.

15.6.6.8 REFEREES AND JUDGES ARE ASSIGNED BY THE COMMISSION:

A. Commission assigns officials for bouts and exhibitions: The commission shall assign deputy inspectors, physicians, timekeeper, referees and judges to each professional unarmed combat, bout, program, match, or exhibition conducted by a licensed promoter in New Mexico.

B. Officials paid by promoter: All officials assigned and directed by the commission to be in attendance at any event, bout, program, match, or exhibition shall be paid by the licensed promoter for the event in accordance with the fee schedule furnished by the commission to the promoter.

C. Number and substitution of officials: The number of officials required to be in attendance, or the substitution of officials for any reason or at any time during the event, bout, program, match, or exhibition, shall be solely within

the power and discretion of the commission. [15.6.6.8 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

**NEW MEXICO
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This amendment to 15.6.7 NMAC, Sections 8 and 18, effective 01-15-2015.

15.6.7.8 THE PREMISES AND EQUIPMENT: Any building or premise in which [an event] professional or amateur event, contest, or exhibition regulated by the commission is to be held must first be approved by the commission. A promoter may only arrange for and hold events, regulated by the commission in premises and with equipment approved by the commission. [15.6.7.8 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

15.6.7.18 DRESSING ROOMS:
A. Contestant’s dressing rooms restricted: No one shall be allowed in a contestant’s dressing room except his manager, his seconds, and the commission representatives.

B. Commission approval for exceptions to restrictions: The commission or its representative may make exception to the restrictions in Subsection A of 15.6.7.18 NMAC, and permit members of the press and members of the promoting corporation into a contestant’s dressing room.

C. Food and beverages in dressing rooms: At the contestant’s discretion, food and non-alcoholic beverages may be allowed in the contestant’s fitting room subject to approval by a commissioner, deputy, or designated official. No tobacco products shall be allowed. [15.6.7.18 NMAC - N, 03-23-2002; A, 01-15-2015]

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This is an amendment to 15.6.8 NMAC, Sections 23 and 25, effective 01-15-2015.

15.6.8.23 [OTHER “ATTRACTIONS” AND “EXHIBITIONS”]:

A. Entertainment, numbers, speeches, or exhibitions of any other branch of sport shall not be permitted on any boxing card, with the exception of such events at club dinners or “smokers”

not regularly advertised as boxing shows, except as the commission shall specifically approve:

B. There shall be no collections of any sort or for any cause made at boxing contests:

C. “Exhibition” bouts shall not be held unless announced and advertised as an “exhibition”:

D. All bouts shall be bonafide “contests”] **[RESERVED]** [15.6.8.23 NMAC - N, 03-23-2002; A, 08-26-2012; Repealed, 01-15-2015]

15.6.8.25 AMATEUR CONTESTS: All provisions in this section apply to all amateur events, contests, and exhibitions, unless the amateur event, contest, or exhibition is conducted pursuant to the rules for that form that are approved by the commission before the event, contest, or exhibition is conducted. [15.6.8.25 NMAC - N, 01-15-2015]

**NEW MEXICO
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This is an amendment to 15.6.9 NMAC, Section 12, effective 01-15-2015.

15.6.9.12 [RESERVED] AMATEUR CONTESTS; SMOKERS: All provisions in this section apply to all amateur events, contests, and exhibitions, unless the amateur event, contest, or exhibition is conducted pursuant to the rules for that form that are approved by the commission before the event, contest, or exhibition is conducted. [15.6.9.12 NMAC - N, 03-23-2002; A, 01-15-2015]

**NEW MEXICO
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This is amendment to 15.6.10 NMAC, Section 9, effective 01-15-2015.

15.6.10.9 [RESERVED] AMATEUR CONTESTS: All provisions in this section apply to all amateur events, contests, and exhibitions, unless the amateur event, contest, or exhibition is conducted pursuant to the rules for that form that are approved by the commission before the event, contest, or exhibition is conducted. [15.6.10.9 NMAC - N, 03-23-2002; A, 01-15-2015]

**NEW MEXICO
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This is an amendment to 15.6.12 NMAC, Sections 8 and 10, effective 01-15-2015.

15.6.12.8 DISTINCTION BETWEEN RULES REGULATING EVENTS:
A. Sanctioning body rules: Various sanctioning bodies [throughout the world] regulate full contact karate and kickboxing by rule. These sanctioning body rules may serve as a guideline, and with the approval of the [New Mexico athletic] commission may vary to align the event or contest with the rules of the sanctioning body.

B. Sanctioning body rules must be approved by commission: A set of [the international] sanctioning body rules must be submitted to the commission for approval for any full contact karate or kickboxing event or contest proposed to be conducted in New Mexico.

C. International sanctions that vary: The commission must approve [international] sanctioning body rules that vary from the commission’s rules. [15.6.12.8 NMAC - N, 03-23-2002; A, 01-15-2015]

15.6.12.10 [RESERVED] AMATEUR CONTESTS: All provisions in this section apply to all amateur events, contests, and exhibitions, unless the amateur event, contest, or exhibition is conducted pursuant to the rules for that form that are approved by the commission before the event, contest, or exhibition is conducted. [15.6.12.10 NMAC - N, 03-23-2002; A, 01-15-2015]

**NEW MEXICO
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This is an amendment to 15.6.14 NMAC, Section 8, effective 01-15-2015.

15.6.14.8 FEES:
A. All fees are non-refundable.
B. Annual licensing fees are set as follows:
(1) promoters license: \$250.00
(2) foreign promoters: \$500.00
(3) referees: \$25.00

- (4) timekeeper: \$25.00
- (5) announcers: \$25.00
- (6) seconds: \$25.00
- (7) trainers: \$25.00
- (8) managers: \$25.00
- (9) professional boxer: \$25.00
- (10) professional wrestlers: \$35.00
- (11) booking agent: \$35.00
- (12) matchmaker: \$35.00
- (13) judges: \$25.00
- (14) judge-trainee: \$10.00
- (15) professional mixed martial arts: \$25.00
- (16) amateur mixed martial arts: \$ 25.00

C. Regulatory fee: In an amount established semi-annually by the commission sufficient to cover the costs of regulating professional contests, up to four percent (4 %) of the total gross receipts derived by the promoter from any professional contest conducted live in New Mexico.

D. Supervisory fee: In an amount established semi-annually by the commission sufficient to cover the costs of supervising the exhibition of professional contests on a closed-circuit telecast, podcast or webcast or motion picture, up to five percent (5 %) of the total gross receipts derived from the exhibition. [15.6.14.8 NMAC - N, 03-23-2002; A/E, 10-11-2005; A, 08-26-2012; A, 01-15-2015]

**NEW MEXICO
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This is an amendment to 15.6.15 NMAC, Section 12, effective 01-15-2015.

**15.6.15.12 PROHIBITED
USE OF DRUGS OR FOREIGN
SUBSTANCES:**

A. It is expressly prohibited for any event contestant licensed by the commission to use or be under the influence, at any time, of any drug, stimulant, or foreign substance designed to be ingested that would unfairly increase or decrease his performance; or impair his or the physician's ability to recognize a potentially serious injury or physical condition.

B. Use by a contestant of any prohibited drugs or stimulants before or during a contest shall be cause for disqualification.

C. A contestant shall disclose prescriptions for drugs that are otherwise banned under these rules, for the commission's review before the event, contest, or exhibition. [15.6.15.12 NMAC - N, 03-23-2002; A, 01-15-2015]

**NEW MEXICO
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This is an amendment to 15.6.16 NMAC, Sections 6, 7, 8, 9, 10, 11 and 14, effective 01-15-2015.

15.6.16.6 OBJECTIVE: [The objective of Part 16 of Chapter 6 is to] Set forth the disciplinary authority of the commission over its licensees and disciplinary procedures and actions that the commission's licensees are subject to. [15.6.16.6 NMAC - N, 03-23-2002; A, 01-15-2015]

15.6.16.7 DEFINITIONS:

A. "Complaint" means a complaint filed with the commission against a licensee or an applicant for licensure [or against a licensee].

B. "Complainant" means [the] a party who files a complaint against a licensee or against an applicant for licensure.

C. "Respondent" means the licensure applicant or the licensee who is the subject of the complaint filed with the [Board] commission.

D. "Hearing" means the formal process whereby the respondent is afforded the opportunity to be heard by the commission, or its designated hearing officer, before the commission takes action which might result in disciplinary action against the respondent's license or application for license.

E. "Violation" means a violation of the Professional Athletic Competition Act or the rules and regulations [duty] adopted by the commission

F. "Notice of Contemplated Action" or "NCA" means the process [provided] whereby the respondent is notified of the Commission's intent to take action against the respondent's license, and whereby the respondent is afforded the opportunity for a hearing [before the Commission].

G. "Shall" means mandatory; a requirement.

H. "Should" means a

suggestion or recommendation; not a requirement.

I. "License Revocation" means to [~~prohibit the~~] rescind a license, thus barring conduct authorized by the license.

J. "License Suspension" means to prohibit, for a limited and specified stated period of time, the conduct authorized by the license. [15.6.16.7 NMAC - N, 03-23-2002; A, 01-15-2015]

**15.6.16.8 AUTHORITY OF
COMMISSIONER OR DEPUTY:**

A. The Commission may, in its discretion, take the following action or any combination of such actions deemed appropriate:

(1) Suspend the license for a period of time deemed appropriate.

(2) Revoke the license.

(3) Order future compliance and any remedial action as [deemed appropriate] determined by the Commission.

(4) Refer alleged violations of Sections 60-2A-27 through 32 NMSA 1978 to the office of the district attorney in the judicial district in which the alleged violation(s) occurred.

B. Each commissioner, [or a representative or deputy designated by the Commission] shall have full power to act as an official on behalf of the commission at all contests and exhibitions to fully enforce all of the rules of the commission. Furthermore, each [such official] commissioner has the power and authority to immediately suspend a license, without prior notice, for any violation of this chapter of the laws of this state, if doing so is necessary in the interest of protection the health and safety of the unarmed combatant or any member of the public.

[15.6.16.8 NMAC - N, 03-23-2002; A, 01-15-2015]

**15.6.16.9 VIOLATORS
SUBJECT TO DISCIPLINARY**

ACTION: Any commission licensee or permit holder who violates the laws of the state of New Mexico or the rules and regulations of the commission, may have his license or permit revoked, suspended, fined or otherwise disciplined, in such a manner as the commission may direct.

[15.6.16.9 NMAC - N, 03-23-2002; A, 01-15-2015]

**15.6.16.10 LICENSE OR
PERMIT SUSPENSION:**

In addition to the power of any commissioner to immediately suspend a license under 15.6.16.8 NMAC, the commission may

suspend any license or permit it has issued by issuing a dated notice to that effect, served by certified mail, return receipt requested to the licensee or permit holder.

A. Such suspension shall be without any advance hearing and shall take effect upon issuance of such notice of suspension by the commission, if such suspension is necessary in the interest of protecting the health and safety of the public.

B. The notice shall specify the effective date and term of the suspension.

C. The suspended licensee or permit holder ~~[may apply to the Commission for a hearing on the matter to]~~ shall be provided a hearing on the matter within twenty (20) days of the date the notice of suspension is served. Such hearing shall be held to determine whether the suspended license or permit shall be revoked as specified in this section.

D. ~~[The application for hearing must be in writing and must be received by the Commission within twenty (20) days of the licensee's or permit holder's receipt of the Commission's notice of suspension, as recorded on the return receipt for the certified notice.]~~ The notice of suspension must be in writing and must be served on the respondent(s) within three (3) days from the date the license or permit was suspended by the commission or from the date the license or permit was suspended by a commissioner.
[15.6.16.10 NMAC - N, 03-23-2002; A, 01-15-2015]

15.6.16.11 LICENSE OR PERMIT REVOCATION: Before the commission may revoke a license or permit, the subject licensee or permit holder shall be served, by certified mail, return receipt requested, a notice of contemplated action ("NCA") to revoke the license.

A. In the ~~[notice]~~ NCA, the ~~[licensee or permit holder]~~ respondent will be advised ~~[to]~~ of their right to request a hearing on the revocation, in which they can appear before the commission or hearing officer appointed by the commission. [at a hearing scheduled within twenty (20) days] Such request for a hearing must be made by the respondent within twenty (20) days from the date the NCA was served on the respondent. Respondents must be notified in the NCA of their right to be represented by counsel, to present relevant evidence, and to examine all opposing witnesses who may testify at their hearing.

B. The ~~[notice of such hearing]~~ NCA shall state the alleged misconduct upon which the contemplated license or permit revocation is based.

C. The ~~[licensee or permit holder]~~ respondent may appear in person

or be represented by his attorney to answer to the charges specified in the ~~[notice of contemplated action]~~ NCA and to show cause as why his license or permit should not be revoked.

D. At any stage of the hearing proceedings, the commission may require the ~~[licensee or permit holder]~~ respondent to take the stand and give sworn testimony.

E. All witnesses, ~~[licensees, or permit holders]~~ and respondents must testify under oath at any disciplinary hearing convened and conducted by the commission. The oath may be administered by any commissioner present or by the court reporter, if one is available to record the proceedings.

F. The ~~commission or~~ designated hearing officer shall be the sole judge of the relevancy and competency of the testimony given, the credibility of the witnesses, and the sufficiency of the evidence presented.

G. In the event that the ~~[licensee or permit holder]~~ respondent does not appear at the scheduled hearing; or if having appeared, the facts and evidence presented at the hearing warrant, in the discretion of the commission, a revocation of the license or permit, the license or permit shall be revoked and a notice of revocation shall be promptly served on the licensee by certified mail, return receipt requested.
[15.6.16.11 NMAC - N, 03-23-2002; A, 01-15-2015]

15.6.16.14 [RESERVED] SETTLEMENTS:

A. Settlements are encouraged. Settlements upon terms that are consistent with the provisions of this act are encouraged at any stage of disciplinary proceedings. Settlements are negotiated by the administrative prosecutor on behalf of the commission.

B. Content of settlement agreements. Every proposed settlement agreement shall:

(1) state how each violation of the Professional Athletic Competition Act and the rules and regulations of this commission are affected by the settlement;

(2) if the settlement is contingent upon certain action by the respondent, describe the contingency and the consequences of the respondents failure to meet the contingency;

(3) if the settlement is not intended as a full and complete settlement of all issues in the case, list those issues not settled; and

(4) bear the signature and date of signature of the commission's administrative prosecutor and

the respondent(s).

C. Presentation to the commission. All settlement agreements must be presented to the commission whereupon the commission must either accept or reject the settlement. Without commission approval, the settlement will have no legal effect.

(1) Upon approval by the commission, the chairman shall sign and date the settlement agreement.

(2) The commission administrator shall file the authorized settlement agreement with the commission.

[15.6.16.14 NMAC - N, 03-23-2002; A, 01-15-2015]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
ATHLETIC COMMISSION**

This is an amendment to 15.6.17 NMAC, Sections 8, 9 and 10, effective 01-15-2015.

15.6.17.8 PREREQUISITE LICENSURE [REQUIREMENTS] REQUIREMENTS FOR PROFESSIONAL AND AMATEUR

UNARMED COMBATANTS: Applicants must submit the following documentation to the commission.

A. Completed application.
B. A copy of driver's license or state issued identification card proving the applicant is at least 18 years of age.

C. The applicable license fee as set forth in Subsection B of 15.6.14 NMAC.

[15.6.17.8 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

15.6.17.9 PREREQUISITE LICENSURE REQUIREMENTS FOR REFEREES: All applicants for a referee's license must.

A. Submit a completed commission-approved application for licensure.

B. Submit proof of a minimum of ten (10) fights as a referee trainee.

C. Submit the applicable license fee as set forth in Paragraph (3) of Subsection B of 15.6.14 NMAC.

D. ~~[Proof of ABC certification:~~

~~—E.]~~ Submit copy of driver's license or state issued identification card proving the applicant is a least 18 years of age.

[15.6.17.9 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

15.6.17.10 PREREQUISITE LICENSURE REQUIREMENTS FOR JUDGES:

All applicants for a judge's license must.

A. Submit a completed commission-approved application for licensure.

B. Submit the applicable license fee as set forth in Paragraphs (13) or (14) of Subsection B of 15.6.14 NMAC.

C. Take and satisfactorily pass a written exam designated by the commission before being assigned to a required actual training period of no less than three unarmed combat events where he will actually score bouts under the supervision of a commission-designated instructor.

D. The judge applicant shall be designated as a "judge-trainee" until completion of the training period.

E. Submit a copy of driver's license or state issued identification card proving the applicant is at least 18 years of age.

F. Applicants who hold a judge's license in a jurisdiction other than New Mexico must submit a completed commission-approved application for licensure and requisite fee. These out-of-state judges need not (1) complete a written exam; (2) observe a training period; or (3) be designated as a "judge-trainee" unless the commission in its discretion deems any of these requirements necessary.

[15.6.17.10 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT ATHLETIC COMMISSION

This is an amendment to 15.6.20 NMAC, Sections 8 and 12, effective 01-15-2015.

15.6.20.8 MIXED MARTIAL ARTS INVOLVING FULL CONTACT: USE OF OFFICIAL RULES; DUTIES OF SPONSORING ORGANIZATION OR PROMOTER; APPROVAL OF COMMISSION REQUIRED:

A. All full-contact mixed martial arts are forms of unarmed combat.

B. The provisions pertaining to licenses, fees, dates of programs and disciplinary action in the laws and regulations on unarmed combat apply to events of such martial arts.

C. [A] An event, contest or exhibition of mixed martial arts must be conducted pursuant to the official rules for the particular [art] form. The sponsoring organization or promoter must [fite] submit a copy of the official rules with the commission before it will be approved to hold the events.

(1) To ensure the rules submitted for the particular form get commission approval before the event, the sponsoring organization or promoter shall submit their rules no later than the last regularly-scheduled commission meeting before the date of the planned event.

(2) The commission shall review and examine aforementioned rules, and may question the sponsoring organization or promoter before voting to approve the rules.

[15.6.20.8 NMAC - N, 08-26-2012; A, 01-15-2015]

15.6.20.12 WEIGHT CLASSES OF UNARMED COMBATANTS; WEIGHT LOSS AFTER WEIGH-IN:

A. The classes for unarmed combatants competing in contests or exhibitions of mixed martial arts and the weights for each class are shown in the following schedule.

(1) Flyweight: up to 125 lbs.

(2) Bantamweight: over 125 to 135 lbs.

(3) Featherweight: over 135 to 145 lbs.

(4) Lightweight: over 145 to 155 lbs.

(5) Welterweight: over 155 to 170 lbs.

(6) Middleweight: over 170 to 185 lbs.

(7) Light heavyweight: over 185 to 205 lbs.

(8) Heavyweight: over 205 to 265 lbs.

(9) Super heavyweight: all over 265 lbs.

B. Weight loss of up to two lbs. is allowed. Unarmed combatants have up to one hour to lose weight. The weight loss described must not occur later than one hour after the initial weigh-in. Unarmed combatants over weight may be fined, have their license suspended, and have their license revoked by the commission.

[15.6.20.12 NMAC - N, 08-26-2012; A, 01-15-2015]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

This is an amendment to 14.5.2 NMAC, Section 8, effective 2/1/2015.

14.5.2.8 PERMITS REQUIRED:

A. **Permits required.** Subject to CILA Section 60-13-3, section 60-13-45, and the provisions of the CID

rules, no building or structure shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished, and no electrical wiring, plumbing or mechanical work as defined and described in the applicable New Mexico construction codes for those trades, may be installed, repaired or maintained in or on such building or structure, unless the applicable permit has first been obtained from the division. All re-roofs require a building permit and inspections.

B. Exceptions to permit requirement. Exceptions from permit requirements of the New Mexico construction codes shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of CILA, any part of the CID rules, or any other applicable law.

C. Previously permitted work; previously submitted plans.

(1) Any work for which a permit has lawfully been issued prior to the effective date of this rule, which permit has not expired, deactivated or been revoked or suspended by the division pursuant to this part, may proceed as permitted, and the rules, codes and standards in effect at the time the permit was issued shall be the rules, codes and standards governing the work and its inspection.

(2) Any work for which plans have been submitted and received by the division shall be permitted and inspected pursuant to the rules in effect at the time the plans were received.

D. Eligibility. No person who is not appropriately, validly and currently licensed by the division is eligible to apply for or be issued a permit under this rule. **Exception.** Subject to the provisions of this part, a homeowner's permit may be issued to an unlicensed person.

E. Application for permit. In order to obtain a permit, the applicant must complete and submit a written application on the form and in the manner indicated by the division for the type of permit sought.

F. Types. Separate permits are required for general building, electrical and mechanical/plumbing, and liquefied petroleum gas work.

G. Solar PV [collector] systems [10-KW or less].

(1) Any person bidding or contracting for the installation of a solar [collector] PV electric system must possess a valid license issued by the construction industries division (CID) in the EE-98 or ER-1 license classification. Subject to the provisions of Paragraph (1) of Subsection A of 14.6.6.9 NMAC. CID license classifications can be found [pursuant to] in Section 9 of 14.6.6 NMAC.

(2) Any person performing the installation of a solar PV [collector] system, or related work, must possess a valid journeyman certificate issued by CID in the EE-98J or ER-1J classification, or be an apprentice working under the direct supervision of such a certified journeyman.

(3) Nothing in this section shall be construed to prohibit a properly licensed person from performing work on solar PV system's support structures, racking and mounting of panels as long as it is within the scope of the licensee's license and upholds the manufacturers' original listing and labeling.

(4) Structural analysis must be performed by a [structural] professional engineer licensed in the state of New Mexico in order to determine if the roof structure is capable of supporting the added loads of a solar [collector or wind turbine] PV electric module when any of the following occur.

(a) The total added dead load of the array is greater than 5 lbs / sq. ft. on roof construction.

(b) The total added point load of the array is greater than 45 lbs on roof construction.

(c) The total added dead load exceeds 200 lbs on any one truss, rafter or roof joist.

(d) The mounting of the system is of a unique roof mounted design.

(e) The roof structure contains over-spanned trusses, rafters or roof joists.

(4) (5) A general solar [collector] PV electric system construction building permit for the mounting of the system on the roof will be required only if structural reinforcement is required by a [structural] professional engineer licensed in the state of New Mexico.

(5) (6) If structural modifications are required, engineered details shall be provided. Structural documents must be sealed by a structural engineer licensed in the state of New Mexico. Reinforcement of the structure will require corresponding building permits and inspections by a certified building inspector.

(6) (7) If structural modifications are not required one electrical permit shall be issued to a properly licensed contractor for solar [collector] PV installation.

H. Wind turbine systems 10KW or less.

(1) Any person bidding or contracting for the installation of a building mounted wind turbine system must possess a valid license issued by the

construction industries division (CID) in the EE-98 or ER-1 license classification, subject to the provisions of Paragraph (1) of Subsection A of 14.6.6.9 NMAC. CID license classifications can be found in Section 9 of 14.6.6 NMAC.

(2) Any person performing the installation of a wind turbine system, or related work, must possess a valid journeyman certificate issued by CID in the EE-98J or ER-1J classification, or be an apprentice working under the direct supervision of such a certified journeyman.

(3) Structural analysis must be performed by a professional engineer licensed in the state of New Mexico in order to determine if the roof structure is capable of supporting the added loads of a wind turbine.

(4) If structural modifications are required, engineered details shall be provided. Structural documents must be sealed by a professional engineer licensed in the state of New Mexico. Reinforcement of the structure will require corresponding building permits and inspections by a certified building inspector.

(5) If structural modifications are not required one electrical permit shall be issued to a properly licensed contractor for wind turbine installation. [14.5.2.8 NMAC - Rp, 14.5.2.8 NMAC, 14.7.2.10 NMAC, 14 NMAC 9.2.I.100-105, 14 NMAC 9.2.II.100 & 14.10.4.8 NMAC, 7-1-04; A, 1-28-11; A, 11-1-13; A, 2-1-15]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF DENTAL HEALTH

This is an amendment to 16.5.1 NMAC, Sections 7, 15, 21 and 27, effective 01-15-2015.

16.5.1.7 DEFINITIONS:

A. "Act" means the Dental Health Care Act, Sections 61-5A-1 through 61-5A-29, NMSA 1978.

B. "Assessment" means the review and documentation of the oral condition, and the recognition and documentation of deviations from the healthy condition, without a diagnosis to determine the cause or nature of disease or its treatment.

C. "Authorization" means written or verbal permission from a dentist to a dental hygienist, dental assistant, or dental student to provide specific tests, treatments or regimes of care.

D. "CITA" means the council of interstate testing agencies, a separate and independent entity not

including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

E. "Close personal supervision" means a New Mexico licensed dentist directly observes, instructs and certifies in writing the training and expertise of New Mexico licensed or certified employees or staff.

F. "Consulting dentists" means a dentist who has entered into an approved agreement to provide consultation and create protocols with a collaborating dental hygienist and, when required, to provide diagnosis and authorization for services, in accordance with the rules of the board and the committee.

G. "CRDTS" means the central regional dental testing service, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

H. "Current patients of record" means the New Mexico licensed dentist has seen the patient in the practice in the last 12 months.

I. "Dental hygiene-focused assessment" means the documentation of existing oral and relevant systemic conditions and the identification of potential oral disease to develop, communicate, implement and evaluate a plan of oral hygiene care and treatment.

J. "Dental record" means electronic, photographic, radiographic or manually written records.

K. "Diagnosis" means the identification or determination of the nature or cause of disease or condition.

L. "Direct supervision" means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

(1) is physically present throughout the performance of the act;

(2) orders, controls and accepts full professional responsibility for the act performed;

(3) evaluates and approves the procedure performed before the patient departs the care setting; and

(4) is capable of responding immediately if any emergency should arise.

M. "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

N. "Extenuating circumstances" are defined as a serious,

physician-verified illness or death in immediate family, or military service. The extenuating circumstances must be presented for the board's consideration on a case-by-case basis.

O. "General supervision" means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant, expanded function dental auxiliary, dental student, or community dental health coordinator and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by the rules of the board.

P. "Impaired Act" means the Impaired Dentists and Dental Hygienists Act, Sections 61-5B-1 through 61-5B-11 NMSA 1978.

Q. "Indirect supervision" means that a dentist, or in certain settings a dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental hygienist, dental assistant or dental student as defined in 61-5A-3 NMSA 1978.

R. "Jurisprudence exam" means the examination given regarding the laws, rules and regulations, which relate to the practice of dentistry, dental hygiene and dental assisting in the state of New Mexico.

S. "Licensee" means an individual who holds a valid license to practice dentistry or dental hygiene in New Mexico.

T. "NERB/ADEX" means the north east regional board of dental examiners, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

U. "Non-dentist owner" means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services and that does not meet an exemption status as detailed in 61-5A-5 G NMSA 1978.

V. "Palliative procedures" means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems.

W. "Professional background service" means a board designated professional background service, which compiles background information regarding an applicant from multiple sources.

X. "Protective Patients Stabilization" means any manual method, physical or mechanical device, material, or

equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely.

[~~X~~.] Y. "Provider" means a provider of dental health care services, including but not limited to dentists, dental hygienists, and dental assistants.

[~~Y~~.] Z. "Specialist" means a specialty is an area of dentistry that has been formally recognized by the board and the American dental association as meeting the specified requirements for recognition of dental specialists.

[~~Z~~.] AA. "SRTA" means the southern regional testing agency, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

[~~AA~~.] BB. "Supervising dentist" means a dentist that maintains the records of a patient, is responsible for their care, has reviewed their current medical history and for purposes of authorization, has examined that patient within the previous 11 months or will examine that patient within 30 days of giving authorization.

[~~BB~~.] CC. "Supervision" means the dentist shall adequately monitor the performance of all personnel, licensed or unlicensed, that he or she supervises. The dentist is ultimately responsible for quality patient care and may be held accountable for all services provided by administrative and clinical individuals that the dentist supervises.

[~~CC~~.] DD. "Teledentistry" means a dentist's use of health information technology in real time to provide limited diagnostic treatment planning services in cooperation with another dentist, a dental hygienist, a community health coordinator or a student enrolled in a program of study to become a dental assistant, dental hygienist or dentist.

EE. "Third Party payer" means an organization other than the patient (1st party) or the health care provider (2nd party) involved in the financing of personal health services.

[~~DD~~.] FF. "WREB" means the western regional examining board, which acts as the representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

[~~EE~~.] GG. "Written authorization" means a signed and dated prescription from a supervising dentist to a dental hygienist to provide specific tests, treatments or regimes of care in a specified location for 30 days following the date of signature.

[3-11-89, 5-31-95, 9-30-96, 12-15-97;

16.5.1.7 NMAC - Rn, 16 NMAC 5.1.7, 12-14-00; A, 06-14-01; A, 03-29-02; A, 03-06-05; A, 07-16-07; A, 07-17-08; A, 07-19-10; A, 01-09-12; A, 06-14-12; A, 07-17-13; A, 01-04-14; A, 01-15-15]

16.5.1.15 GUIDELINES FOR APPROVAL OF CONTINUING EDUCATION:

A. Approved courses and providers. The following providers and courses are approved for continuing education credits. Professional training programs used by dental assistants for certification preparation in expanded functions are considered to be "approved training programs." The credit hours for approved training programs may also be used to meet continuing education requirements such as:

(1) scientific meetings or sessions sponsored or recognized by a local, state, regional, national, or international dental, dental hygiene, dental assisting or medical related professional organization;

(2) any dental related course sponsored by an institution accredited by the United States department of education;

(3) courses that are primarily in relationship to maximizing income, billing, or marketing in the dental or dental hygiene practice shall be limited to eight hours per triennial period;

(4) courses presented by approved study clubs as further defined in Subsection B of 16.5.1.15 NMAC;

(5) on-line and self-study as further defined in Subsection C of 16.5.1.15 NMAC;

(6) original presentation by a licensee who has submitted to the board an outline, date, place, and sponsor of the presentation; a maximum of eight hours will be allowed each triennial period in this category;

(7) any course not sponsored by a recognized provider may be approved by the secretary-treasurer or delegate of the board; the application for approval must include the course outline, date, location, hours, names and qualifications of presenters;

(8) medical education courses that are accredited by the American council for continuing medical education (ACCME) shall be limited to eight hours per triennial period;

(9) ~~examining board credits shall be limited to 20 hours per triennial period; and~~ clinical examiners for regional boards shall be allowed up to 24 hours per triennial period;

(10) a non-board or non-committee licensee volunteering for

the board or committee may receive up to 10 hours of continuing education for board approved activities; including serving as a hearing officer, investigator, mentor, or monitor;

(11) participation in a board or dental hygiene committee board approved charitable event to include a post-event survey; charitable event credits shall be limited to eight hours per triennial period.

B. Approved study clubs. The board may approve study clubs which meet the following criteria:

(1) composed of not less than five licensees with elected officers, written bylaws, and regular meetings;

(2) organized for the purpose of scientific study;

(3) the approved club must keep records of continuing education information or material presented the number of hours and the members in attendance; films, cassettes, or similar media produced or distributed by approved providers may be used; guest speakers may also be used to present educational material.

C. Allowable on-line, webinars, or self-study.

(1) A self-study course of instruction designed to directly enhance the licensee's or certificate holder's knowledge, skill, or competence in providing care to the dental consumers.

(2) A course that includes a post study course examination must be completed and returned for grading by the course provider.

(3) The hours of credit must be listed on the certificate.

(4) A maximum of 30 credits per triennial period will be allowed in the category of on-line, webinar, or self-study.

(5) A licensee or certificate holder may take the board's open book jurisprudence examination, up to once a year, and be granted three hours of continuing education credit for successfully passing the exam with a score of 75% or above. There will be a \$25 fee for the exam to cover the cost of handling.

(6) Basic life support (BLS) or cardiac pulmonary resuscitation (CPR) is not allowed thru a self-study course, a hands-on course is required.

D. Credit hours.

(1) One hour of credit will be granted for every hour of contact instruction. This credit shall apply to either academic or clinical instruction. Eight hours shall be the maximum number of continuing education credits granted in a single day.

(2) Courses

which are presented in institutions of higher education for the purpose of receiving a degree, advanced degree or certificate will earn the licensee or certificate holder 10 hours for every semester credit hour assigned a course as specified in the catalogue of the institution presenting the course.

E. Courses not allowed. Courses dealing largely with money management, personal finances or personal business matters, and courses in basic educational or cultural subjects that are not taught in direct relationship to dental care may not be used to fulfill continuing education requirements.

F. Verification of course attendance. The following documents, or combination of documents, may be used to verify attendance/participation in the required continuing education:

(1) course certificate with the course title, content, presenter, sponsor and units/hours;

(2) pamphlet of course with same information as requested on certificate along with canceled check;

(3) course attendance sheet submitted from the sponsor;

(4) course code or statement of attendance from presenter or sponsor of licensee attendance;

(5) for out of state courses and meetings when certificates or sign-in sheets are not available, the licensee may provide a copy of the registration form, with a copy of courses in printed form which were offered, identify the ones attended, along with information regarding travel and lodging accommodations for the meeting; and

(6) licensee is responsible for maintaining records of all CEUs for one year following the renewal cycle.

[11-21-75, 5-21-93, 5-31-95; 3-11-89, 9-30-96, 12-15-97, 1-1-99; 16.5.1.15 NMAC - Rn & A, 16 NMAC 5.1.15, 12-14-00; A, 07-19-10; A, 01-09-12; A, 07-17-13; A, 01-15-15]

16.5.1.21 CONSULTING SERVICES; CLAIMS REVIEW BY INSURANCE COMPANIES OR THIRD PARTY PAYERS: A dentist who reviews dental insurance [claims for New Mexico-licensed dentists who are treating patients in New Mexico must:] or third party payment claims for patients being treated by a dentist in New Mexico must meet the following requirements:

A. be a current New Mexico licensed dentist; and

B. within 60 days, [licensee has filed a letter at the board office the name of the company the dentist will

be providing consulting services to:] of initial agreement or contract with insurance company or third party payer, the reviewing dentist must provide the board office with the dentist's license number and name of the insurance company or third party payer for which the dentist is providing claims review services.

[16.5.1.21 NMAC - N, 06-14-12; A, 07-17-13; A, 01-15-15]

16.5.1.27 PROTECTIVE PATIENT STABILIZATION: Unless otherwise stated in rules or statute, the board, licensees and certificate holders shall refer to the American academy of pediatric dentistry's guidelines on protective patients stabilization.

[16.5.1.27 NMAC - N, 01-15-15]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF DENTAL HEALTH

**This is an amendment to 16.5.2 NMAC,
Sections 10 and 15, effective 01-15-15.**

16.5.2.10 VOLUNTARY RESTRICTION OF LICENSE: A licensee may request a restriction to practice under his/her license. The request must be in writing to the board or the dental hygienists committee. The board or the dental hygienists committee has the authority to attach stipulations to the licensee's licensure, if appropriate and to waive commencement of any proceedings.

A. As a condition for accepting a voluntary limitation, the board may require a licensee to:

(1) agree to and accept care, counseling or treatment [of] by physicians or other appropriate health care providers acceptable to the board; and

(2) participate in a program of education prescribed by the board; or

(3) practice under the direction of a dentist acceptable to the board for a specified period of time.

B. A violation of any of the conditions of the voluntary limitation of practice by the licensee shall be cause for the refusal of renewal, or the suspension or revocation of the license by the board.

C. Removal of a voluntary restriction on a license is subject to the procedure for reinstatement of a license. [9/30/96; 16.5.2.10 NMAC - Rn, 16 NMAC 5.2.10, 04/17/06; A, 06/14/12; A, 01-15-15]

16.5.2.15 [DISCIPLINARY ACTION: No action or examination or proceedings under the Impaired Dentists and Dental Hygienists Act precludes the board from investigating or acting simultaneously, in its sole discretion, under

the Dental Health Care Act.] [RESERVED]
[16.5.2.14 NMAC - N, 06/14/12; Repealed,
01-15-15]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
BOARD OF DENTAL HEALTH**

**This is an amendment to 16.5.5 NMAC,
Section 8, effective 01-15-15.**

16.5.5.8 FEES:

A. All fees are non-refundable.

B. Application for licensure by examination fee is \$600, which includes the initial licensing period.

C. Application for licensure by credential fee is \$850, which includes the initial licensing period.

D. An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$100 to re-take the exam.

E. Triennial renewal fee for all dental licensees is \$550.

(1) Impaired fee is \$30 per triennial renewal period plus renewal fee.

(2) Late renewal fee of \$100 after July 1 through September 1 plus renewal and impaired fees.

(3) Cumulative late fee of \$10 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal, late and impaired fees.

F. Triennial renewal fee for inactive license is \$90.

G. Temporary license fees:
(1) forty-eight hour license, application fee of \$50, license fee of \$50;

(2) six month license, application fee of \$100, license fee of \$200;

(3) twelve month license, application fee of \$100, license fee of \$300;

(4) twelve month license for student enrolled in residency program, application fee of \$25.00, license fee of \$50.00.

H. Anesthesia permit fees:
(1) nitrous oxide permit fee is \$25;

(2) conscious sedation I permit fee is \$25;

(3) conscious sedation II permit fee is \$300;

(4) deep sedation and general anesthesia permit fee is \$300.

I. Reinstatement fee is \$400.

J. Application for

licensure for inactive status is \$50.

K. Non-dentist owner fees.

(1) Application for licensure fee is \$300, which includes the initial licensing period.

(2) Triennial renewal fee of \$150.

(3) Late renewal fee of \$100 after July 1 through September 1 plus renewal fee.

(4) Cumulative late fee of \$10 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal and late fee.

L. Administrative and duplication fees:

(1) duplicate license fee is \$25;

(2) multiple copies of the statute or rules are \$10 each;

(3) copy fees are \$0.25 per page;

(4) list of current dental licensees is \$300; an annual list of current licensees is available to the professional association upon request at no cost; and

(5) mailing labels of current dental licensees is \$300.

[10-21-70, 3-14-73, 4-11-81, 3-7-88, 4-12-92, 3-16-94, 5-31-95, 9-30-96, 12-15-97, 5-28-99, 8-16-99; 16.5.5.8 NMAC - Rn & A, 16 NMAC 5.5.8, 06-14-01; A, 5-31-02, A, 03-06-05; A, 04-17-06 A, 07-16-07; A, 07-17-08; A, 06-10-09; A, 01-15-15]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
BOARD OF DENTAL HEALTH**

**This is an amendment to 16.5.6 NMAC,
Section 10, effective 01-15-15.**

16.5.6.10 DOCUMENTATION

REQUIREMENTS: Each applicant for a license by examination must submit the required fees and following documentation:

A. completed application signed and notarized with a passport quality photo taken within six months; applications are valid for one year from the date of receipt;

B. official transcripts or an original letter on letterhead with [a raised] an embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

C. a copy of clinical examination score card or certificate from the appropriate specialty board;

D. copy of national board examination certificate or score card;

E. proof of having taken

a course in infection control technique or graduation from dental school within the past 12 months;

F. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross; or the American safety and health institute (ASHI); cannot be a self-study course;

G. the board will obtain verification of applicant status from the national practitioners data bank and the American association of dental examiners clearinghouse; and

H. the appropriate status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board;

I. the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;

J. verification of licensure in all states where the applicant holds or has held a license in good standing to practice dentistry, or other health care profession; verification must be sent directly to the office from the other state(s) board, must include a [raised] seal, and must attest to the status, issue date, license number, and other information contained on the form;

K. in addition to the documentation required above, an applicant for licensure in a specialty area must request official transcripts from the residency program or postgraduate training program to be sent directly to the board office from the accredited program.

[3-16-94, 5-31-95, 9-30-96, 12-15-97, 8-16-99; 16.5.6.10 NMAC - Rn & A, 16 NMAC 5.6.10, 06-14-01; A, 3-29-02; A, 07-16-07; A, 07-19-10; A, 01-09-12; A, 07-17-13; A, 01-15-15]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
BOARD OF DENTAL HEALTH**

**This is an amendment to 16.5.7 NMAC,
Section 8, effective 01/11/2015.**

**16.5.7.8 CATEGORIES OF
TEMPORARY OR PUBLIC SERVICE**

LICENSES: Applications for a temporary or a public service New Mexico dental

license may be issued in the following categories for specific purposes if education and experience requirements are met.

A. Clinical educator.

Dentists, not currently licensed in New Mexico, who provide clinical education or training that includes demonstrations on live subjects must apply for temporary licensure. The temporary license is issued for 48 hours; if the course lasts longer than two days, additional 48 hour licenses may be requested upon payment of the applicable fees; a temporary license may not be issued for less than 48 hours.

B. A student who is

enrolled in a commission of dental accreditation (CODA) dental specialty program or a commission of dental accreditation (CODA) general practice dental residency program, or an advanced education in general dentistry program, who holds a current, valid license in good standing in another US jurisdiction, may be granted a temporary 48 hour license for the purpose of observing or assisting a licensed New Mexico practitioner in cases for educational purposes.

C. A resident or student

enrolled in a commission of dental accreditation (CODA) accredited program in the state of New Mexico may be granted a public service license for up to 12 months. This public service license [may] shall be automatically renewed annually only for the purpose of completing the education program and shall not be [renewed] valid once the residency or educational program is completed or the applicant is no longer enrolled, provided:

(1) the program in this state is accredited by the commission on dental accreditation (CODA);

(2) the residency program maintains a physical presence in New Mexico, including:

(a) a faculty and staff full time in New Mexico who holds a license in New Mexico in good standing in accordance with the degree they hold; and

(b) a facility in the state where residency students may attend lectures, seminars and receive clinical instruction;

(3) public service license for a dental resident or student may not be converted to any other public service license or license by credentials;

(4) the applicant must practice under the sponsorship of or be associated with a dentist holding a current license in good standing in this state;

(5) upon application by a resident or student, the participating residency or education program must supply documentation to the board of its accreditation status, faculty and

facilities in New Mexico; and

(6) successful completion of a clinical board examination is not a requirement for a public service license to be granted to a student or resident under this section.

D. Clinical practice in underserved area or state institutions. A dentist may be granted temporary licensure to practice in a state institution, a program approved or maintained by the New Mexico department of health (NMDOH), or a program or clinic designated by the New Mexico department of health (NMDOH), as dental care underserved area (DCUA). The New Mexico department of health (NMDOH) may recommend to the New Mexico board of dental health care, counties, communities, county census divisions, or in the case of urban areas, neighborhoods, zip codes, and census tracts to be considered as dental care underserved areas (DCUA's). Areas recommended as DCUA's may reflect those areas designated by the federal government as dental health professional shortage areas (DHPSA). The New Mexico board of dental health care will request annually from NMDOH a written report of which areas are recommended as DCUA's and will update the listing throughout the year as appropriate. The New Mexico board of dental health care may designate DCUA's based upon these recommendations:

(1) the temporary license holder is restricted to work exclusively in the institution or program named on the application or the temporary license certificate;

(2) a temporary license for clinical practice in an underserved area or state institution is valid for 12 months and shall expire at the end of that period; the board may re-issue the temporary license for three additional 12 month periods; each license reissue must be approved by the board; the licensee must contact the board office three months prior to the expiration date to begin the re-issue process;

(3) the New Mexico board of dental health care shall rely upon the listing of recommended practices in underserved areas or state institutions, and the listing of recommended DCUA's provided by NMDOH in its review of applications for clinical practice in underserved areas; temporary licenses will be reissued only for sites and DCUA's that remain on the recommended listings by the New Mexico department of health;

(4) the applicant shall provide an affidavit from the administrative supervisor of the applicant's proposed employer organization as defined in Subsection C of 16.5.7.8 NMAC attesting to supervision and oversight by a New

Mexico licensed dentist in good standing, and bearing the signature of both; and

(5) the applicant shall provide an affidavit from the New Mexico department of health specifying supervision will be by a licensed New Mexico dentist in good standing and bearing the signature of both;

(6) a temporary license to practice in an underserved area may be converted to a license by credentials provided the applicant:

(a) meets all requisite requirements listed in 16.5.8 NMAC and provides all documentation as required in 16.5.8.10 NMAC of these rules, with exception of the requirement to have a license in good standing for five years;

(b) practices for at least 1000 hours per year under a temporary license in an underserved area for three consecutive years; one year of credit will be granted for;

(i) a commission on dental accreditation residency (CODA) or ADA recognized specialty program; or

(ii) private practice of 1000 or more hours per year; and

(c) has no complaints under board investigation, actions pending or actions taken against the applicant's temporary license;

(d) has renewed the temporary license yearly, and has paid the required license fees;

(e) has maintained the same continuing education requirements of regularly licensed dentists as set forth in 16.5.10 NMAC of these rules; the annual continuing education requirements are to be based upon 1/3 prorated share of those required of a licensee applying for license renewal on a triennial basis; and

(f) applies for conversion of a temporary license to a license by credentials pursuant to 16.5.7.15 NMAC of these rules.

E. Emergency practitioner. Out of state specialists needed for emergency care in a hospital may be granted a temporary license:

(1) the information normally given in official documentation may be given in written or verbal form because of the emergency nature of the license;

(2) this category will be given a 48 hour temporary license but it may be extended in 48 hour increments until the dentist can leave the patient to the care of others; and

(3) the New Mexico licensed dentist acting as the

sponsor for the temporary licensee must be responsible for the validity of the following credentials:

(a) the license number in the state in which the applicant resides and practices, and the current status of the license;

(b) proof of liability insurance; and

(c) verification of status of hospital credentials in state of residence or practice.

F. Replacement practitioner. A dentist may be granted temporary licensure for six or 12 months to work exclusively with patients in the practice of a New Mexico licensed dentist who is unable to practice dentistry because of physical or mental illness, injury, pregnancy, impairment, physical absence, or other condition approved by the board:

(1) the temporary license holder is restricted to work exclusively in the practice named on the application; and

(2) a temporary license as a replacement practitioner is valid for no longer than 12 months, and may not be re-issued.

G. Presumptive public service licensure for a charitable dental project. A dentist not holding a license in the state may be granted a presumptive public service license for up to 72 hours to participate in a board approved charitable project. Except as noted in this section the dentist shall otherwise be subject to the provisions of the dental practice act and the rules and regulations of the board. The presumptive public service license is valid only when:

(1) the charitable project is approved by the board at least 45 days prior to the scheduled event;

(2) the dentist receives no compensation for participating in the project;

(3) the project is sponsored by an entity as defined in 16.5.7.7 NMAC and that entity has been approved by the board to undertake the charitable project;

(4) the dentist holds a license in good standing in another jurisdiction and the license is verified by the sponsoring entity;

(5) the dentist has graduated from and holds a diploma from a dental school accredited by the commission on dental accreditation and a copy of the diploma is on file with the sponsoring entity;

(6) upon request the out-of-state dentist shall produce copies of their diploma and license in another jurisdiction;

(7) the dental

care provided is within the scope and limits of the license the dentist holds in the other jurisdiction;

(8) the out-of-state dentist works under the indirect supervision of a dentist licensed in good standing in this state who is present at the charitable project;

(9) patients who receive dental care during the charitable project will be given a list of dentists whom they can contact if post-operative care is needed;

(10) a charitable public service license is not eligible for conversion to any other public service, regular license; or license by credentials; and

(11) no fee shall be required by the board for the presumptive public service license for a charitable project.

[3-17-73, 3-16-94, 4-15-94, 5-31-95, 9-30-96; 16.5.7.8 NMAC - Rn & A, 16 NMAC 5.7.8, 12-14-00; A, 3-29-02; A, 07-17-08; A, 09-18-10; A, 01-09-12; A, 01/11/2015]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
BOARD OF DENTAL HEALTH**

This is an amendment to 16.5.8 NMAC, Section 10, effective 01-15-15.

16.5.8.10 DOCUMENTATION REQUIREMENTS: Each applicant for licensure by credentials must submit the required fees and following documentation:

A. completed application signed and notarized with a passport quality photo taken within six months; applications are valid for one year from the date of receipt;

B. official transcripts or an original letter on letterhead with [a raised] an embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

C. copy of national board examination certificate or scorecard;

D. copy of clinical examination score card or certificate from the accepted examining agent;

E. proof of having taken a course in infection control technique within the past twelve months;

F. proof of current life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

G. the board will obtain

verification of applicant status from the national practitioner's data bank and the American association of dental examiners clearinghouse;

H. verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession; verification must be sent directly to the office from the other state(s) board, must include a [raised] seal, and must attest to the status, issue date, license number, and other information contained on the form;

I. a level II status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board;

J. the board may deny, stipulate or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentist and Hygienist Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;

K. proof of 60 hours of continuing education during the 36 months prior to licensure in compliance with 16.5.1.15 NMAC of these rules;

L. dentists employed in uniform service practice shall furnish:

(1) a copy of the most recent commissioned officers effectiveness report, or equivalent, issued by the uniformed service dental service, and
(2) a certified letter from the clinic commander attesting to past record and any actions taken on applicant's uniform service credentials;

M. applicants for specialty by credentials in one of the following applicants for specialty license must submit: official transcripts from the residency program or postgraduate training program, sent directly to the board office from the accredited program;

N. certificate of diplomate status from the specialty board, must be sent directly to the board office; and

O. successfully completed an examination for diplomate status or a specialty licensure examination comparable to the specialty exam recognized by the New Mexico board of dental health care:

(1) the examination must include the entry level clinical skills in one of the following specialties: endodontics, oral and maxillofacial surgery, orthodontics/dento-facial orthopedics, oral pathology, pediatric dentistry, periodontology, prosthodontics; or oral and maxillofacial radiology; or

(2) for licensure as a specialist in dental public health, the applicant must have successfully completed the examination for diplomate status given by the American board of public health dentistry;

P. supplemental information may be requested by the board. [3-16-94, 8-15-96, 9-30-96, 12-15-97, 1-1-99, 8-16-99, 2-14-00; 16.5.8.10 NMAC - Rn, 16 NMAC 5.8.10, 12-14-00; A, 06-14-01; A, 07-16-07; A, 07-19-10; A, 01-09-12; A, 01-15-15]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF DENTAL HEALTH

This is an amendment to 16.5.9 NMAC, Section 8, effective 01-15-15.

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

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

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

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

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

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

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

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

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

G. non-dentist owner employees shall follow provision of 16.5.16

NMAC; failure of an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

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

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

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

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

L. non-dentist owners shall maintain patient records for a minimum of six years; and

M. a non-dentist owner licensee shall notify the board of any adverse action taken against such licensee by any licensing board, peer review body, malpractice insurance carrier, or any other entity as defined by the board; a non-dentist owner licensee shall also notify the board of its surrender of a license while under, or in lieu of, an investigation by any authority; such report shall be made in conformance with the provision of 16.5.3 NMAC.

N. the non-dentist owner shall be subject to the provisions of 16.5.58 NMAC.

[16.5.9.8 NMAC - N, 03-06-05; A, 07-16-07; A, 01-09-12; A, 09-14-12; A, 07-17-13; A, 01-15-15]

[Subsection H of 16.5.9.8 NMAC (effective 01/09/2012) was set aside by the New Mexico Court of Appeal's decision in Pacific Dental Services, Inc. v. New Mexico Board of Dental Health Care (*In re* New Mexico Board of Dental Health Rule Hearing), case number 31,836 (June 1, 2012).]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF DENTAL HEALTH

This is an amendment to 16.5.10 NMAC, Section 9, effective 01-15-15.

16.5.10.9 COURSES

REQUIRED: Continuing education coursework must contribute directly to the practice of dentistry and must comply with the requirements of 16.5.1.15 NMAC of these rules. The following courses are

required for license renewal.

A. Proof of current certification in basic life support (BLS) or cardiac pulmonary resuscitation (CPR) accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be self-study course.

B. Infection control. As further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period.

C. Education requirements: Any dentist holding enteral anxiolysis (minimal sedation), CSI, CSII, deep sedation and permit at large (AAL) are required to have a minimum of five hours of continuing education for the permit renewal (every six years) in medical emergencies, air way management, pharmacology, or anesthesia related topics.

D. Management of pain with controlled substances. Any dentists who holds a federal drug enforcement administration registration to prescribe controlled substances shall successfully complete three continuing dental or medical education hours, as defined in Part 16.5.57 NMAC, in appropriate courses that shall include:

(1) an understanding of the pharmacology and risks of controlled substances,

(2) a basic awareness of the problems of abuse, addiction and diversion,

(3) awareness of state and federal regulations for the prescription of controlled substances, and

(4) management of the treatment of pain.

[5/21/93..9/30/96; 16.5.10.9 NMAC - Rn & A, 16 NMAC 5.10.9, 04/17/06; A, 07/16/07; A, 07/19/10; A, 01/09/12; A, 01-15-15]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF DENTAL HEALTH

This is an amendment to 16.5.14 NMAC, Part name, effective 01-15-15.

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 5 DENTISTRY
(DENTISTS, DENTAL HYGIENISTS, ETC.)**

**PART 14 DENTISTS,
ADJUNCTIVE DENTAL [FUNCTIONS]
SERVICES**

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
BOARD OF DENTAL HEALTH**

This is an amendment to 16.5.16 NMAC, Section 10, effective 01-15-15.

16.5.16.10 GUIDELINES: The board shall use the following as guidelines for disciplinary action.

A. "Gross incompetence" or "gross negligence" means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients.

B. "Unprofessional conduct" means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental profession;

(2) failure to refer a patient, after emergency treatment, to his/her regular dentist and inform the latter of the conditions found and treated;

(3) failure to release to a patient copy of that patient's records and x-rays within 15 business days regardless whether patient has an outstanding balance;

(4) failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by referral to individuals with special skills, knowledge, and experience;

(5) failure to advise the patient in simple understandable terms of the proposed treatment, the anticipated fee, the expectations of success, and any reasonable alternatives;

(6) failure of a dentist to comply with the following advertising guidelines, no person shall:

(a) practice dentistry under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name, which shall be the name used in his/her license or renewal certificate as issued by the board, or his/her commonly used name;

(b) practice dentistry without displaying his/her full name as it appears on the license issued by the board on the entrance of each dental office;

(c) fail to include in all advertising media for the practice (excluding building signage and promotional items), in a reasonably visible and legible manner, the dentist's names(s), address and telephone number or direct reference where the name of the dentist(s) can be found as defined in 16.5.16.7 NMAC;

(d) advertise a practice in a false, fraudulent or misleading manner; if the name of the practice or office contains one of the American dental association recognized specialties and only a general dentist performs that service, the advertisement, signage, or broadcast media must say "services provided by a general dentist", so as not to imply that a specialist is performing such procedures; and

(e) advertise as a specialist unless the dentist is licensed by the board to practice the specialty or unless the dentist has earned a post-graduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by commission on dental accreditation (CODA) in one of the specialty areas of dentistry recognized by the American dental association;

(7) failure to use appropriate infection control techniques and sterilization procedures;

(8) deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another dentist licensed or applying for licensure by the board;

(9) accept rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits in a dental partnership, association, HMO or DMO, or similar association shall not be construed as fee-splitting, nor shall compensating dental hygienists or dental assistants on a basis of percentage of the fee received for the overall service rendered be deemed accepting a commission;

(10) prescribe, dispense or administer drugs outside the scope of dental practice;

(11) charge a patient a fee which is not commensurate with the skill and nature of services rendered, such as to be unconscionable;

(12) sexual misconduct;

(13) breach of ethical standards, an inquiry into which the board will begin by reference to the code of ethics of the American dental association;

(14) the use of a false, fraudulent or deceptive statement in any document connected with the practice

of dentistry;

(15) employing abusive billing practices;

(16) fraud, deceit or misrepresentation in any application;

(17) violation of any order of the board, including any probation order;

(18) injudicious prescribing, administration, or dispensing of any drug or medicine;

(19) failure to report to the board any adverse action taken by any licensing board, peer review body, malpractice insurance carrier or any other entity as defined by the board or committee; the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(20) negligent supervision of a dental hygienist or dental assistant;

(21) cheating on an examination for licensure; or

(22) failure to comply with the terms of a signed collaborative practice agreement;

(23) failure of a dentist of record, or consulting dentist, to communicate with a collaborative practice dental hygienist in an effective professional manner in regard to a shared patient's care under part 17 of these rules;

(24) assisting a health professional, or being assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

(25) failure to make available to current patients of record a reasonable method of contacting the treating dentist or on-call service for dental emergencies; dental practices may refer patients to an alternate urgent care or emergency facility if no other option is available at the time, or if the contacted dentist deems it necessary for the patient's well-being;

(26) conviction of either a misdemeanor or a felony punishable by incarceration;

(27) aiding and abetting a dental assistant, expanded function dental auxiliary or community dental health coordinator who is not properly certified;

(28) patient abandonment;

(29) habitually addicted as defined in NMSA 1978, Sections 61.5A-21 4 & 6 or 61.5B-3 (C) and (D) habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act [30-31-1 NMSA 1978]

or habitual or excessive use or abuse of alcohol;

(30) failure of the licensee to furnish the board within 10 business days of request, its investigators or representatives with information requested by the board;

(31) failure to appear before the board when requested by the board in any disciplinary proceeding;

(32) failure to be in compliance with the Parental Responsibility Act NMSA1978, Section 40-5A-3 seq.;

(33) fraudulent record keeping;

(34) failure to properly install amalgam separator as defined in 16.5.58 NMAC;

(35) failure to properly operate and maintain amalgam separator as defined in 16.5.58 NMAC; and

(36) failure to properly dispose of amalgam waste as defined in 16.5.58 NMAC. [9-13-69, 10-21-70, 4-11-81, 3-9-89, 3-11-89, 10-16-92, 5-31-95, 6-4-96, 2-14-00; 16.5.16.10 NMAC - Rn & A, 16 NMAC 5.16.10, 12-14-00; A, 07-16-07; A, 07-19-10; A, 01-09-12; A, 06-14-12; A, 07-17-13; A, 01-04-14; A, 01-15-15]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
BOARD OF DENTAL HEALTH**

This is an amendment to 16.5.17 NMAC, Sections 11 and 12, effective 01-15-15.

16.5.17.11 RESPONSIBILITIES OF A COLLABORATIVE PRACTICE DENTAL HYGIENIST: The collaborative practice dental hygienist shall:

A. refer each patient for a dental examination every 12 months, as well as anyone who may require further dental services, to the patient's consulting dentist or to a dental specialist in the case of an emergency;

B. in conjunction with the consulting dentist, be responsible and liable for acts and omissions in the collaborative dental hygiene practice;

C. assure that each consulting dentist is duly licensed by the board of dental health care; by verification with the board office;

D. maintain a collaborative practice agreement with each consulting dentist; and

E. maintain an appropriate level of contact and communication with the consulting dentist;

F. contact the patient's dentist of record, if not a consulting dentist,

prior to treating the patient to give the dentist the option of becoming a consulting dentist;

G. offer the patient a choice of the collaborative practice dental hygienist's consulting dentists if the patient's dentist of record chooses to be a non-participating dentist;

H. not to perform any treatment if the patient does not have an active consulting dentist on record with the collaborative practice dental hygienist;

I. follow the standardized protocol unless modified by the consulting dentist by prescription or order;

J. follow the verbal and written prescriptions and orders of the consulting dentist for those treatments requiring a diagnosis;

K. forward all records and x-rays, or duplicates, to the consulting dentist within 14 days;

L. assure that each consulting dentist meets the requirements of a consulting dentist as stated in 16.5.17.9 NMAC; and

M. a copy of the collaborative agreement shall be on file with the board office; any changes to this agreement shall be filed with the board office within 60 days; and

N. the collaborative dental hygienist shall be subject to provisions of 16.5.58 NMAC.

[2-14-00; 16.5.17.11 NMAC - Rn & A, 16 NMAC 5.17.11, 12-14-00; A, 01-09-12; A, 01-15-15]

16.5.17.12 COLLABORATIVE DENTAL HYGIENE PRACTICE AND LIMITATIONS:

A. A dental hygienist in a collaborative practice may perform the procedures in a dental hygienist's scope of practice listed in 16.5.29 NMAC without general supervision while the hygienist is in a cooperative working relationship with a consulting dentist, pursuant to rules promulgated by the board and the committee.

B. A collaborative practice dental hygienist may have more than one consulting dentist.

C. A dentist shall have a consulting agreement with no more than three collaborative practice dental hygienists. The board may grant exception to this limitation for public health settings on a case-by-case basis.

D. The collaborative practice dental hygienist may own and manage a dental hygiene practice, or enter into a contractual arrangement, in any location or setting in New Mexico.

E. The committee, through the board, may take any disciplinary action allowed by the Uniform Licensing

Act, against a dental hygienist certified in collaborative practice.

F. Collaborative dental hygienist can administer local anesthesia under general supervision as defined in 16.5.28.8 NMAC and 16.5.28.12 NMAC.

G. A collaborative dental hygienist may assess for pit and fissure sealants without a dentist's evaluation as provided in Subsection D of 16.5.29.8 NMAC.

H. A collaborative dental hygienists may prescribe, administer and dispense topically applied fluoride and topically applied antimicrobials as provided for in 16.5.29.11 NMAC.

I. Perform dental hygiene focused assessment.

J. A collaborative practice dental hygienist shall not:

(1) administer local anesthesia except under the general supervision of a dentist; and only if certified to do so through the committee and ratified by the board;

(2) administer a drug or medication, except those directly indicated as dental topical therapeutic or preventive agents; other therapeutic agents may only be dispensed if the collaborative practice dental hygienist holds a class C clinic license; any drugs dispensed as a class C clinic (as designated and defined by the New Mexico board of pharmacy) shall be on the specific individual authorization of a dentist:

(a) all non-controlled substance medications requiring a prescription or order from the dentist may only be dispensed for immediate use in the collaborative practice dental hygienist office, and only on the specific order or protocol from the consulting dentist; a log of these dispensing shall be kept and a copy of this log shall be sent to the corresponding consulting dentist every six months; collaborative practice dental hygienists may not dispense or administer any controlled substance;

(b) prescription drugs, which are kept in bulk at the collaborative practice dental hygienist's office, to be dispensed or used by the collaborative practice dental hygienist as in 16.5.17.12 NMAC, shall be purchased on an order or prescription by a consulting dentist;

(3) diagnose dental disease, but may advise the patient of suspected pathology and periodontal status;

(4) perform oral hygiene procedures on any patient identified as having a significant health risk from the procedures; unless the patients' current health history has been reviewed by the patient's dentist of record or the consulting dentist; or for patients who reside in

residential or long term care facilities, the patient's dentist or physician;

(5) perform treatments requiring the diagnosis of a dentist without a prescription/order from the consulting dentist; such treatments include but are not limited to, root planing, sealant application in presence of cavitation, administration of therapeutic agents and other services defined in Section 61-5A-4(B) as within the scope of dental hygiene practice but which require a dentists diagnosis;

(6) modify the standard collaborative practice protocol without a prescription or order from the consulting dentist;

(7) take impressions for bleaching trays, deliver bleaching materials or provide systems of home bleaching, or provide instructions to patients on using bleaching materials unless it is authorized on a case by case basis by prescription from a consulting dentist;

(8) provide in office bleaching systems unless under indirect supervision of a consulting dentist.

K. Effective July 1, 2015 a collaborative practice hygienist may own and manage a dental practice providing:

(1) they possess a current NM dental hygiene license in good standing

(2) they register with the board as a non-dentist owner; no additional license or fee is required for this registration;

(3) they comply with all statutes and rules applying to non-dentist owners in Sections 61-5A-5.1 NMSA 1978 and 16.5.9 NMAC [2-14-00; 16.5.17.12 NMAC - Rn & A, 16 NMAC 5.17.12, 12-14-00; A, 06-14-01; A, 04-16-08; A, 07-19-10; A, 01-09-12; A, 01-15-15]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
BOARD OF DENTAL HEALTH**

This is an amendment to 16.5.19 NMAC, Section 9, effective 01-15-15.

16.5.19.9 DOCUMENTATION REQUIREMENTS: Each applicant for a dental hygiene license by examination must submit the required fees and following documentation:

A. completed application, signed and notarized with a passport quality photo taken within six months affixed to the application; applications are valid for one year from the date of receipt;

B. official transcripts or an

original letter on letterhead with [a-raised] an embossed seal verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

C. copy of clinical examination score card or certificate;

D. copy of national board examination certificate or score card;

E. proof of having taken a course in infection control technique or graduation from dental hygiene school within the past 12 months;

F. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

G. verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession; verification must be sent directly to the board office from the other state(s) board, must include [a-raised] an embossed seal, and must attest to the status, issue date, expiration date, license number, and other information contained on the form; and

H. the appropriate status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the committee.

[3-14-73, 3-7-88, 10-4-86, 5-31-95, 9-30-96, 12-15-97; 16.5.19.9 NMAC - Rn & A, 16 NMAC 5.19.9, 12-30-02; A, 04-16-08; A, 07-17-08; A, 07-19-10; A, 01-09-12; A, 01-15-15]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
BOARD OF DENTAL HEALTH**

This is an amendment to 16.5.20 NMAC, Section 9, effective 01-15-15.

16.5.20.9 DOCUMENTATION REQUIREMENTS: Each applicant for licensure by credentials must submit the required fees and following documentation:

A. completed application, signed and notarized with a passport quality photo taken within six months affixed to the application; applications are valid for one year from the date of receipt;

B. official transcripts or an original letter on letterhead with [a-raised] an embossed seal verifying successfully passing all required courses from the dental

hygiene program, to be sent directly to the board office from the accredited program;

C. copy of national board examination certificate or score card;

D. proof of having taken a course in infection control technique within the past 12 months;

E. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

F. proof of 15 hours of continuing education during the 12 months prior to application;

G. a status report must be received at the board office directly from a board designated professional background service; the results of the board designated professional background service background check must either indicate no negative findings or, if there are negative findings, those findings will be considered by the committee:

(1) the committee may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or the rules;

(2) supplemental information may be requested by the committee; and

H. verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession; verification must be sent directly to the board office from the other state(s) board, must include [a-raised] an embossed seal, and must attest to the status, issue date, expiration date, license number, and other information contained on the form.

[3-28-91, 5-31-95, 9-30-96, 8-16-99; 16.5.20.9 NMAC - Rn & A, 16 NMAC 5.20.9, 06-14-01; A, 04-16-08; A, 07-19-10; A, 01-09-12; A, 01-15-15]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
BOARD OF DENTAL HEALTH**

This is an amendment to 16.5.28 NMAC, Section 8, effective 01/15/2015.

16.5.28.8 REQUIREMENT TO BE CERTIFIED: Local anesthesia may only be performed by dental hygienists who have been certified by the committee to perform the expanded function. The administration of local anesthesia requires the indirect supervision of a dentist. Local anesthesia may be administered by a

dental hygienist under general supervision under the following conditions; the dental hygienist shall:

A. be currently certified to administer local anesthesia in New Mexico and have a New Mexico license in good standing;

B. have administered local anesthesia under the indirect supervision of a dentist for at least two consecutive years;

C. administered at least 20 cases of local anesthesia under the indirect supervision of the same dentist during that two year period;

D. provide a signed affidavit from the supervising dentist attesting to the length of employment, supervision, and observation of the 20 certifying cases, and attest that the dental hygienist is qualified to administer local anesthesia and to handle possible emergencies or side effects in a dental facility. The affidavit is valid for subsequent or additional locations in which the licensee may practice.

[3/14/73, 5/31/95; 16.5.28.8 NMAC - Rn, 16 NMAC 5.28.8, 04/17/06; A, 01/09/12; A, 01/15/2015]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF DENTAL HEALTH

This is an amendment to 16.5.29 NMAC, Section 8, effective 01-15-15.

16.5.29.8 SCOPE OF

PRACTICE: A dental hygienist may perform dental hygiene services as defined in Section 61-5A-4 B thru F NMSA 1978 of the act with the supervision defined. In addition, a licensed hygienist may:

A. prescribe, administer or dispense therapeutic agents as per the formulary as defined in Subsection C of 16.5.29.11 NMAC;

B. function as an expanded function dental auxiliary after passing the certifying exam and completing the apprenticeship accepted by the board;

C. function as a community dental health coordinator after completing a program certified by the board;

D. except in cases where a tooth exhibits cavitation of the enamel surface, assessing without a dentist's evaluation whether the application of pit and fissure sealants is indicated;

E. except in cases where a tooth exhibits cavitation of the enamel surface, applying pit and fissure sealants without mechanical alteration of the tooth;

F. administration of local anesthesia as defined in 16.5.28 NMAC;

and

G. such other closely related services as permitted by the rules of the committee and the board.

H. Effective July 1, 2015 dental hygienists may own and manage a dental practice provided:

(1) they possess a current NM dental hygiene license in good standing;

(2) they register with the board as a non-dentist owner; no additional license or fee is required for this registration; and

(3) they comply with all statutes and rules applying to non-dentist owners in 1978, Sections 61-5A-5.1 NMSA and 16.5.9 NMAC.

[10/21/70, 5/31/95; 16.5.29.8 NMAC - Rn, 16 NMAC 5.29.8, 04/17/06; A, 01/09/12; A, 12/15/12; A, 01/04/14; A, 01-15-15]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF DENTAL HEALTH

This is an amendment to 16.5.33 NMAC, Section 13, effective 01-15-15.

16.5.33.13 CERTIFICATION

BY CREDENTIALS: Applicants for certification by credentials [~~shall provide to the board or its agent~~] must possess the following qualifications:

A. [~~verification of a current active certificate from another state, or~~] verification of certification in all states where the applicant holds or has held a certificate to practice dental assisting; verification must be sent directly to the board office from the other state(s) board, must include a seal, and must attest to the status, issue date, expiration date, certification number, and other information contained on the form;

B. an official letter from the director of an accredited dental hygiene program indicating the applicant has completed coursework in the requested expanded function; or

C. proof of current, valid, certification as a CDA issued by DANB; and

D. all certifications, letters and validations must be received directly by the board office from the state, institution, or DANB;

E. the board may deny, stipulate, or otherwise limit a certification if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or the rules;

F. pass the jurisprudence exam with a score of a least 75%;

G. all certificates held by the applicant must have been in good standing for two years prior to application; and

H. the board may deny, stipulate, or otherwise limit a certification if it is determined the applicant holds or has held a certification in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the act, the Uniform Licensing Act or these rules.

[8-11-89... 5-31-95, 9-30-96, 1-1-98, 2-14-00; 16.5.33.13 NMAC - Rn & A, 16 NMAC 5.33.13, 12-14-00; 16.5.33.13 NMAC - Rn, 16.5.33.14 NMAC & A, 12-30-02; A, 07-17-08; A, 01-09-12; A, 01-11-15]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF DENTAL HEALTH

This is an amendment to 16.5.57 NMAC, Section 11, effective 01-15-15.

16.5.57.11 PAIN MANAGEMENT CONTINUING EDUCATION:

This section applies to all New Mexico dentists who hold a federal drug enforcement administration registration to prescribe controlled substances. Pursuant to the Pain Relief Act in order to ensure that all such health care practitioners safely prescribe for pain management and harm reduction, the following rules shall apply.

A. Immediate requirements effective July 17, 2013. Between July 17, 2013 and no later than June 30, 2014, all board licensees who hold a federal drug enforcement administration registration to prescribe controlled substances shall complete no less than three continuing dental or medical education hours in appropriate courses that shall include:

- (1) an understanding of the pharmacology and risks on controlled substances,
- (2) a basic awareness of the problems of abuse, addiction and diversion,
- (3) awareness of state and federal regulations for the prescription of controlled substances,
- (4) management of the treatment of pain, and
- (5) [courses-

~~may also include a review of this rule (16.5.57 NMAC); the applicability of such courses toward the fulfillment of the continuing education requirement is subject to board approval;] dentists who have taken continuing education hours in these~~

educational elements between July 1, 2012 and July 17, 2013 and reviewed this rule, may apply those hours toward the required three continuing education hours described in this section.

B. Triennial requirements: Beginning with the July 1, 2014 triennial renewal date, all New Mexico dentist licensees who hold a federal drug enforcement administration registration shall be required to complete and submit three continuing education hours; these hours shall count toward the 60 continuing education hours required during each triennial cycle. Appropriate courses shall include all of the educational elements described in Subsection A of this section. The applicability of such courses toward fulfillment of the continuing education requirement is subject to board approval. These hours may be earned at any time during the three-year period immediately preceding the triennial renewal date.

The three continuing education hours completed prior to July 1, 2014, as defined in Subsection A, may be included as part of the required continuing education hours in pain management in either the triennial cycle in which those hours are completed or the triennial cycle immediately thereafter.

C. Requirements for new licensees: All New Mexico dental licensees who hold a federal drug enforcement administration registration, whether or not the New Mexico license is the licensee's their first license, shall complete three continuing education hours in pain management during the first year of licensure. These three continuing education hours completed prior to the first renewal may be included as part of the hours required in Subsection B of this section.

D. The continuing education requirements of this section shall be included in the total continuing education requirements as set forth in 16.5.10 NMAC.

[16.5.57.11 NMAC - N, 07-17-13; A, 01-15-15]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF DENTAL HEALTH

This is an amendment to 16.5.58 NMAC, Section 8, effective 01-15-15.

16.5.58.8 AMALGAM SEPARATOR; INSTALLATION REQUIREMENTS:

A. On or before December 31, 2014, the licensed owner(s), operator(s) or designee(s) of a dental office shall:

(1) install an appropriately sized amalgam separator

system on each wastewater drain at the licensee or certificate holder's dental office; the amalgam separator system must, at a minimum, comply with international standard contained in *ISO 11143*; and

(2) within 90 days of installation, report to the board office and to the local water treatment authority where applicable the type, model, and size of the amalgam separator system, and the date the amalgam separator system became operational [~~to the board office and where applicable, to the local water treatment facility~~].

B. Exemption: An amalgam separator shall not be required for the offices or clinical sites of:

(1) a dental office that is not engaged in amalgam placement, removal or modification;

(2) an orthodontists;

(3) a periodontist;

(4) an oral and

maxillofacial surgeons;

(5) an oral and

maxillofacial radiologists;

(6) an oral

pathologists; or

(7) a portable dental office without a fixed connection for wastewater discharge.

C. Licensed owner(s), operator(s) or designee(s) of a dental office with an existing amalgam separator must be in compliance with *ISO 11143* and shall report the type, model and size of the amalgam separator system to the board no later than December 31, 2014.

[16.5.58.8 NMAC - N, 01-04-14; A, 01-15-15]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF NURSING

Explanatory paragraph: This is an amendment to 16.12.2 NMAC, Sections 7, 12, and 14, effective 01-19-15. In 16.12.2.7 NMAC, Subsection B through O and Q through V; 16.12.2.12 NMAC, Subsection A through G and I through K; 16.12.2.14 NMAC, Subsection A through L and N were not published as there were no changes.

16.12.2.7 DEFINITIONS:

A. Definitions beginning with the letter A:

(1) **“actually engaged in nursing”**, employed, engaged, or holding a position which requires licensure or in which the maintenance of licensure as a nurse is expected;

(2) **“administration of medications”**, a

process whereby a prescribed drug or biological agent is given to a patient/client by a person licensed or certified by the board to administer medications;

(3) **“advanced practice registered nurse”** APRN, a graduate level prepared registered nurse who has completed a program of study in a specialty area in an accredited nursing program, taken a certification examination in the same area, and been granted a license to practice as an advanced practice nurse with an expanded scope of practice; individuals are authorized to practice in the roles of certified nurse practitioner (CNP), certified registered nurse anesthetist (CRNA) and clinical nurse specialist (CNS);

(4) **“affidavit”**, a sworn written statement made to affirm a statement of fact;

(5) **“anesthetics”**, means a drug-induced loss of consciousness, otherwise known as general anesthesia, during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory support is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired. General anesthesia is used for those procedures when loss of consciousness is required for the safe and effective delivery of surgical services.

(6) (6) **“approval”**, the review and acceptance of a specific activity;

(7) (7) **“approval agency”**, agency, institution or organization with the authorization to award CE credit;

(8) (8) **“approved equivalent”**, a program reviewed and accepted by the board of nursing as meeting necessary regulatory/statutory requirements;

(9) (9) **“assessment”**, the review and interpretation by a licensed individual of specific data necessary to determine the patient/client's care and treatment needs; (also see data collection);

(10) (10) **“assignment of nursing activity”**, assignment of nursing activity involves appointing or designating another licensed nurse or assistive personnel that is consistent with his/her scope of practice (licensed person) or role description (unlicensed person);

(11) (11) **“audit”**, an examination and verification of CE and practice documents.

P. Definitions beginning with the letter P:

(1) **“permit-to-practice for GCNSs”**, a document conferring the privilege to practice as a graduate clinical nurse specialist, at a specific place of employment, under the direct supervision of a licensed CNS, CNP or physician; such permits will carry set expiration dates, are not renewable and are not transferable;

(2) **“permit-to-practice for GNs and GPNs”**, a document conferring the privilege to practice nursing at a specific place of employment, under direct supervision of a RN only; such permits will carry set expiration dates, are not renewable or transferable;

(3) **“permit-to-practice for GNPs”**, a document conferring the privilege to practice as a graduate nurse practitioner, at a specific place of employment, under the direct supervision of a physician or a certified nurse practitioner; direct supervision of a physician, licensed CNP or CNS is required for prescription writing; such permit will carry set expiration dates, are not renewable and are not transferable;

(4) **“permit-to-practice for GRNAs”**, a document conferring the privilege to administer anesthesia to any person, as a GRNA, at a specific place of employment, functioning in an interdependent role under the direction of and in collaboration with a licensed physician, osteopathic physician, dentist or podiatrist licensed in New Mexico; such permits will carry set expiration dates, and are not renewable or transferable;

(5) **“post-graduate program”**, any specialized knowledge and skills sought after completion of a basic nursing educational program which does not necessarily lead to an advanced degree;

(6) **“preceptor”**, an individual at or above the level of licensure that an assigned student is seeking, who may serve as a teacher, mentor, role model or supervisor in a clinical setting;

(7) **“prescriptive authority”**, the power to determine the need for drugs, immunizing agents or devices; selecting the remedy and writing a prescription;

(8) **“private practice”**, employment status of an individual nurse who is self-employed;

(9) **“procedural sedation”**, a technique of administering sedatives or dissociative agents with or without analgesics to induce a state that allows the patient to tolerate unpleasant procedures while maintaining cardio respiratory functions.

[1-1-98; 16.12.2.7 NMAC - Rn & A, 16 NMAC 12.2.7, 7-30-01; A, 12-31-01; A, 01-2-04; A, 02-17-06; A, 06-17-08; A, 05-17-10; A, 11-29-10; A, 11-20-12; A, 01-19-15]

16.12.2.12 STANDARDS OF NURSING PRACTICE:

H. Standards for professional registered nursing practice. Registered nurses practice in accordance with the definition of professional registered nursing in the NPA. [61-3-3, J. NMSA 1978].

(1) RNs may assume specific functions and perform specific procedures which are beyond basic nursing preparation for professional registered nursing [61-3-3, J. NMSA 1978] provided the knowledge and skills required to perform the function and procedure emanates from a recognized body of knowledge and practice of nursing, and the function or procedure is not prohibited by any law or statute.

(2) When assuming specific functions and performing specific procedures, which are beyond the nurse’s basic educational preparation, the RN is responsible for obtaining the appropriate knowledge, skills and supervision to assure he/she can perform the function/procedure safely and competently.

(a) Administration of medication for the purposes of procedural sedation and analgesia requires particular attention;

(b) A nurse shall possess specialized nursing knowledge, judgment, skill and current clinical competence to manage the nursing care of the patient receiving procedural sedation including;

(i) being currently trained with demonstrated proficiency in ACLS or PALS;

(ii) knowledge of anatomy, physiology, pharmacology, cardiac arrhythmia recognition, oxygen delivery, respiratory physiology, transport and uptake and the use of an oxygen mask, bag-valve mask, oral airway, nasal airway adjunct, or the maintenance of a supraglottic airway, or endotracheal tube;

(iii) ability to recognize emergency situations and institute emergency procedures as appropriate to the patient condition and circumstance.

(c) To perform procedural sedation a registered

nurse:
(i) shall not have other responsibilities during or after the procedure that would compromise the nurse’s ability to adequately monitor the patient during procedural sedation/analgesia;

(ii) shall assess the physical setting for safe administration of medications for sedation and proceed only if the resources needed for reasonable anticipated emergencies are available;

(iii) shall ensure that a qualified airway specialist is readily available during and after the procedure for respiratory emergencies. A qualified airway specialist includes but is not limited to a CRNA, anesthesiologist, emergency physician or other physician trained, and maintaining a current competency I endotracheal intubation, paramedic, respiratory therapist or a registered nurse;

(iv) shall decline to administer medications classified as sedatives or other medication if the registered nurse assesses the administration of sedatives or other medication would be unsafe under the circumstances;

(v) shall maintain adequate oxygenation and ventilation via an appropriate method as noted in Item (iii) of Subparagraph (b) of Paragraph (2) of Subsection C of 16.12.2.12 NMAC.

[01-01-98; 16.12.2.12 NMAC - Rn & A, 16 NMAC 12.2.12, 07-30-01; A, 01-02-04; A, 02-17-06; A, 6-17-08; A, 01-19-15]

16.12.2.14 ADVANCED PRACTICE REGISTERED NURSE (APRN) CERTIFIED REGISTERED NURSE ANESTHETIST (CRNA):

M. Certified registered nurse anesthetist practice.

(1) The CRNA provides pre-operative, intra-operative and post-operative anesthesia care and related services, including ordering of diagnostic tests, in accordance with the current *American association of nurse anesthetists’* guidelines for nurse anesthesia practice.

(2) [The CRNA- functions in an interdependent role as a member of a health care team in which the medical care of the patient is directed by a licensed physician, osteopathic physician, dentist or podiatrist licensed in New Mexico.] The CRNA makes independent

decisions regarding the health care needs of the client and also makes independent decision in carrying out health care regimes.

(3) The CRNA may assume specific functions or perform specific procedures which are beyond the advanced educational preparation and certification for the CRNA provided the knowledge and skills required to perform the function or procedure emanates from a recognized body of knowledge or advanced practice of nursing and the function or procedure is not prohibited by any law or statute. When assuming specific functions or performing specific procedures, which are beyond the CRNA's advanced educational preparation and certification, the CRNA is responsible for obtaining the appropriate knowledge, skills and supervision to ensure he/she can perform the function/procedure safely and competently and recognize and respond to any complications that may arise.

(4) The CRNA collaborates as necessary with the licensed physician, osteopathic physician, dentist or podiatrist concerning the anesthesia care of the patient. Collaboration means the process in which each health care provider contributes his/her respective expertise. Collaboration includes systematic formal planning and evaluation between the health care professionals involved in the collaborative practice arrangement.

(5) CRNAs who have fulfilled requirements for prescriptive authority may prescribe and administer therapeutic measures, including dangerous drugs and controlled substances included in Schedules II through V of the Controlled Substances Act within the specialty of anesthesia and practice setting.

(a) Requirements for prescriptive authority: in accordance with applicable state and federal laws, the CRNA who fulfills the following requirements may prescribe and administer dangerous drugs including controlled substances included in Schedules II through V of the Controlled Substance Act.

(i) Verifies 400 hours of work experience in which prescribing and administering dangerous drugs has occurred within the two (2) years immediately preceding the date of the application. Individuals who have not fulfilled this requirement must provide documentation of successful completion of 400 hours of prescribing dangerous drugs in a preceptorship with a CRNA or physician. The preceptorship must be completed within six (6) months and a letter of authorization will be issued for the duration of the preceptorship.

(ii) In order to prescribe controlled substances, the CRNA must provide the board of

nursing with verification of current state controlled substances registration and current DEA number, unless the CRNA has met registration waiver criteria from the New Mexico board of pharmacy (Subsection I of 16.19.20.8 NMAC). CRNAs may not possess or prescribe controlled substances until they have both a current state controlled substances registration and a current DEA registration.

(iii) Once prescriptive authority requirements are met, the board will notify the board of pharmacy of completion of prescriptive authority requirements.

(b) Formulary: the formulary will include agents related to the administration of anesthesia and ACLS protocol agents.

(i) All CRNAs must adhere to the current formulary approved by the board of nursing.

(ii) The initial formulary or a formulary with changes will be submitted to the board of medical examiners for a review.

(c) Prescription records: written, verbal or electronic prescriptions and order will comply with state board of pharmacy and federal requirements. All prescriptions will include the name, title, address and phone number of the prescribing advanced practice registered nurse.

(d) Prescribing and administering: CRNAs who have fulfilled requirements for prescriptive authority as stated in these rules as defined by the board of pharmacy may prescribe and administer to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act, which have been prepared, packaged or fabricated by a registered pharmacist or doses or drugs that have been prepackaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act [61-11-22] and the New Mexico Drug, Device and Cosmetic Act for the benefit of the public good.

(e) Distributing: CRNAs who have fulfilled requirements for prescriptive authority as stated in these rules may NOT distribute to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act.

(f) CRNAs who do not plan to prescribe controlled substances but do plan to prescribe dangerous drugs must meet the requirements relative to prescriptive authority except those specifically required for controlled substances.

(6) Graduate registered nurse anesthetist practice.

(a) GRNAs may NOT distribute medications.

(b) GRNAs may practice or prescribe/administer medications only in collaboration with a physician, osteopathic physician, dentist or podiatrist.

(7) To insure competency and safe practice in specific regard to prescription writing practices in the state of NM.

(a) A list of current CRNAs and their status with regard to prescription writing shall be distributed upon request to the board of pharmacy.

(b) Violation of these rules or disciplinary action taken by the board of nursing with regard to controlled substances shall be reported to the board of pharmacy.

(c) The board of nursing shall appoint as requested, qualified CRNAs to serve on the board of pharmacy disciplinary panel as requested by the board of pharmacy.

[01-01-98; 16.12.2.14 NMAC - Rn & A, 16 NMAC 12.2.13, 07-30-01; A, 12-31-01; A, 04-01-02; A, 01-02-04; A, 02-17-06; A, 06-17-08; A, 11-29-10; A, 11-20-12; A, 01-19-15]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT BOARD OF NURSING

This is an amendment to 16.12.9.NMAC, Section 12, effective 01-19-15

16.12.9.12 ADVANCED PRACTICE NURSES, REGISTERED NURSES, AND LICENSED PRACTICAL NURSES TREATED

WITH OPIATES: [~~Advanced practice nurses, registered nurses, licensed practical nurses who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by a physician, CRNA, CNP, CNS pain specialist and must have a complete, independent neuropsychological evaluation, as well as clearance from their practitioner, before returning to or continuing in practice. In addition, they must remain under the care of a physician, CRNA, CNP or CNS for as long as they remain on opiates while continuing to practice.~~] Advanced practice nurses, registered nurses, licensed practical nurses, certified hemodialysis technicians,

and certified medication aides who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by a physician, CRNA, CNP, CNS pain specialist and must have clearance from their practitioner, before returning to or continuing in practice and must remain under the care of a physician, CRNA, CNP or CNS for as long as they remain on opiates and continue to practice. The treating physician, CRNA, CNP or CNS may, at her or his discretion, order a neuropsychological evaluation to help determine clearance for practice.

[16.12.9.12 NMAC - Rn & A, 16.12.9.9 NMAC; 11-20-12; A, 01-19-15]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
PRIVATE INVESTIGATIONS
ADVISORY BOARD**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 48 PRIVATE LAW
ENFORCEMENT PRACTITIONERS
PART 8 LICENSURE FOR
MILITARY SERVICE MEMBERS,
SPOUSES AND VETERANS**

16.48.8.1 ISSUING AGENCY:
Regulation and Licensing Department,
Private Investigations Advisory Board.
[16.48.8.1 NMAC - N, 01/15/15]

16.48.8.2 SCOPE: This part sets forth application procedures to expedite licensure for military service members, spouses and veterans.
[16.48.8.2 NMAC - N, 01/15/15]

16.48.8.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to and in accordance with the Private Investigations Act, NMSA 1978, Sections 61-27B-1 to -36 (specific authority to promulgate rules is 61-27B-5(C) and NMSA 1978, Section 61-1-34.
[16.48.8.3 NMAC - N, 01/15/15]

16.48.8.4 DURATION:
Permanent.
[16.48.8.4 NMAC - N, 01/15/15]

16.48.8.5 EFFECTIVE DATE:
January 15, 2015, unless a later date is cited at the end of a section.
[16.48.8.5 NMAC - N, 01/15/15]

16.48.8.6 OBJECTIVE: The purpose of this part is to expedite licensure for military service members, their spouses and veterans pursuant to NMSA 1978, Subsection 34, of Section 1 of Chapter 61.

[16.48.8.6 NMAC - N, 01/15/15]

16.48.8.7 DEFINITIONS:

A. "Military service member" means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.

B. "Recent veteran" means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.

[16.48.8.7 NMAC - N, 01/15/15]

16.48.8.8 APPLICATION REQUIREMENTS:

A. Applications for licensure shall be completed on a form provided by the board.

B. The applicant shall provide:
(1) completed application and corresponding fee pursuant to 16.48.5.8 NMAC;

(2) satisfactory evidence that the applicant is currently licensed in another jurisdiction, including a branch of the United States armed forces, and holds a current license in good standing; the applicant further must provide satisfactory evidence that he has met the minimal licensing requirements in that jurisdiction and that they are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for pursuant to Chapter 61, Articles 27B NMSA 1978; and
(3) proof of honorable discharge (DD214) or military ID card or accepted proof of military spouse status.

C. Electronic signatures will be acceptable for applications submitted pursuant to section 14-16-1 through section 14-16-19 NMSA 1978.
[16.48.8.8 NMAC - N, 01/15/15]

16.48.8.9 RENEWAL REQUIREMENTS:

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance set forth in 16.48.2 NMAC and for the renewal of a license set forth in 16.48.7 NMAC pursuant to Chapter 61, Articles 2 through 36 NMSA 1978.

B. A license issued pursuant to this section shall be valid for two years.

C. The board office mails license renewal notifications to licensees before the license expiration date. Failure

to receive the renewal notification shall not relieve the licensee of the responsibility of renewing the license by the expiration date.

D. The renewal application will be available online at the board's website and in paper copy if requested from the board office and must be received at the board office on or before the expiration date.

[16.48.8.9 NMAC - N, 01/15/15]

History of 16.48.8 NMAC: [RESERVED]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
PRIVATE INVESTIGATIONS
ADVISORY BOARD**

This is an amendment to 16.48.2 NMAC, Sections 7, 17, 18, 19 and repeal of Section 23, effective 01/15/2015.

16.48.2.7 DEFINITIONS: Please refer to 16.48.1.7 NMAC in addition to the definitions within this part.

~~[A.] "Armored vehicle security guard" means an individual employed by an armored car company whose primary duty is that of guarding the tangible property, currency, valuables, jewelry, food stamps, or other high value items of higher or unusual value, which require secured delivery from one place to another and who wears, carries, possesses, or has immediate access to a firearm at any time in the performance of the individual's duties.]~~

~~[B.] A. "Chemical agents" means tear gas or any other certifiable non-lethal chemical agents used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.~~

~~[C.] B. "Defensive impact tools" means straight baton, expandable baton, side handle baton or other defensive impact tools used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.~~

~~[D.] C. "Electronic non-lethal devices" means tasers or other certifiable devices used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.~~

~~[E.] D. "Restraint and control devices" means handcuffs or similar certifiable devices used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.~~
[16.48.2.7 NMAC - Re-pr & A, 16.48.2.7 NMAC, 09/24/08; A, 01/15/15]

16.48.2.17 [QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A SECURITY GUARD REGISTRATION: LEVEL ONE:

A. On or after July 1, 2007, every individual seeking employment or employed as a level one security guard shall file an application for registration with the department. The application shall include two (2) passport type photos taken within the prior six months:

B. Applicants for registration as a level one security guard must submit the following:

(1) proof of age indicating applicant is at least eighteen (18) years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(2) completed application;

(3) proof of successfully passing a jurisprudence examination to be administered by the department;

(4) proof of completing a department approved training program as defined in Subsection D of 16.48.2.17 NMAC prior to being placed on a guard post for the first time as a level one security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act (21-23-1 NMSA 1978);

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent; or

(c) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(5) non-refundable registration fee; and

(6) criminal history background check as set forth in Subsection C of 16.48.2.17 NMAC.

C. Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance, reinstatement or renewal of a level one security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) Blank

fingerprint cards shall be obtained from the department:

(2) 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 department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above:

(3) Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashier's check for the prescribed fee:

D. The following eight hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level one registration:

(1) legal training for security guards - four (4) hours;

(a) legal responsibilities, qualifications, restrictions and liability of level 1 security guard;

(b) introduction to use of force continuum, appropriate use of force and de-escalation techniques;

(c) powers of detention and New Mexico laws of citizen arrest;

(d) appropriate search and seizure, legal restrictions and civil liability;

(e) New Mexico laws on trespass;

(2) authority and responsibility of the security guard - two (2) hours;

(a) communication with local law enforcement, jurisdiction and limitations of authority;

(b) radio dispatch protocol and other communication tools;

(c) image, professional communication, note-taking and report writing;

(3) incident scene management and preservation - two (2) hours;

(a) identifying evidence;

(b) care and handling of evidence;

(c) securing the immediate area;

(d) evidence tampering and/or removal;

(e) witness/participant identification.

E. Training may consist of an in-person instructor and prerecorded material.]

LEVEL ONE SECURITY GUARD APPLICANT QUALIFICATIONS AND EXPERIENCE REQUIREMENTS:

A. Every individual seeking employment or employed as a level one security guard shall file an application for registration with the department.

B. Applicants for registration as a level one security guard shall submit the following:

(1) completed application with two (2) passport type photos taken within the prior six months;

(2) non-refundable registration fee as defined in 16.48.5 NMAC;

(3) proof of age indicating applicant is at least eighteen (18) years of age (copy of driver's license, state issued identification card, or U.S. passport);

(4) achievement of a passing score of not less than 90 percent on the board approved jurisprudence examination, provided by the board, covering the Private Investigations Act and the rules;

(5) department's release of information form; and

(6) proof of completing a department approved training program as defined in Subsection D of 16.48.2.17 NMAC prior to being placed on a guard post for the first time as a level one security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act (21-23-1 NMSA 1978);

(b) an in-house training program provided by a licensed private patrol company using a curriculum provided by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent; or

(c) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent.

C. BACKGROUND CHECK: Pursuant to Section 61-27B-34

of the act, all applicants for initial issuance, reinstatement or renewal of a level one security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) All applicants for licensure or registration shall be fingerprinted electronically as required for submission to the federal bureau of investigation to conduct a national criminal history investigation and for submission to the department of public safety to conduct a state criminal history investigation.

(2) Initial and renewal applicants will need to register on-line with the agent for New Mexico department of public safety prior to going to an electronic fingerprinting location:

(a) at the electronic fingerprinting location, the applicant will need to provide the electronic fingerprinting technician with a registration number they received after registering online;

(b) a designated fee determined by the New Mexico department of public safety shall be paid at the time of registration by credit card or at the fingerprinting site by cashier's check or money order; and

(c) fingerprint results will be sent electronically to the department.

D. TRAINING

REQUIREMENTS: The following eight hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level one registration. The training shall be taught by a department approved instructor that has been recommended by the board and approved by the superintendent. Training shall be taught by an in-person instructor:

(1) legal training for security guards;

(a) legal responsibilities, qualifications, restrictions and liability of level one security guard;

(b) introduction to use of force continuum, appropriate use of force and de-escalation techniques;

(c) appropriate search and seizure, legal restrictions and civil liability, and;

(d) New Mexico laws on trespass pursuant to the act, Section 30-14-1 NMSA 1978;

(2) authority and responsibility of the security guard;

(a) communication with local law enforcement;

(b)

radio dispatch protocol and other communication tools;

(c) image, professional communication, note-taking and report writing;

(3) incident scene management and preservation;

(a) identifying evidence;

(b) care and handling of evidence;

(c) securing the immediate area, and;

(d) witness/participant identification.

E. INSTRUCTOR

REQUIREMENTS: On or after February 28, 2015, every individual seeking to be an approved training instructor for level one security guards, an individual shall complete an application for approval on a form provided by the department. The application shall include, but not be limited to, all of the following information:

(1) applicant name, business address, and telephone number of the individual; and

(2) proof of instructor certification issued by a law enforcement academy (LEA) or the federal law enforcement training center (FLETC) or one year of verifiable training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent.

[16.48.2.17 NMAC - Re-pr & A, 16.48.2.17 NMAC, 09/24/08; A, 05/01/10; A, 01/15/15]

16.48.2.18 [QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A SECURITY GUARD REGISTRATION: LEVEL TWO:

A. On or after July 1, 2007, every individual seeking employment or employed as a level two security guard shall file an application for registration with the department. The application shall include two (2) passport type photos taken within the prior six months. Endorsements to carry a specific weapon, not including a firearm, will require successful completion of the specific weapon curriculum as defined in Subsection E of 16.48.2.18 NMAC:

B. Applicants for registration as a level two security guard must submit the following:

(1) proof of a current registration in good standing as a level one security guard or proof of completing department approved level one security guard training;

(2) proof of successfully passing a jurisprudence examination to be administered by the department;

(3) proof of a high school diploma or its equivalent; and

(4) proof of completing a department approved training program as defined in Subsection D of 16.48.2.18 NMAC for level two security guard training prior to being placed on a guard post for the first time as a level two security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act (21-23-1 NMSA 1978);

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(c) the New Mexico law enforcement academy; or

(d) any other department approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(5) proof of completing department approved weapon training as defined in Subsection E of 16.48.2.18 NMAC;

(6) completed application;

(7) non-refundable registration fee; and

(8) criminal history background check as set forth in Subsection C of 16.48.2.18 NMAC:

C. Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance or reinstatement of a level two security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check:

(1) Blank fingerprint cards shall be obtained from the department.

(2) 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 department, by a private agency or individual qualified to

take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above:

(3) Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashiers check for the prescribed fee.

D. The following sixteen (16) hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level two registration:

(1) legal and practical aspects of use of force and personal/employer liability - eight (8) hours;

(2) verbal and written communication and conflict management - six (6) hours;

(3) first responder basic first aid - two (2) hours.

E. An applicant for weapon endorsement must successfully complete training for each specific weapon endorsement. The training must be taught by a department approved instructor that has been recommended by the board and approved by the superintendent. The following are the available endorsements for level two applicants:

(1) four (4) hour chemical agents training shall include, but not be limited to the following subjects:

(a) effects of chemical agents;

(b) avoiding bad positions;

(c) disengagement;

(d) proper defensive positions;

(e) shielding;

(f) drawing techniques;

(g) defense against moving attacks;

(h) spraying techniques;

(i) using OC spray with light;

(j) multiple opponent defense;

(k) proper weapon retention and disarming;

(l) cautions and hazards;

(m) recovery and decontamination;

(n) functioning when contaminated;

(o) storage and maintenance;

(2) eight (8) hour defensive impact tools training shall

include, but not be limited to, the following subjects:

(a) moral and legal aspects of baton usage;

(b) use of force;

(c) baton familiarization and uses;

(d) first aid for baton injuries;

(e) fundamentals of baton injuries;

(f) stances and grips;

(g) target areas;

(h) defensive techniques;

(i) control techniques;

(j) arrest and control techniques;

(k) skill practice;

(3) eight (8) hour electronic non-lethal device training shall include, but is not limited to, the following subjects;

(a) technology overview;

(b) electrical and medical background;

(c) specifications how electronic non-lethal devices work;

(d) practical hands-on training;

(e) changing batteries and air cartridges;

(f) firing drills;

(g) drive stun;

(h) tactical considerations;

(i) field applications

(j) safety considerations and associated risks; and

(k) how an electronic non-lethal device overrides the central nervous system;

(4) eight (8) hour restraint and control devices training shall include, but not be limited to, the following subjects:

(a) handcuffing nomenclature;

(b) daily maintenance and safety checks;

(c) applying and removing handcuffs;

(d) potentially uncooperative and uncooperative handcuffing;

(e)

cuffing from control holds;

(f) handcuffing from standing and prone;

(g) dangers of positional asphyxia and excited delirium;

(h) standing a prone handcuffed subject;

(i) conflict resolution;

(j) handcuffing guidelines and best practice; and

(k) use of force and justification for handcuffing

F. To be an approved instructor to offer chemical agents, defensive impact tools, electronic non-lethal device or restraint and control devices weapon training an individual shall complete an application for approval on a form provided by the department. The application shall include, but not be limited to, all of the following information:

(1) the name, business address, and telephone number of the individual;

(2) proof of an associate of arts degree in the administration of justice or the equivalent thereof;

(3) proof of the specific weapon instructor certification issued by a federal, state, or local agency or one year of verifiable weapons training or training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent;

(4) proof of a minimum of three (3) years experience as a private patrol operator, security guard or equivalent; and

(5) the applicable fee as prescribed by the superintendent.]

LEVEL TWO SECURITY GUARD APPLICANT QUALIFICATIONS AND EXPERIENCE REQUIREMENTS:

A. Every individual seeking employment or employed as a level two security guard shall file an application for registration with the department. To carry a specific endorsement weapon, not including a firearm, will require successful completion of the specific weapon curriculum as defined in Subsection E of 16.48.2.18 NMAC.

B. Applicants for registration as a level two security guard shall submit the following:

(1) completed application with two (2) passport type photos taken within the prior six months;

(2) non-refundable registration fee as defined in 16.48.5 NMAC;

(3) proof of age indicating applicant is at least twenty-one

(21) years of age (copy of driver's license, state issued identification card, or U.S. passport);

(4) proof of a current registration in good standing as a level one security guard or proof of completing department approved level one security guard training;

(5) achievement of a passing score of not less than 90 percent on the board approved jurisprudence examination, provided by the board, covering the Private Investigations Act and the rules;

(6) proof of a high school diploma or its equivalent;

(7) department's release of information form; and

(8) proof of completing a department approved weapon training program as defined in Subsection D of 16.48.2.18 NMAC for level two security guard training prior to being placed on a guard post for the first time as a level two security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act (21-23-1 NMSA 1978);

(b) an in-house training program provided by a licensed private patrol company using a curriculum provided by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent.

C. BACKGROUND

CHECK: Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance or reinstatement of a level two security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) All applicants for licensure or registration shall be fingerprinted electronically as required for submission to the federal bureau of investigation to conduct a national criminal history investigation and for submission to the department of public safety to conduct a state criminal history investigation.

(2) Initial and renewal applicants will need to register on-line with the agent for New Mexico

department of public safety prior to going to an electronic fingerprinting location:

(a) at the electronic fingerprinting location, the applicant will need to provide the electronic fingerprinting technician with a registration number they received after registering online;

(b) a designated fee determined by the New Mexico department of public safety shall be paid at the time of registration by credit card or at the fingerprinting site by cashier's check or money order; and

(c) fingerprint results will be sent electronically to the department.

D. TRAINING

REQUIREMENTS: The following twenty (20) hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level two registration. The training shall be taught by a department approved instructor that has been recommended by the board and approved by the superintendent. Training shall be taught by an in-person instructor:

(1) legal and practical aspects of use of force and personal/employer liability;

(2) verbal and written communication and conflict management;

(3) restraint and control devices training shall include, but not be limited to, the following subjects:

(a) handcuffing nomenclature;

(b) daily maintenance and safety checks;

(c) applying and removing handcuffs;

(d) potentially uncooperative and uncooperative handcuffing;

(e) handcuffing from control holds;

(f) handcuffing from standing and prone;

(g) dangers of positional asphyxia and excited delirium;

(h) standing a prone handcuffed subject;

(i) conflict resolution;

(j) handcuffing guidelines and best practice; and

(k) use of force and justification for handcuffing;

(4) defensive impact tools training shall include, but not be limited to, the following subjects:

(a) moral and legal aspects of baton usage;

(b) use of force;

(c) baton familiarization and uses;

(d) first aid for baton injuries;

(e) fundamentals of baton injuries;

(f) stances and grips;

(g) target areas;

(h) defensive techniques;

(i) control techniques;

(j) arrest and control techniques, and;

(k) skill practice;

(5) chemical agents training shall include, but not be limited to the following subjects:

(a) effects of chemical agents;

(b) avoiding bad positions;

(c) disengagement;

(d) proper defensive positions;

(e) shielding;

(f) drawing techniques;

(g) defense against moving attacks;

(h) spraying techniques;

(i) using OC spray with light;

(j) multiple opponent defense;

(k) proper weapon retention and disarming;

(l) cautions and hazards;

(m) recovery and decontamination;

(n) functioning when contaminated, and;

(o) storage and maintenance;

E. ADDITIONAL

ENDORSEMENTS: An applicant for weapon endorsement must successfully complete training for the specific weapon endorsement. The following endorsement for level two applicants; eight (8) hour electronic non-lethal device training shall include, but is not limited to, the following subjects:

(1) technology overview ;

(2) electrical and medical background;

(3) specifications

- how electronic non-lethal devices work;
 - (4) practical hands-on training;
 - (5) changing batteries and air cartridges;
 - (6) firing drills;
 - (7) drive stun;
 - (8) tactical considerations;
 - (9) field applications
 - (10) safety considerations and associated risks; and
 - (11) how an electronic non-lethal device overrides the central nervous system.

F. INSTRUCTOR

REQUIREMENTS: On or after February 28, 2015, every individual seeking to be a level two security guard instructor to offer training in chemical agents, defensive impact tools, restraint and control devices or electronic non-lethal devices an individual shall complete an application for approval on a form provided by the department. The application shall include, but not be limited to, all of the following information:

- (1) applicant name, business address, and telephone number of the individual;
- (2) proof of instructor certification issued by a law enforcement academy (LEA) or the federal law enforcement training center (FLETC) or one year of verifiable training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent;
- (3) proof of the specific weapon instructor certification issued by the weapon manufacturer or one year of verifiable weapons training or training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent; [16.48.2.18 NMAC - Re-pr & A, 16.48.2.18 NMAC, 09/24/08; A, 05/01/10; A, 01/15/15]

16.48.2.19 [QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A SECURITY GUARD REGISTRATION: LEVEL THREE:

A. On or after July 1, 2007, every individual seeking employment or employed as a level three security guard or level three armored vehicle security guard shall file an application for registration with the department. The application shall include two (2) passport type photos taken within the prior six (6) months. Endorsement to carry a weapon, not including a firearm, will be granted upon successful completion of relevant and specific weapon curriculum as defined in Subsection E of 16.48.2.18 NMAC.

B. Applicants for registration as a level three security guard must submit the following:

- (1) proof of age indicating applicant is at least twenty-one (21) years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);
- (2) proof of a current registration in good standing as a level two security guard or proof of completing department approved level one and level two security guard training;
- (3) proof of successfully passing a jurisprudence examination to be administered by the department;
- (4) proof of a high school diploma or its equivalent;
- (5) proof of completing a department approved training program as defined in Subsection C of 16.48.2.19 NMAC prior to being placed on a guard post for the first time as a level three security guard; that training must be provided by:
 - (a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act;
 - (b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;
 - (c) the New Mexico law enforcement academy; or
 - (d) any other department approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;
 - (6) proof of being firearm certified by an instructor recognized and certified by the New Mexico law enforcement academy or the national rifle association law enforcement activities division;
 - (7) proof of level two weapon endorsement or proof of completing department approved weapon training as defined in Subsection E of 16.48.2.18 NMAC;
 - (8) beginning on July 1, 2009, proof of successful completion of a psychological evaluation as prescribed by the department to determine suitability for carrying firearms;
 - (9) completed application;
 - (10) non-

refundable registration fee as set forth in Part 5; and

- (11) criminal history background check as set forth in Subsection E of 16.48.2.19 NMAC.

C. Psychological evaluation:

(1) **Requirements:** (a) Prior to certification as a level three security guard in the state of New Mexico, upon initial licensure only, it shall be necessary for each applicant to be examined by a licensed psychologist regarding the individual's mental suitability to carry a firearm within the individual's scope of duty as a licensed level three security guard.

(b) Evaluations cannot be more than one year old for certification purposes.

(c) A psychological evaluation shall be original, signed, and transmitted by the psychologist who performs the psychological evaluation directly to the board.

(d) The willful providing of false information or willful failure to disclose information that the applicant knows or should have known is necessary to a complete and accurate evaluation shall be grounds for denial of licensure.

(2) **Evaluation standards:**

(a) The purpose of these guidelines is to set minimally acceptable standards for psychological evaluation of persons seeking licensure as level three security guards in New Mexico.

(b) The psychological evaluation shall consist of the Minnesota multi-phasic inventory-2 restructured form or MMPI-2RF.

(c) The report shall incorporate all information gathered in the interview and testing, and shall contain a specific recommendation as to the applicant's suitability to carry a fire arm as a level three security guard. All psychologists performing evaluations must be licenses and conform to the guidelines of the American psychological association regarding storage of records.

(3) **Records:**

(a) A list of licensed psychologists who are able to administer the exam will be available on the website or from the board office.

(b) A psychological evaluation shall not be maintained in applicant's file. A psychological evaluation shall be maintained by the board administrator in secure storage separate from applicant files.

(c) The

psychological evaluation is a confidential record that shall not be subject to disclosure pursuant to the Inspection of Public Records Act Section 14-2-1, et seq. NMSA 1978:

D. The following sixteen (16) hour curriculum, with a minimum of four (4) hours dedicated to the laws pertaining to firearms and deadly physical force, is the minimum training required and must be completed within twelve months prior to application for security guard level three registration:

- (1) the five (5) firearms safety rules;
- (2) weapon manipulation;
- (3) types of sidearms;
- (4) firearm retention and equipment;
- (5) firearm storage devices;
- (6) locking devices;
- (7) ammunition and storage;
- (8) training household members;
- (9) hazards of loaded firearms in the home;
- (10) mental conditioning and tactics;
- (11) weapon manipulation and marksmanship;
- (12) threat recognition and judgmental shooting;
- (13) laws pertaining to firearms, deadly physical force and the exercise of the powers of arrest – mandatory four (4) hours minimum.

E. Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance or reinstatement of a level three security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check:

(1) Blank fingerprint cards shall be obtained from the department.

(2) 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 department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any

of the agencies referenced in Subparagraphs (a) and (b) above:

(3) Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashier's check for the prescribed fee.]

LEVEL THREE SECURITY GUARD APPLICANT QUALIFICATIONS AND EXPERIENCE REQUIREMENTS:

A. Every individual seeking employment or employed as a level three security guard or level three armored vehicle security guard shall file an application for registration with the department.

B. Applicants for registration as a level three security guard shall submit the following:

- (1) completed application with two (2) passport type photos taken within the prior six months;
- (2) non-refundable registration fee as defined in 16.48.5 NMAC;
- (3) proof of age indicating applicant is at least twenty one (21) years of age (copy of driver's license, state issued identification card, or U.S. passport);
- (4) copy of a current registration in good standing as a level two security guard or proof of completing department approved level one and level two security guard training;
- (5) achievement of a passing score of not less than 90 percent on the board approved jurisprudence examination, provided by the board, covering the Private Investigations Act and the rules;

(6) proof of a high school diploma or its equivalent;

(7) department's release of information form;

(8) proof of completing a department approved firearm training program as defined in Subsection C of 16.48.2.19 NMAC prior to being placed on a guard post for the first time as a level three security guard; that training must be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act;

(b) an in-house training program provided by a licensed private patrol company using a curriculum provided by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(c) the

New Mexico law enforcement academy; or (d)

any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(9) proof of being firearm certified by an instructor recognized and certified by the New Mexico law enforcement academy or the national rifle association (NRA) law enforcement activities division;

(10) proof of level two weapon endorsement or proof of completing department approved weapon training as defined in Subsection E of 16.48.2.18 NMAC; and

(11) successful completion of a psychological evaluation as prescribed by the department to determine suitability for carrying firearms.

PSYCHOLOGICAL EVALUATION

(1) **Requirements:** Prior to certification as a level three security guard in the state of New Mexico, upon initial licensure only, it shall be necessary for each applicant to be examined by a licensed psychologist regarding the individual's mental suitability to carry a firearm within the individual's scope of duty as a licensed level three security guard. A list of licensed psychologists who are able to administer the exam will be available on the website or from the board office.

(a) All psychological evaluations shall be on a form provided by the department and must state if the applicant is recommended or not recommended to carry a firearm. If an applicant is not recommended to carry a firearm, the psychologist shall specify the reason(s) the applicant is not recommended to carry a firearm.

(b) Evaluations cannot be more than one year old for certification purposes.

(c) The original evaluation form shall be signed and transmitted directly to the board by the psychologist that performed the psychological evaluation

(d) The willful providing of false information or willful failure to disclose information that the applicant knows or should have known is necessary to a complete and accurate evaluation shall be grounds for denial of licensure.

(2) **Evaluation standards:** The psychological evaluation shall consist of the Minnesota multi-phasic inventory-2 restructured form or MMPI-2RF. The report shall incorporate

all information gathered in the interview and testing, and shall contain a specific recommendation on a form provided by the department as to the applicant's suitability to carry a fire arm as a level three security guard. All psychologists performing evaluations must be licensed and conform to the guidelines of the American psychological association regarding storage of records.

D. FIREARM

TRAINING: The following sixteen (16) hour curriculum, to include the laws pertaining to firearms and deadly physical force, is the minimum training required and must be completed within twelve months prior to application for security guard level three registration. The training shall be taught by a department approved instructor that has been recommended by the board and approved by the superintendent. Training shall be taught by an in-person instructor:

- (1) the four (4) general firearms safety rules;
- (2) weapon manipulation;
- (3) types of sidearms;
- (4) firearm retention and equipment;
- (5) firearm storage devices;
- (6) locking devices;
- (7) ammunition and storage;
- (8) training household members;
- (9) hazards of loaded firearms in the home;
- (10) mental conditioning and tactics;
- (11) weapon manipulation and marksmanship;
- (12) threat recognition and judgmental shooting;
- (13) laws pertaining to firearms, deadly physical force and the exercise of the powers of arrest.

E. BACKGROUND

CHECK: Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance or reinstatement of a level three security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

- (1) All applicants for licensure or registration shall be fingerprinted electronically as required for submission to the federal bureau of investigation to conduct a national criminal history investigation and for submission to the department of public safety to conduct a state criminal history investigation.
- (2) Initial and

renewal applicants will need to register on-line with the agent for New Mexico department of public safety prior to going to an electronic fingerprinting location:

- (a) at the electronic fingerprinting location, the applicant will need to provide the electronic fingerprinting technician with a registration number they received after registering online;
- (b) a designated fee determined by the New Mexico department of public safety shall be paid at the time of registration by credit card or at the fingerprinting site by cashier's check or money order; and
- (c) fingerprint results will be sent electronically to the department.

F. INSTRUCTOR

REQUIREMENTS: On or after February 28, 2015, every individual seeking to be a level three security guard instructor offering training in firearms and deadly physical force, an individual shall complete an application for approval on a form provided by the department. The application shall include, but not be limited to, all of the following information:

- (1) applicant name, business address, and telephone number of the individual;
- (2) proof of instructor certification issued by a law enforcement academy (LEA) or the federal law enforcement training center (FLETC) or one year of verifiable training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent;
- (3) if the level three training instructor offers firearms certification, proof of the instructor certification by a law enforcement academy or the national rifle association law enforcement activities division is required. [16.48.2.19 NMAC - Re-pr & A, 16.48.2.19 NMAC, 09/24/08; A, 11/28/09; A, 05/01/10; A, 01/15/15]

16.48.2.23 [QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR AN ARMORED VEHICLE SECURITY GUARD REGISTRATION- LEVEL THREE:

- A. On or after July 1, 2007, every individual seeking employment or employed as a level three armored vehicle security guard shall file an application for registration with the department. The application shall include two (2) passport type photos taken within the prior six months.
- B. Applicants for registration as a level three armored vehicle security guard must submit the following:

- (1) proof of age indicating applicant is at least twenty one (21) years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);
- (2) proof of successfully passing a jurisprudence examination to be administered by the department;
- (3) proof of a high school diploma or its equivalent;
- (4) proof of completing a department approved training program as defined in Subsection C of 16.48.2.20 NMAC prior to being placed on a guard post for the first time as a level three armored vehicle security guard; that training must be provided by:
 - (a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act;
 - (b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;
 - (c) the New Mexico law enforcement academy; or
 - (d) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;
- (5) proof of being firearm certified by an instructor recognized and certified by the New Mexico law enforcement academy or the national rifle association law enforcement activities division;
- (6) beginning on July 1, 2009, proof of successful completion of a psychological evaluation as prescribed by the department to determine suitability for carrying firearms;
- (7) completed application;
- (8) non-refundable registration fee as set forth in Part 5; and
- (9) criminal history background check as set forth in Subsection D of 16.48.2.23 NMAC.
- C. The following forty (40) hour curriculum is the minimum training required and must be completed within twelve (12) months prior to application for armored vehicle security guard level three registration:
 - (1) the armored vehicle security guard in New Mexico;

~~(2) legal issues for the armored vehicle security guard in New Mexico;~~
~~(3) armored security operations;~~
~~(4) emergency situations;~~
~~(5) safe driver training;~~
D. Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance or reinstatement of a level three armored vehicle security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check:
~~(1) Blank fingerprint cards shall be obtained from the department.~~
~~(2) 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 department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above.~~
~~(3) Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashiers check for the prescribed fee.]~~
[RESERVED]
 [16.48.2.23 NMAC - N, 09/24/08; A, 05/01/10; Repealed, 01/15/15]

**NEW MEXICO
 REGULATION AND
 LICENSING DEPARTMENT
 SPEECH-LANGUAGE PATHOLOGY,
 AUDIOLOGY AND HEARING AID
 DISPENSING PRACTICES BOARD**

**TITLE 16 OCCUPATIONAL
 AND PROFESSIONAL LICENSING
 CHAPTER 26 HEARING, SPEECH
 AND AUDIOLOGY PRACTITIONERS
 PART 11 LICENSURE FOR
 MILITARY SERVICE MEMBERS,
 SPOUSES AND VETERANS**

16.26.11.1 ISSUING AGENCY:
 New Mexico Speech Language Pathology,
 Audiology and Hearing Aid Dispensing

Practices Board.
 [16.26.11.1 NMAC - N, 01/29/15]

16.26.11.2 SCOPE: This part sets forth application procedures to expedite licensure for military service members, spouses and veterans.
 [16.26.11.2 NMAC - N, 01/29/15]

16.26.11.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to Section 61-1-34 of the Uniform Licensing Act.
 [16.26.11.3 NMAC - N, 01/29/15]

16.26.11.4 DURATION:
 Permanent.
 [16.26.11.4 NMAC - N, 01/29/15]

16.26.11.5 EFFECTIVE DATE:
 January 29, 2015, unless a later date is cited at the end of a section.
 [16.26.11.5 NMAC - N, 01/29/15]

16.26.11.6 OBJECTIVE: The purpose of this part is to expedite licensure for military service members, spouses and veterans seeking licensure to practice under the provisions of Chapter 61, Articles 14B NMSA 1978.
 [16.26.11.6 NMAC - N, 01/29/15]

16.26.11.7 DEFINITIONS:
A. "Military service member" means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.
B. "Recent veteran" means a person who has received an honorable discharge or separation from military service within the two (2) years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.
 [16.26.11.7 NMAC - N, 01/29/15]

16.26.11.8 APPLICATION REQUIREMENTS:
A. Applications for registration shall be completed on a form provided by the board.
B. A completed application shall include:

- (1) The required fee as outlined in 16.26.6 NMAC;
- (2) Satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States, that has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for pursuant to Chapter 61, Articles 14B

NMSA 1978; and

- (3) Proof of honorable discharge (DD214), military ID card, or other recognized proof of military spouse status.
 [16.26.11.8 NMAC - N, 01/29/15]

16.26.11.9 RENEWAL REQUIREMENTS: A license issued pursuant to this section shall not be renewed unless the license holder submits the following.
A. A complete renewal application accompanied by the required documents listed under 16.26.4 NMAC.
B. Payment of required renewal fees under 16.26.6 NMAC.
C. Documentation required for initial licensure under 16.26.2 NMAC.
 [16.26.11.9 NMAC - N, 01/29/15]

**HISTORY OF 16.26.11 NMAC:
 [RESERVED]**

**NEW MEXICO
 REGULATION AND
 LICENSING DEPARTMENT
 SPEECH-LANGUAGE PATHOLOGY,
 AUDIOLOGY AND HEARING AID
 DISPENSING PRACTICES BOARD**

This is an amendment to 16.26.1 NMAC, Sections 7, 8 and 10, effective 01/29/2015.

16.26.1.7 DEFINITIONS:
A. "AAA" refers to the American academy of audiology, a national professional association of audiologists concerned with professional qualifications, standards of practice, ethics, scientific progress and continuing education.
B. "Act" means the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act (Sections 61-14B-1 to 61-14B-25 NMSA 1978) as it may be amended.
C. "Apprentice" means a [paraprofessional] person working towards full licensure [as a speech-language pathologist who provides adjunct services, is not actively engaged as clinical fellow and meets the education, employment and supervisory requirements as set forth in these regulations:] in speech-language pathology and who meets the requirements for licensure as an apprentice in speech and language pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.
D. "ASHA" refers to the American speech-language and hearing association, a national professional association of speech-language pathologists and audiologists recognized by the secretary of the U.S. department of education for

the accrediting of university graduate degree programs in audiology and speech-language pathology. ASHA also maintains a professional membership of speech-language pathologists and audiologists concerned with professional qualifications, standards of practice, ethics, scientific progress and continuing education. [Subsection C of Section 61-14-B-2 NMSA-1978:]

E. “Audiologist” means a person holding at least a master’s degree in audiology issued prior to January 1, 2007, or a doctoral degree in audiology ~~ist~~ who engages in the practice of audiology who may or may not dispense hearing aids and who meets the qualifications set forth in the act; means a person who engages in the practice of audiology, who may or may not dispense hearing aids, and who meets the qualifications set forth in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

F. “Certified” means a notarized statement of authenticity of a true copy.

[F.] G. “CFY plan” (clinical fellowship year plan) means a written plan submitted to the board outlining the duration of the CFY (up to a maximum of three years), the CFY plan must designate a CFY supervisor and outline the amount and type of supervision. ~~[of the clinical fellow and designates a CFY supervisor.]~~

[G.] H. “Direct supervision” means on-site, in-view observation and guidance ~~[by a licensed professional in the applicant’s field present (other than a paraprofessional or clinical fellow) during a therapy session with clients while an assigned activity is performed by support personnel.]~~ while a clinical activity is performed by the supervisee. This can include supervising the speech language pathologist (SLP) viewing and communication with the supervisee via telecommunication technology so long as the SLP is able to provide ongoing immediate feedback. Direct supervision does not include reviewing a taped session at a later time.

I. “Electronic signature” means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

[H.] J. “Indirect supervision” means ~~[those activities other than direct supervision conducted by a licensed professional (other than a paraprofessional or clinical fellow) that may include demonstration, record review, consultations, meetings and evaluation of audio or videotaped sessions.]~~ supervision that does not require the SLP to be physically present or available via telecommunication in real time while the supervisee is providing services.

Indirect supervisory activities may include demonstration tapes, record review, review and evaluation of audio or videotaped sessions, or supervisory conferences that may be conducted by telephone or live, secure webcam via the internet.

[F.] K. “Jurisprudence examination” means the evaluation of knowledge of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act and these regulations, given as a requirement for licensure to all applicants.

[F.] L. “License” means a document identifying a legal privilege and authorization to practice within one of the categories established by the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act. A license under this act is not transferable.

[K.] M. “Licensing year” means the period from January 31, of any year through January 30 of the next year; initial, renewed and reinstated licenses may be issued at any time set herein but shall expire on January 30 of the following year except as otherwise provided in these rules.

[E.] N. “NBC-HIS” means national board for certification in hearing instruments sciences.

[M.] O. “IHS” refers to the international hearing society, an international organization of persons in the hearing aid industry concerned with professional qualifications, standards of practice, ethics, scientific progress, and continuing education.

[N.] P. “Referral” means the process of directing or redirecting a customer or patient to a specialist, hearing aid dispenser, therapist or clinician for services or diagnosis.

[O.] Q. “Student” means any person who is a full or part time student enrolled in an accredited college or university program in speech-language pathology, audiology or communication disorders.

[P.] R. “Temporary paraprofessional license” means a license issued to a person working towards full licensure as a speech-language pathologist and who provides adjunct speech-language pathology services under the supervision of a speech-language pathologist who is licensed under this act.

[O.] S. “Temporary trainee permit” means a permit issued by the board to a person authorized to fit and dispense hearing aids only under the supervision of a sponsor as defined by these regulations. Temporary trainee permits will be issued for a one-year period and are non-renewable. [12/21/71; 02/5/80; 08/01/81; 08/04/81; 03/18/82; 10/21/91; 11/09/96; 11/07/98; 11/27/99; 16.26.1.7 NMAC - Rn & A, 16 NMAC 26.1.7, 02/03/06; A, 01/29/2015]

16.26.1.8 BOARD CREATED:

A. In order to insure the safety and welfare of the public served, the speech-language pathology, audiology and hearing aid dispensing practices board is appointed by the governor, and is to consist of ~~[ten]~~ eleven members who have been New Mexico residents of at least five years:

- (1) ~~[two]~~ three licensed speech-language pathologists;
- (2) two licensed audiologists;
- (3) two licensed hearing aid dispensers;
- (4) one licensed otolaryngologist; and
- (5) three public members.

B. The licensed members of the board shall not hold any elected or appointed office in any related professional organization.

C. The public members of the board shall not be licensed as speech-language pathologists, audiologists, or hearing aid dispensers nor shall the public members have any ~~[significant financial]~~ interest, whether direct or indirect, in the occupation regulated.

D. The board shall develop rules and regulations and establish policy for the implementation of the act, and perform such other functions as may be necessary to carry out its functions. The members of the board serve at the pleasure of the governor.

E. The members of the board shall serve staggered three-year terms. ~~[The term of a member of the board shall end on the 30th day of June of the calendar year.]~~ Vacancies shall be filled for the unexpired term in the same manner as original appointments. No board member may serve more than two consecutive terms and board members shall serve until their replacements are appointed.

F. The board members shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act (Section 10-8-1 et seq., NMSA 1978) and shall receive no other compensation, perquisite or allowance for discharge of their duties as members.

G. ~~[At least 6 board members constitutes a quorum.]~~ A majority of the board members serving shall constitute a quorum.

H. The board shall meet at least once a year. A meeting of the board may be called by any board member or board administrator. The board shall elect its own chairperson, and vice-chairperson annually, during the first meeting.

I. The board shall receive and investigate all public complaints alleging violations of this act, regulations

and code of ethics. The board shall make determinations for appropriate disciplinary action.

J. Any member failing to attend three meetings after proper notice shall be automatically recommended for removal as a board member, unless excused by the board chair for one of the following reasons: personal or family illness, pre-arranged activities out of town, or good cause.

K. The board shall review the Open Meetings Act and adopt an open meetings resolution at the first meeting in each calendar year.

L. Except as provided herein and except as otherwise provided by law, all applications, pleadings, petitions and motions are matters of public record as of the time of filing with the board.

M. The board operates in compliance with the Inspection of Public Records Act Sections 14-2-1 through 14-2-16 NMSA 1978. The board administrator or designee is the custodian of the board's records. Individuals may make written requests to inspect the public records of the board. The request must include the name, address and phone number of the individual seeking access. Requests for access to public records will be processed in a timely manner. If the inspection is not permitted within 3 business days, the custodian will notify the individual requesting access to the records in writing and explain when the records will be made available. The board may provide copies of public records upon request and upon payment of a reasonable copying fee, except as may be ordered by a court of competent jurisdiction. No person shall remove original board documents from the board office. The board maintains files for all individuals. Information in an individual's file is a matter of public record except for the following:

- (1) letters of reference;
- (2) test scores;
- (3) medical reports and/or records of chemical dependency, physical or mental examinations or treatment;
- ~~(4) complaints and investigative materials; and~~
- ~~(5)~~ (4) social security number.

N. If it is difficult or impossible for a member of the board to attend a meeting in person, the member may participate through a conference telephone if available. Each member participating by conference telephone must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[12/21/71; 03/18/82; 11/09/96; 11/07/98; 11/27/99; 16.26.1.8 NMAC - Rn & A, 16 NMAC 26.1.8, 02/03/06; A, 01/29/2015]

16.26.1.10 ELECTRONIC

SIGNATURE: The board will accept electronic signatures from all applicants and licensees who submit applications for professional licensure or renewal under the Speech-Language Pathology, Audiology, and Hearing Aid Dispensing Practices Act, Sections 61-14B-1 through -25 NMSA 1978 and the board's rules and regulations.
[16.26.1.10 NMAC - N, 01/29/15]

**NEW MEXICO
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SPEECH-LANGUAGE PATHOLOGY,
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DISPENSING PRACTICES BOARD**

This is an amendment to 16.26.2 NMAC, Sections 2, 12, 14, 17 and 18, effective 01/29/2015.

16.26.2.2 SCOPE: ~~[All individuals wishing to practice as a speech-language pathologist, audiologist, hearing-aid dispenser or individuals working as a clinical fellow, persons working under a hearing aid dispensing training permit and temporary professional license holders who will be offering adjunct services in speech-language pathology or audiology.]~~ The provisions of Part 2 of Chapter 26 apply to all individuals seeking licensure under the Speech-Language Pathology, Audiology, and Hearing Aid Dispensing Practices Act.
[16.26.2.2 NMAC - Rp, 16 NMAC 26.2.2, 2/3/06; A, 01/29/15]

16.26.2.12 QUALIFICATIONS AND APPLICATION FOR LICENSURE AS [A] AN [NONDISPENSING]

AUDIOLOGIST: Application for licensure as an audiologist must be accompanied by the following documents:

A. official transcripts verifying at least a master's degree in audiology, or communication disorders or equivalent degree in audiology or communication disorders awarded prior to January 1, 2007; or a doctoral degree in audiology or equivalent degree regardless of degree name; or

B. a certification bearing an official seal and attesting to completion of degree requirements from the registrar, mailed directly to the board from the conferring institution; and

C. a certified copy of a certificate of clinical competency from a board recognized national speech-language association or proof of completion of the

clinical fellowship year or equivalent; and

D. proof of having passed a nationally recognized standard examination in audiology;

E. passing the jurisprudence examination with a grade of no less than 70%; and

F. if currently or previously licensed in another state a verification of licensure must be sent directly to the board by the issuing jurisdiction;

G. physicians eligible for certification or certified by the American board of otolaryngology head and neck surgery, who wish to be licensed as a hearing aid dispenser, must provide the following documents:

(1) a certified copy of current New Mexico medical license; and

(2) a notarized letter from a qualified sponsor as specified in the act verifying work experience of at least six months in the fitting of the hearing aids, the initial three hundred twenty (320) hours of which must be under direct supervision of the sponsor.

[16.26.2.12 NMAC - Rp, 16 NMAC 26.3.9, 2/3/06; A, 11/29/08; A, 06/07/10; A, 1/29/15]

16.26.2.14 QUALIFICATIONS AND APPLICATION FOR LICENSURE FOR A HEARING AID DISPENSER:

A. Application for licensure as a hearing aid dispenser must be accompanied by documentation of the following:

(1) applicant is eighteen (18) years of age or older;

(2) has a high school education or the equivalent; and

(3) has a business location in New Mexico and can provide satisfactory evidence of the following:

(a) a notarized letter from an employer verifying completion of the training requirements as outlined for the temporary hearing aid dispensing trainee permit;

(b) written examination: the board will require each candidate to pass the IHS, or the NBC-HIS hearing aid written examination, or a nationally recognized hearing aid dispensers examination approved by the board; ~~[or other exams approved by the board with an overall score of no less than 70%];~~ the examination must have occurred within forty-eight (48) months prior to the application;

(c) practical examination: the board will require each candidate to pass the hearing aid practical examination or other exams approved by the board with an overall score

of no less than 70%; and

(d)

passing the jurisprudence examination with an overall score of no less than 70%;

(4) any applicant

who fails any portion of the licensing examination two (2) times may not reapply until he/she has waited six (6) months and repeated the training and application requirements; at that time the entire exam must be repeated.

B. If currently or previously licensed in another state a verification of licensure must be sent directly to the board by the issuing jurisdiction.

C. [Physicians eligible for certification or] A physician certified by the American board of otolaryngology head and neck surgery, [who wish to be licensed as a] applying for a hearing aid dispenser license, must provide the following documents to the board:

(1) a certified copy of the physician's current New Mexico medical license; and

(2) a notarized letter from a qualified sponsor as specified in the act verifying work experience of at least six (6) months in the fitting of the hearing aids, the initial three hundred twenty (320) hours of which must be under direct supervision of the sponsor. [16.26.2.14 NMAC - Rp, 16 NMAC 26.3.11, 02/03/06; A, 06/07/10; A, 01/29/15]

16.26.2.17 QUALIFICATION FOR LICENSURE FOR CLINICAL FELLOWS:

A. A clinical fellow (CF) [has met] must meet all academic course work and practicum requirements for a master's degree in speech-language pathology, speech pathology, communication disorders or audiology or both or equivalent degree(s) regardless of degree name that would enable the individual to successfully be granted certification from a nationally recognized speech-language and or hearing association after completion of the clinical fellowship if the individual chooses to apply national certification.

B. Procedure for applying for licensure as a clinical fellow.

(1) An individual will complete application including appropriate fee and clinical fellow plan and submit to the board office at the initiation of the clinical fellow period. The individual shall also submit:

(a)

official transcripts verifying at least a master's degree in speech-language pathology, audiology, speech-language and hearing science, communication disorders

or equivalent degree regardless of degree name; or

(b)

a certification bearing an official seal and attesting to completion of degree requirements from the registrar, mailed directly to the board from the conferring institution; and

(c)

certify that he/she has received no reprimands of unprofessional conduct or incompetency; and

(d)

file a [clinical fellow] CFY plan that meets with board approval that designates a clinical fellow supervisor who is licensed in accordance of this act and is practicing in the same field as the clinical fellow.

(e)

CFY means no less than nine (9) months full time employment defined as a minimum of thirty-two (32) clock hours of work per week. This requirement also may be fulfilled by part time employment as follows:

(i)

work of fifteen (15) - nineteen (19) hours per week over eighteen (18) months;

(ii)

work of twenty (20) - twenty-four (24) hours per week over fifteen (15) months; or

(iii)

work of twenty-five (25) - thirty-one (31) hours per week over twelve (12) months.

(iv)

In the event that part time employment is used to fulfill a part of the CFY, 100% of the minimum hours of part time work per week requirements must be spent in direct professional experience as defined above. Professional employment of less than fifteen (15) hours per week will not fulfill any part of this requirement.

(f) a

clinical fellow in audiology is not required to have a temporary hearing aid training permit.

(g) the

clinical fellow must understand and abide by the code of ethics adopted by the board.

(2) Speech-

language pathologist's supervision requirements for CFYs:

(a)

Duties of clinical fellow supervisor: Clinical fellow supervision must be based on no less than thirty-six (36) occasions of monitoring. These can include on site monitoring activities such as conferences with the clinical fellow, evaluation of written reports, evaluation by professional colleagues or may be executed by correspondence.

(b)

Should the clinical fellow supervisor suspect at anytime during the clinical fellow plan that the clinical fellow under her/his supervision will not meet regulations, the

clinical fellow supervisor must counsel the clinical fellow both orally and in writing and maintain careful written records of all contacts, contracts and conferences in the ensuing months.

(c) It

is the responsibility of the clinical fellow to request feedback from their supervisor when the clinical fellow requires such feedback.

C. Completion of clinical fellowship: Upon completion of CFY, the CF is required to submit application for licensure as a speech-language pathologist or audiologist or both.

[16.26.2.17 NMAC - Rp, 16 NMAC 26.3.14, 02/03/06; A, 01/29/15]

16.26.2.18 TEMPORARY PARAPROFESSIONAL LICENSURE AS AN APPRENTICE IN SPEECH-LANGUAGE (ASL):

A. Prerequisite requirements:

(1) Acceptance of

a temporary paraprofessional licensee as an apprentice in speech-language is subject to board approval. Such licensees shall:

(a)

be working towards a license pursuant to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

(b)

certify that he/she is not guilty of any activities listed in Section 61-14B-21 of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act; and

(c)

provide proof of having met educational, supervision, and employment requirements.

(2) It is

the responsibility of the apprentice in speech-language and the supervising speech-language pathologist to insure the distinction between the roles of the apprentice in speech-language and the graduate student.

B. Educational requirements:

(1) a

baccalaureate degree in speech-language pathology or communication disorders or baccalaureate degree in another field with thirty (30) semester hours of credit in speech-language pathology or communication disorders;

(2) enrolled

in a master's degree program in speech-language pathology or communication disorders and completes a minimum rate of nine (9) semester hours per year of graduate courses in communication disorders per year; or

(a)

if not accepted into a master's degree

program in speech-language pathology or communication disorders, [completes] the applicant must be currently enrolled in nine (9) semester hours of graduate courses per year with at least three (3) hours in communication disorders, six (6) hours may be taken in a related field; and

(b) [if the educational institution does not permit students who are not matriculated into a graduate program to take graduate courses in communication disorders, the student may substitute three (3) hours in a related field for the three (3) hours in communication disorders, in addition to the other six (6) hours in a related field;

(c) acceptance in a master's degree program must take place within two (2) years of initial license; and

(3) maintains a minimum of a 3.0 GPA in communication disorders course work and/or master's degree program.

C. Supervision

requirements:
(1) Work of the apprentice in speech-language must be supervised by a speech-language pathologist licensed by this act and who has a minimum of two (2) years experience in the field.

(a) Minimum of ten (10) percent of contact time of the apprentice in speech-language must be direct supervision.

(b) Minimum of ten (10) percent of contact time of the apprentice in speech-language must be indirect supervision.

(2) It is recommended that the speech-language pathologist's and audiologist's direct caseload size be limited to no more than forty (40) clients.

(a) A speech-language pathologist may supervise a maximum of three (3) apprentices at one (1) time.

(b) The supervising speech-language pathologist is expected to appropriately reduce their direct caseload for each apprentice they supervise, ensuring the maintenance of high professional standards as stated in the code of ethics.

(c) It is the responsibility of the supervising speech-language pathologist and the apprentice in speech-language to ensure the distinction between the roles of the apprentice in speech-language and the graduate student.

D. Employment

requirements:
(1) Terms of employment must require at least a temporary paraprofessional license as an

apprentice in speech-language. The role of the apprentice in speech-language shall be determined in collaboration with the supervising speech-language pathologist (SLP) and the employer.

(2) Employment duties must be limited to the following:

(a) conduct speech-language and/or hearing screenings;

(b) conduct treatment programs and procedures that are planned, selected and/or designed by the supervising SLP;

(c) prepare written daily plans based on the overall intervention plan designed by the supervising SLP;

(d) record, chart, graph, or otherwise display data relative to the client performance and report performance changes to the supervising SLP;

(e) maintain daily service/delivery treatment notes and complete daily charges as requested;

(f) report but not interpret data relative to client performance to teachers, family, or other professionals;

(g) assist the speech-language pathologists during assessment of clients, such as those who are difficult to test;

(h) perform clerical duties, including maintenance or therapy/diagnostic material/equipment, client files, as directed by the SLP supervisor;

(i) participate with the speech-language pathologist in research projects, in-service training, and public relations programs.

E. Employment duties

must not include any of the following:
(1) administer diagnostic tests;

(2) interpret data into diagnostic statements or clinical management strategies or procedures;
(3) select or discharge clients for services;

(4) interpret clinical information including data or impressions relative to client performance;
(5) treat clients without following the individualized treatment plan;

(6) independently compose clinical reports except for progress notes to be held in the client's file;

(7) refer a client to other professionals or agencies;

(8) provide client or family counseling;

(9) develop or

modify a client's individual treatment plan: IEP/IFSP/ clinical report or plan of care in anyway without the approval of the SLP supervisor;

(10) disclose clinical or confidential information;

(11) sign any formal documents without the supervising SLP co-signature;

(12) represent himself/herself as a speech-language pathologist.

F. Documentation

required: All applicants for temporary paraprofessional license as an apprentice in speech-language are required to provide the following documentation to the board each year:

(1) a completed board approved license application form, signed in the presence of a notary public;

(2) the required license application fee; and

(3) a completed board approved verification of employment form verifying:

(a) applicant's employment;

(b) performance responsibilities of the apprentice in speech-language;

(c) limitations on employment practices of the apprentice in speech-language license holder (apprentice in speech-language);

(d) provision for supervision by an SLP licensed according to this act;

(4) a completed board approved verification of education form verifying:

(a) course work completed in communication disorders or other courses as outlined in the degree plan with a minimum GPA of 3.0;

(b) current degree plan once the applicant is admitted to a master's degree program; and

(c) official copy of transcripts from college or university.

[16.26.2.18 NMAC - Rp, 16 NMAC 26.2.15, 02/03/06; A, 11/29/08; A, 06/07/10; A, 01/29/15]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
SPEECH-LANGUAGE PATHOLOGY,
AUDIOLOGY AND HEARING AID
DISPENSING PRACTICES BOARD**

This is an amendment to 16.26.4 NMAC, Part name & Sections 2, 3, 6, 8, and 9, effective 01/29/2015.

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 26 HEARING, SPEECH
AND AUDIOLOGY PRACTITIONERS
PART 4 [ANNUAL]
RENEWAL OF LICENSES**

16.26.4.2 SCOPE: All licensees complying with the [annual] renewal of licenses to practice speech-language pathology, audiology or hearing aid dispensing.
[11/9/96; 16.26.4.2 NMAC - Rn, 16 NMAC 26.4.2, 02/03/06; A, 01/29/15]

**16.26.4.3 STATUTORY
AUTHORITY:** These rules are promulgated pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act NMSA 1978, Sections 61-14B-1 to [61-14B-25] -25 and the Uniform Licensing Act NMSA 1978, Sections 61-1-1 to [61-1-33] -33.
[11/09/96; 11/07/98; 16.26.4.3 NMAC - Rn, 16 NMAC 26.4.3, 02/03/06; UA, 01/29/15]

16.26.4.6 OBJECTIVE: The objective of Part 4 is to outline requirements, procedures, and criteria for [annual] renewal of licenses.
[12/21/71; 11/09/96; 16.26.4.6 NMAC - Rn, 16 NMAC 26.4.6, 02/03/06; A, 01/29/15]

**16.26.4.8 [ANNUAL]
RENEWAL OF LICENSES:**
A. [Section 8 requires] All licensees except clinical fellows and apprentices [to] shall apply for license renewal on or before January 30 of the renewal year, on the renewal forms supplied by the board office. The renewal requirements for clinical fellows and apprentices are set forth in Sections 9 and 10 of [this] Part 4.
B. Licensees shall assume the total responsibility for:
(1) filing a current mailing address with the board office;
(2) completing the renewal form and ensuring its delivery to the board office on or before January 30 of the renewal year;
(3) enclosing the

appropriate fee; and
(4) enclosing documentation of meeting continuing education requirements.
C. To assist in the renewal process, the board office will:
(1) mail renewal notices and the appropriate forms to the licensee's address of record on or before December 15; and
(2) mail renewed and reinstated licenses no later than thirty (30) days from day of receipt of application, fees and appropriate documentation.
D. Expiration: All speech-language pathology, audiology and hearing aid dispensing licenses expire on January 30 of each year and renewal forms must be complete and postmarked no later than the expiration date or a late fee will be assessed without exception.
E. Grace period: There is a grace period permitting renewal of expired licenses which ends March 31 of the intended licensure year. However the license shall be considered expired during the grace period and the licensee must refrain from practicing.
F. Renewal of license during the grace period ending March 31 of the intended license year will require payment of a late fee. Individuals renewing during the grace period may not practice with the expired license.
G. If a licensee fails to renew within the grace period, the licensee must reapply as a new applicant, meet all applicable requirements, meet CEU requirements and pay the application fee, renewal fee and late penalty fee.
H. Licensees shall be notified by the board office of all license expirations ten (10) days after the close of the grace period.
I. Timely renewal of license(s) is the full and complete responsibility of the licensee. Pursuant to Subsection C of 16.26.4.8 NMAC of these regulations, renewal forms are mailed to the licensee at address on record no later than December 15. If the renewal form is not received by the licensee within a reasonable time after December 15, it is the responsibility of the licensee to contact the board office. Non-receipt of the renewal form by the licensee will not exempt licensure expiration or late penalty fees.
[12/21/71; 2/5/80; 4/5/83; 11/9/96; 11/7/98; 11/27/99; 16.26.4.8 NMAC - Rn & A, 16 NMAC 26.4.8, 2/3/06; A, 11/29/08; A, 06/07/10; A, 01/29/15]

16.26.4.9 RENEWAL OF CLINICAL FELLOW LICENSE: The CFY must be completed within a maximum period of thirty-six (36) consecutive months. Prior to or during the first twelve

(12) months [an individual has his/her CF-
license, he/she] of clinical fellow licensure, the clinical fellow must take and pass a nationally recognized examination in their field. Proof of passing this exam is required for renewing the [CF] CFY license. Clinical fellowship licenses expire twelve (12) months after initial licensure.
A. The clinical fellowship [licenses] license shall be renewed annually on a [forms] form supplied by the board office and must be postmarked no later than the expiration date.
B. A late penalty fee will be assessed if the license is not renewed by the expiration date.
C. If a licensee fails to renew within sixty (60) days, the licensee must reapply, meet all applicable requirements, meet CEU requirements and pay the application fee, renewal fee and late penalty fee.
[11/7/98; 16.26.4.9 NMAC - Rn & A, 16 NMAC 26.4.9, 2/3/06; A, 01/29/15]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
SPEECH-LANGUAGE PATHOLOGY,
AUDIOLOGY AND HEARING AID
DISPENSING PRACTICES BOARD**

This is an amendment to 16.26.6 NMAC, Sections 6 & 8, effective 01/29/15.

16.26.6.6 OBJECTIVE: [Pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, Part 6 establishes fees application, licensure, renewal, late penalty fees, exams, processing continuing education offerings, administrative fees, labels, mailings, etc., the practice of speech-language pathology, audiology and hearing aid dispensing.] Part 6 establishes fees for applications, licenses, license renewals, exams, penalties, and administrative fees, issued pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.
[12/21/71; 11/9/96; 16.26.6.6 NMAC - Rn & A, 16 NMAC 26.6.6, 02/03/06; A, 01/29/15]

16.26.6.8 FEES: All fees are payable to the board and are non-refundable. Fees are as follows:

[See Table on page 851]

	Initial fee	Renewal fee
A. Hearing aid dispenser trainee temporary permits includes hearing aid practical and written exam	\$300.00	
B. Temporary paraprofessional license (apprentice)	\$50.00	\$50.00
C. Clinical fellow license	\$50.00	\$50.00
D. Speech-language pathologist and audiologist license	\$100.00	[\$85.00] <u>\$170.00</u>
E. Hearing aid dispensers	\$175.00	[\$180.00] <u>\$360.00</u>
F. Hearing aid practical, and written exams	\$200.00	
G. Endorsement to dispense hearing aids	\$100.00	[\$95.00] <u>\$190.00</u>
H. Processing continuing education offerings per offering	\$50.00	
I. <u>Bilingual-Multicultural Endorsement</u>	<u>\$50.00</u>	<u>\$50.00</u>
J. Late renewal fee	\$75.00	
[K:] K. All application packet fees	\$10.00	
[K:] L. Dual licensure (SLP/audiology)	\$200.00	\$150.00
[L:] M. Verification of licensure	\$15.00	
[M:] N. Paper list	\$125.00	
[N:] O. Mailing labels	\$150.00	
[O:] P. Electronic list	\$175.00	
[P:] Q. Duplicate license	\$10.00	
[Q:] R. Insufficient funds	\$25.00	

[10/25/91; 11/09/96; 11/07/98; 11/27/99; 16.26.6.8 NMAC - Rn & A, 16 NMAC 26.6.8, 02/03/06; A, 06/07/10; A, 01/29/15]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
SPEECH-LANGUAGE PATHOLOGY,
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DISPENSING PRACTICES BOARD**

This is an amendment to 16.26.8 NMAC, Sections 10 & 12, effective 01/29/15.

16.26.8.10 STANDARDS OF PRACTICE COMMITTEE: The standards of practice committee is formed for the purpose of investigating disciplinary matters referred to it by the board. The board chairperson shall appoint a member or members of the board to the standards of practice committee.

A. The standards of practice committee shall review all documentation provided to it in reference to the subject complaint.

B. The standards of practice committee may provide the respondent with a copy of the complaint and allow a reasonable time for the respondent to respond to the allegations in the complaint.

C. The foregoing notwithstanding, the standards of practice committee will not be required to provide the respondent with notice of the complaint filing, or a copy of the complaint, or any related investigatory evidence prior to

the notice of contemplated action, if the committee determines that disclosure may impair, impede, or compromise the efficacy or integrity of the investigation.

D. The standards of practice committee may employ an investigator or other persons determined to be necessary in order to assist in the processing and investigation of the complaint.

~~**E.** The standards of practice committee will have independent authority to direct the board administrator to contract for the services of such persons without prior approval of the board after the board administrator has determined budgetary availability for such services.~~

~~**F:]** **E.** Upon completion of its investigation, the standards of practice committee shall submit to the board its proposed recommendations concerning the proper disposition of the subject complaint.~~

~~**G:]** **E.** Upon review the board shall vote upon the proposed recommendations and either uphold, reverse, or modify the standards of practice committee recommendations.~~

~~**H:]** **G.** Standards of practice committee members who participate in the preparation of recommendations to the remaining board members shall not participate further in any actions initiated by the board against the licensee or applicant who is the subject of the complaint.~~

~~**I:]** **H.** If the board determines~~

that it lacks jurisdiction, or that there is insufficient evidence or cause to issue a notice of contemplated action, the board may vote to dismiss or close the complaint.

~~**J:]** **L.** If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, it may vote to refer the complaint to the attorney generals office for possible prosecution in accordance with the provisions contained in the Uniform Licensing Act.~~

~~**K:]** **L.** The board may take any other action with regard to the complaint which is within its authority and which is within the law, including referring the complaint to the attorney general and/or the district attorney for prosecution of persons alleged to be practicing without a valid license.~~

[11/7/98; 16.26.8.10 NMAC - Rn, 16 NMAC 26.8.10, 2/3/06; A, 01/29/15]

16.26.8.12 DISCIPLINARY ACTION: In accordance with the Uniform Licensing Act, the board has authority to impose penalties in disciplinary matters. The Uniform Licensing Act allows discipline in many forms including but not limited to fines, letters of reprimand, corrective action plans, suspension, and revocation of license.

A. Formal letter of reprimand: The board shall have discretionary authority to issue formal letters of reprimand or warning instead

of revocation or suspension. Issuance of formal letters of reprimand shall be subject to the provisions of the Uniform Licensing Act and shall be matters of public record.

B. Prehearing motions: The board may appoint a hearing officer to decide non-dispositive motions filed prior to a hearing. Until such time as the board appoints a hearing officer, the chair of the board shall serve as hearing officer.

C. Settlement agreements: Following the issuance of a notice of contemplated action, the board may enter into a settlement agreement with the respondent as a means of resolving a complaint.

D. Costs of disciplinary proceedings: Licensees or applicants shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees, or if they prevail at the hearing and an action in Section 61-1-3 NMSA 1978 of the Uniform Licensing Act is not taken by the board.

E. Uniform licensing provisions: In accordance with Section 61-1-7.G NMSA 1978 of the Uniform Licensing Act, a licensee who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to the board shall be subject to disciplinary action.

F. License returned to the board: Any license, renewal license or temporary permit issued by the board must be returned to the board subsequent to revocation or suspension. [~~The item(s) listed must be returned in person or by certified mail no later than thirty (30) days after the suspension or revocation order to the board.~~] Unless otherwise ordered by the board, a licensee or permit holder whose license has been suspended or revoked must return his/her license or permit to the board no later than thirty (30) days from receipt of a final order of suspension or revocation.

G. Federal fraud and abuse data bank: As required by federal law, final adverse disciplinary actions taken by the board against applicants or licensees will be reported to the federal health care integrity and protection data bank (or its successor data bank), which was established by the enactment of the federal Health Insurance Portability and Accountability Act of 1996. [11/7/98; 16.26.8.12 NMAC - Rn, 16 NMAC 26.8.12, 020/3/06; A, 01/29/15]

NEW MEXICO SECRETARY OF STATE

This is an emergency amendment to the existing 1.10.23 NMAC, adding Section 13, effective 12-2-2014.

1.10.23.13 RECOUNT PROCEDURES FOR STATEWIDE

AUTOMATIC RECOUNTS: This section applies to automatic recounts for statewide elective office in a general election when the margin between the two candidates receiving the greatest number of votes for the office is less than one-half of one percent of the total votes cast for that office in that election. Upon notification by the secretary of state to the state canvassing board that an automatic recount is required, a recount shall proceed according to the procedures set forth in these rules.

A. Dates and times prescribed for the Recount. Pursuant to 1-14-16 NMSA 1978, the absent voter precinct board ("the absentee board"), district judge ("district judge") and county clerk ("clerk") shall meet at the county seat on day one of the recount to recount and re-tally the ballots in the contest for commissioner of public lands, and no other contest. Upon receipt of this order, county clerks shall send notices, by registered mail, of the date for the recount to the district judge for the county, the absentee board members and the county chair of each of the political parties that participated in the election for the office in question. In addition to the notices sent by registered mail, the state canvassing board strongly recommends that county clerks promptly contact, by telephone, e-mail, and all other appropriate media the district judge, absentee board members and county chairs involved in the recount. It is also recommended that there be notification to the general public in all appropriate media. The secretary of state's office shall order 500 new, unused compact flash cards ("cards") for the vote tabulators and will provide those to the counties for the conduct of the recount. In the weeks preceding the commencement of the recount, the removable storage media for the election tabulators and results tabulating reporting (RTR) servers will be programmed to conduct the recount of the ballots for the commissioner of public lands race. The absentee board, district judge and clerk shall meet on the date fixed, at 8:00 AM, for the recount. The recount shall continue until all ballots shall have been recounted and re-tallied. If the recount is not completed during the first day of the recount, the process shall continue until at least 5:00 PM on that day and shall continue on the second day beginning at 8:00 AM and continuing

until at least 5:00 PM or until the process is completed. If the process is still not complete, the same schedule used for day 2 shall be followed each succeeding day until such time as the recount and re-tally is completed and the absentee board has certified the results to the secretary of state (Section 1-14-16 (D) NMSA 1978). All counties, with the exception of Bernalillo county, should complete the recount and re-tally not later than day 2, and shall complete the process not later than day 3. Should a continuation of the process beyond day 3 be deemed necessary, the clerk shall request an extension, in writing, to the secretary of state, providing the reasons for the extension and the ballot security measures in place. Bernalillo county should complete the recount and re-tally not later than day 4, and shall complete the process not later than day 5. Should a continuation of the process beyond day 5 be deemed necessary, the clerk shall request an extension, in writing, to the secretary of state, providing the reasons for the extension and then ballot security measures in place. The absentee board shall consist of a sufficient number of members to ensure that each time a tabulator is in operation in the conduct of the recount, whether it is for absentee ballots, early voting ballots, or Election Day ballots, a two-person team is assigned to conduct the recount on that particular tabulator. Examples follow:

(1) If a county uses five tabulators simultaneously to recount early voting ballots cast, 10 precinct board members would be required to conduct that portion of the recount.

(2) If, simultaneously, absentee ballots are being recounted on one tabulator, early voting ballots are being recounted on two tabulators, and Election Day ballots are being recounted on three tabulators, all tabulators being programmed for the respective ballot types, then 12 absentee board members would be required to be present in order to ensure the required two-person team per tabulator. County clerks shall appoint additional members of the absentee board in order to ensure the board is sufficiently staffed to complete the recount, provided that equal numbers of qualified board members from the democratic party and the republican party shall be appointed. Names and respective political party affiliations of absentee board members shall be provided to the secretary of state not later than noon, Thursday, December 4, 2014. If any absentee board members are replaced or added during the recount, the names and political party affiliations of the replaced members and of those of the new members replacing them shall be provided to the secretary of state.

B. Duties of the state

canvassing board, secretary of state, presiding judge, absentee board, district judge and clerk. The state canvassing board has adopted these procedures governing the statewide recount to ensure that all ballots are treated uniformly and consistently throughout the state and that the procedures followed are uniform and consistent in each county.

(1) The presiding judge ("presiding judge") of the absentee board in each county is charged with the duty of conducting and maintaining an orderly recount following the procedures set forth in this order and under the oversight and supervision of the secretary of state, and shall maintain a record of the proceedings ("the log").

(2) The district judge, or his or her designee, is charged with maintaining the security of the ballots and election returns during the conduct of the recount.

(3) The clerk is charged with providing the tabulators, staff assistance as required by the presiding judge in zeroing machines, or other technical assistance not provided by the *dominion* technical representatives, lists of voters as required, and shall supervise review of qualified and unqualified provisional ballots and absentee-in-lieu-of ballots. The clerk shall maintain the list of watchers (Subsection I).

(4) Consistent with the provisions of Sections 1-2-1 and 1-2-2 NMSA 1978, the secretary of state shall be authorized to provide required ministerial and technical instructions as needed to implement this order.

C. Ballot Security. When the absentee board is properly convened in the presence of the district judge and county clerk, the ballot boxes and ballot containers or voting machines of the precincts involved in the recount or recheck shall be opened. Either the district judge or the presiding judge and at least one other witness, shall witness the movement of all ballots during the recount. All movement of ballots to and from the ballot boxes shall be logged by the precinct board. Each time that ballots are removed from or returned to a ballot box, the presiding judge shall ensure that the number of ballots present are determined and ensure that that number is compared to the number of ballots that should be in that particular box. All discrepancies shall be noted by the absentee board, and the presiding judge shall report the same to the office of the secretary of state, bureau of elections.

D. Preparation; zeroing and testing procedures. The absentee board shall recount and re-tally the ballots for the office in question in the presence of the clerk, district judge or person designated

to act for the district judge, and any other person who may desire to be present. The automatic recount shall be conducted pursuant to the recount procedures established in Sections 1-14-16 and 1-14-18 through 1-14-22 NMSA 1978, and further delineated in greater detail in this order.

(1) The recount will involve the machine re-tabulating and tallying of an expected number of 521,797 ballots cast, based on county canvass reports and any additional provisional or absentee ballots which may be determined to have been improperly disqualified and that may be qualified during the course of the recount.

(2) Pursuant to the express provisions of Section 1-14-24 NMSA 1978, the provisions of Section 1-14-23 NMSA 1978, do not apply to a statewide automatic recount. Therefore, the ballots in this statewide recount will be electronically tabulated using *imagecast evolution* (ICE), *imagecast precinct* (ICP) and *imagecast central count* (ICC) voting systems, which shall be certified according to the procedures set forth below.

(3) In each instance where an ICE or ICP is being used, the clerk and the presiding judge shall ensure that only new and unused cards programmed by and provided by *dominion voting* are employed for the recount, and that each is clearly marked for use in recounting and re-tabulating for either "absentee," "early voting" or "Election Day" ballots. The clerk and presiding judge shall confirm such markings in the log.

(4) In each instance where an ICE or ICP is being used, the clerk and the presiding judge shall ensure that each tabulator present for use in the recount, or designated as a back-up tabulator, is clearly marked for either "absentee," "early voting" or "Election Day" ballots, and that only those ballots and those cards designated for the corresponding method of voting shall be inserted into any tabulator. Upon ensuring that tabulator identification has been completed, the clerk and the presiding judge shall confirm such markings in the log.

(5) In each instance where an ICC is being used, the clerk and presiding judge shall ensure that the correct file for each method of voting is uploaded, and that each ICC is labeled as early voting 1, early voting 2, Election Day 1 and election 2, as the case may be. Counties with two ICCs or fewer will ensure the labels conform to the method of voting being recounted.

(6) The recount shall be conducted using newly acquired removable media storage devices for the tabulators which shall be programmed to accept all precincts in the county. A team

of two members of the absentee board, one from each of the major political parties involved in the recount, shall be assigned to each tabulator.

(7) A zero summary report ("zero tape") shall be generated and certified by the absentee board in the presence of the clerk and a designated representative of a candidate or political party who may desire to witness the certification, prior to tabulating any ballots on any machine. This designated representative shall be chosen from the appointed discussed in Subsection I below.

(8) One hundred (100) ballots of the ballot type (absentee, early voting and Election Day) to be recounted on each tabulator shall be used to test the accuracy of each tabulator to be used in the recount. 100 absentee ballots shall be inserted into the absentee tabulator, 100 early ballots shall be inserted into each early vote tabulator and 100 Election Day ballots shall be inserted into each Election Day tabulator. The same ballots for each shall have been hand-tallied by the absentee board prior to being fed into the tabulators. If the vote totals on the tabulator tape match the hand-tally totals for each candidate, the recount may then proceed with the machine recount. If the count does not match, the presiding judge shall supervise a re-tally of the hand count at least twice to ensure that no error has occurred in the hand tally. If after the presiding judge is certain that the tabulator and the hand-tally counts cannot be reconciled on the tabulator being tested, new removable storage media cards shall be programmed for that ballot type and inserted in a new tabulator, and shall be tested. Only those tabulators that match the hand-tally with 100% accuracy shall be used.

(9) If 100 ballots of a particular ballot type were not voted during the November 4, 2014 general election, then the test shall be conducted using all those ballots available from that particular ballot type, and if the tabulator tape matches the hand-tally of those same ballots the totals produced in that process shall constitute the final totals of that particular portion of the recount, and that portion shall be concluded.

E. Recounting and re-tallying of ballots. The ballots shall be re-tabulated by precinct and ballot type (absentee ballots, early voting ballots and Election Day ballots).

(1) Where ICE and ICP units are in use, the absentee board two-person team conducting each recount on each ballot type on each tabulator shall closely preview each ballot. Those ballots which do not show a mark in a voting target oval (an oval alongside one of the two candidates, indicating a choice

for a candidate) but which do provide an indication of voter intent, such as a circled name, check mark beside a candidate's name or other similar marking, shall be set aside for hand-tallying. All other ballots shall be inserted into the tabulator. Once all the ballots for the precinct or *voting convenience center (VCC)* being recounted have been inserted into the tabulator, the absentee board shall then hand-tally the ballots that have been set aside for review. Those ballots shall be adjudicated according to procedures shown in Subsection H.

(2) When all ballots to be tabulated in that vote category (absentee, early, Election Day) have been either placed in the tabulator or hand-counted, the presiding judge shall close the polls on the tabulator and generate a results tape. The total of hand-tallied ballots and machine-tallied ballots shall be compared to the existing results - the official canvassed results of the 2014 general election, and any discrepancies shall be noted by the absentee board.

(3) When all ballots in all categories have been tabulated the clerk shall upload the results from the removable storage media (cards) to the secretary of state's *integrated reporting and integrity system (IRIS)*.

(4) Where ICC units are in use, the two-person teams shall use the adjudication program provided for those ballots with ambiguous marks or over votes, applying the same standards outlined in Subsection H.

(5) The existing removable media storage devices from the 2014 general election shall be preserved in their current state, and shall not be handled, examined, erased, or altered, and shall be retained by the clerks, including the ballot images, all audit logs and audit marks. In the event any voted ballots are unavailable or incomplete for the recount, the district judge, in consultation with the clerk, may order that a results tape or ballot images be regenerated from the removable storage media that was originally used to tabulate the voted ballots.

(6) Each clerk shall ensure that tabulators, sufficient in number to allow for the completion of the recount, are available in each county beginning on day one of the recount and concluding not later than day 3, or in the case of Bernalillo county not later than 5:00 PM, day 5. Should a continuation of the process beyond those scheduled dates be deemed necessary, the clerk shall request, in writing to the secretary of state, an extension, providing the reasons for the extension and detailing the ballot security measures in place.

(7) As each box of ballots is completely tabulated in the

recount, the absentee precinct board shall replace the ballots in the original ballot box and re-lock it. The absentee precinct board shall certify to the secretary of state the results of the recount. The district judge, or the person designated to act for the district judge, and clerk shall also certify that the recount was made in their presence. The secretary of state shall have the authority to extend the time set aside for the statewide recount on a county-by-county basis, if extraordinary circumstances are deemed to exist.

F. Provisional ballots.

Any ballot boxes, envelopes or containers that hold provisional or absentee-in-lieu-of ballots shall be opened one at a time.

(1) The presiding judge shall count the total number of provisional and absentee-in-lieu-of ballots in each polling location and the number shall be compared to the previously certified signature roster count in that polling location and noted. Any discrepancies in the number of ballots shall be immediately reported to the clerk, district judge and secretary of state's office, bureau of elections. Section 1-4-22 NMSA 1978, states "the secretary of state shall issue rules governing and allowing procedures for reviewing the qualification of provisional ballot envelopes, absentee and other paper ballots in case of a contest or recount of election results. All rejected provisional paper ballot envelopes shall be included in any contest or recount of election results, and a review of the qualifications of provisional ballots envelopes shall occur in a recount."

(2) The clerk shall review the qualification of all rejected provisional and absentee in-lieu-of ballots. Reasons for rejected ballots shall be clearly stated and detailed and shall be noted on the ballot application or other appropriate form or record. If a previous record of reasons for rejected ballots exists on the ballot application or other appropriate form, new comments or details that may be added by the clerk shall be added in blue pencil, or in such a manner as to ensure the new comments are distinguishable from previous records.

(3) The absentee board shall review the qualification of all rejected absentee ballots. Reasons for rejected ballots shall be clearly stated and detailed and shall be noted on the ballot application or other appropriate form or record. If a previous record of reasons for rejected ballots exists on the ballot application or other appropriate form, new comments or details that may be added by the presiding judge shall be added in blue pencil or in such a manner as to ensure the new comments are distinguishable from previous records.

(4) The clerk shall not disqualify any provisional ballot or absentee-in-lieu-of ballot because the voter's address on the affidavit of the outer provisional ballot envelope does not match the voter's address on the certificate of registration, provided the clerk can identify the voter with other information provided on the affidavit or certificate of voter registration attached to the provisional ballot outer envelope.

(5) The clerk shall not disqualify a provisional or absentee-in-lieu-of ballot because the voter has used an abbreviated name, abbreviated address, middle name, middle initial or suffix, provided the clerk can identify the voter with other information provided on the provisional ballot outer envelope or certificate of voter registration attached to the provisional ballot outer envelope. The clerk shall not disqualify a provisional or absentee-in-lieu-of ballot because the voter did not sign both the affidavit and the polling place roster if the voter provided a valid signature and the clerk can identify the voter with the information provided on the affidavit on the outer envelope or certificate of voter registration attached to the provisional ballot outer envelope.

G. Hand-tallied ballots.

Any ballots that cannot be read by a ballot tabulator shall be hand-tallied by the absentee board. (See Subsection H, as applicable.)

(1) The absentee board shall utilize tally sheets provided by the bureau of elections showing only the commissioner of public lands race, with options for under votes and over votes. The two-person counting team for hand-tallying shall be a democrat and a republican. The team shall ensure that the ballot type (Election Day, early, absentee, provisional, or absentee-in-lieu-of) and the precinct number are noted on each hand-tally sheet.

(2) The reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote. The marker shall then mark the tally sheet of the appropriate precinct and the reader shall observe whether the marker correctly marked the tally sheet. Upon completion of the hand-tally sheet, the marker shall add the total number of votes for each candidate, as well as any under votes and over votes. The reader shall confirm those numbers. Both the marker and the reader shall sign the tally sheet.

H. Ambiguous marks. If a ballot is marked indistinctly or not marked according to the instructions on the ballot, the counting team shall count as a vote as provided for in Section 1-1-5.2 NMSA 1978. A vote shall be counted if it is:

(1) marked in

accordance with the ballot instructions;
(2) the preferred candidate's name is circled;
(3) there is a cross or check within the voting response area for the preferred candidate; or
(4) the presiding judge and election judges for the absentee precinct board unanimously agree that the voter's intent is clearly discernable. In no case shall the counting team mark or remark a ballot. The presiding judge shall inform the counting team of the procedures to be followed. The presiding judge shall ensure that the counting team is sensitive to the need to handle ballots in a manner that facilitates possible reviews and inspections. The counting team shall not use black ink pens or markers to mark the tally sheets and shall only use blue or red pencils.

I. Watchers.

(1)

Appointment. Each candidate and each political party participating ("organization") in the recounted race shall be entitled to have watchers present during the recount, provided that watchers shall not disturb or obstruct the conduct of the recount. Watchers may be appointed for each county. The list of watchers appointed by each organization shall be provided to the clerk not later than noon, Friday, December 5, 2014.

(2) **Counties**

other than Bernalillo county. The county chairs for the democratic and republican parties of each county may appoint a watcher to be present during the recount for each method of voting: absentee voting recount, early voting recount, and Election Day voting recount. Each of the candidates may appoint a watcher to be present in each county in the same manner as provided for the political parties. Substitute watchers may be employed, but no more than one watcher for each organization, or a maximum of 12 individuals may act as watcher at one time (four for each method of voting recount). No watcher may be appointed who is a sheriff, deputy sheriff, marshal, deputy marshal, or state or municipal police officer. Nor may a watcher be a member of the judiciary or a member of the staff of a judicial officer or the office of the district attorney.

(3) **Bernalillo**

county. Watchers may be appointed in the same manner as described in Paragraph (2) of Subsection I above, except that each organization may have a maximum of three watchers for the absentee ballot recount, and two each for the early vote ballot recount and Election Day ballot recount. No more than 12 watchers may be present for the absentee vote ballot recount at any one time. No more than eight watchers may be present for the early vote ballot recount.

No more than eight watchers may be present for the Election Day ballot recount.

(4)

Identification. Watchers shall identify themselves to the clerk or clerk staff, and clerk staff shall verify watchers' appointments on the list provided by the organization. At all times while present at the recount proceedings, a watcher shall wear a self-made badge, nameplate, or other suitable means of identification, designating himself or herself as an authorized watcher on behalf of the organization he or she represents. Substitute watchers must observe the same rule, and watchers leaving the area shall remove their identification.

(5) **Permitted**

activities. A watcher, upon ensuring his or her identifying badge is visible to the presiding judge, shall be permitted to be present at any time from the time the absentee precinct board convenes at the recount location until the completion of the absentee board's duties. A watcher may view, but not handle, signature rosters, precinct or VCC voter lists, ballots and provisional ballot applications. He or she may view each tabulator to ensure that the public counter is at zero, and to ensure the zero tape contains no votes and that there are no voted ballots in the voting machine bins, and the results tape which is produced for each tabulator in the course of the recount. The watcher may also make and preserve for future reference written memoranda of any action or omission on the part of any member of the absentee board, or other official present at the recount.

(6) **Questions.**

While a watcher shall not be permitted to interfere with or disrupt the proceedings, he or she may interpose reasonable questions to the presiding judge. The presiding judge is charged with conducting the recount in accordance with the provisions set forth in this order, pertinent provisions of the Election Code and 1.10.23 NMAC, as applicable. Determinations made by the presiding judge in consultation with the absentee board shall be adhered to in the course of the recount proceedings. The presiding judge may refer questions, if he or she deems it necessary, to the secretary of state. However, questions or discussions should not, except in rare instances, require any pause in the recount proceedings. In the event a watcher or candidate or party representative is not satisfied with a decision taken by the presiding judge, the watcher may file a statement, report, or question, in writing, to the office of the secretary of state. Such report or question shall outline in detail the concerns or issues in question and shall be forwarded immediately via email or other appropriate media available. However, no pause in the

recount proceedings shall take place unless the presiding judge so determines.

(7) **Provisional**

ballots. Watchers may review qualification and disqualification decisions of the clerk, and may pose reasonable questions regarding the qualifications. Determinations made by the clerk shall be adhered to in the course of the recount proceedings. The clerk may refer questions, if he or she deems it necessary, to the secretary of state. In the event a watcher or candidate or party representative is not satisfied with a decision taken by the clerk, the watcher may file a report, in writing, to the office of the secretary of state. Such report shall be forwarded via email immediately, but no pause in the recount proceedings shall take place, unless the presiding judge so determines.

(8) **Prohibited**

activities. Watchers shall not be permitted to perform any duty of absentee board member; shall not handle the ballots, signature rosters, checklist of voters or voting machines, or take any part in the recounting or re-tallying of the ballots; shall not be allowed to view a voter's full date of birth or any portion of the voter's social security number; and shall not interfere with the orderly conduct of the recounting or re-tallying of ballots.

J. Preservation of the

record. Upon completion of the recount and the certification of the results to the secretary of state, the clerk shall take all measures necessary to preserve the record of the recount proceedings, including all ballots cast, the identity of the tabulators used and the ballots contained therein, the cards and the identity of the cards, hand-tallied ballots, and all other categories of ballots; including all records, notes, observations and provisional ballots accepted and rejected. The clerk shall ensure that all the above records are locked and secured in a secure location. The clerk shall preserve all records for a minimum of 22 months from the date the results of the recount are certified to the secretary of state, or until the office of the secretary of state provides further information regarding their disposition.

[1.10.23.13 NMAC - N/E, 12-2-14]

[1.10.23.13 NMAC is being adopted and filed pursuant to Section 1-12-4 NMSA 1978. As it is an emergency in nature, upon filing, this section will become immediately effective without public hearing or publication. It is intended to be temporary and shall expire at the conclusion of the recount and no more than 30 days from the effective date.]

**NEW MEXICO
DEPARTMENT OF
TRANSPORTATION**

18.27.5 NMAC, Contractor Prequalification Rule (filed 12/7/00) repealed and replaced by 18.27.5 NMAC, Contractor Prequalification Rule, effective 01/01/15.

**NEW MEXICO
DEPARTMENT OF
TRANSPORTATION**

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 27 HIGHWAY
CONSTRUCTION GENERAL
PROVISIONS
PART 5 CONTRACTOR
PREQUALIFICATION RULE**

18.27.5.1 ISSUING AGENCY:

The New Mexico department of transportation, post office box 1149, Santa Fe, New Mexico, 87504-1149.
[18.27.5.1 NMAC - Rp, 18.27.5.1 NMAC, 01-01-15]

18.27.5.2 SCOPE: This rule

applies to the New Mexico department of transportation construction projects and to all contractors and subcontractors seeking or anticipating the performance of work within the project limits.

[18.27.5.2 NMAC - Rp, 18.27.5.2 NMAC, 01-01-15]

18.27.5.3 STATUTORY

AUTHORITY: Section 13-1-82 NMSA 1978 (1984, as amended through 2012) and Section 13-1-133 to -134 NMSA 1978 (1984, as amended through 2012) Sections 67-3-2 (2003), 67-3-11 (2003), 67-3-14 (2003), and 67-3-43 (1983) NMSA 1978.

[18.27.5.3 NMAC - Rp, 18.27.5.3 NMAC, 01-01-15]

18.27.5.4 DURATION:

Permanent.

[18.27.5.4 NMAC - Rp, 18.27.5.4 NMAC, 01-01-15]

18.27.5.5 EFFECTIVE DATE:

January 1, 2015, unless a later date is cited at the end of a section.

[18.27.5.5 NMAC - Rp, 18.27.5.5 NMAC, 01-01-15]

18.27.5.6 OBJECTIVE: To

establish policies and procedures for a determination of responsibility through a contractor prequalification system that directly rewards good performers and encourages poor performers to improve.

[18.27.5.6 NMAC - Rp, 18.27.5.6 NMAC,

01-01-15]

18.27.5.7 DEFINITIONS:

A. This rule adopts the abbreviations, symbols and definitions in the division 100-general provisions of the New Mexico department of transportation current edition of the standard specifications for highway and bridge construction and incorporates the same by reference.

B. CID is the abbreviation of construction industries division.

C. Compass form means the New Mexico department of transportation form generated at project closure that documents certain contractor performance measurement data.

D. Innovative contracting is an alternate form of competitive bidding consistent with federal and state procurement laws that can result in work being awarded to a responsible bidder that may not submit the lowest monetary bid.

E. Modified bid amount means the contractor's bid multiplied by the contractor's prequalification factor rolling average or Pqfra. The modified bid amount will be used solely for determining the apparent lowest responsible bidder. The modified bid amount will not be used for payment.

F. Packet means the current New Mexico department of transportation contractor prequalification application from the office of inspector general.

G. Performance factor or Pf means the numerical quantification of a contractor's past performance on closed projects for certain objectively measurable criteria.

H. Pf claim or Pfc means the performance measurement of a contractor's unsuccessful demand for reconsideration seeking additional compensation or contract time beyond the cabinet secretary administrative remedy level.

I. Pf disincentive or Pfd means the performance measurement of a contractor's quality of work related to certain contract items. Applicable contract items for disincentive are the following sections 401 pavement smoothness measurement, 403 and 404 open graded friction course, 416 minor paving, 417 miscellaneous paving, 423 hot mix asphalt - superpave qla and non-qla, 424 warm mix asphalt qla and non-qla, 450 and 451 portland cement concrete pavement qla and non-qla, 901 quality control/quality assurance.

J. Pf liquidated damages or Pfld means the performance measurement of a contractor's timely completion of the contract.

K. Pf non-conformance or

Pfn means the performance measurement of a contractor's compliance with the terms and conditions of the contract.

L. Pf safety or Pfs means the performance measurement of a contractor's safety reflected by the contractor's experience modifier rate or emr provided by the contractor's bonding company.

M. Pf subcontractor or Ppsc means the performance measurement of a contractor's prompt payment of its subcontractors or suppliers.

N. Pqf rolling average or Pqfra means the final measure of responsibility that is applied to the contractor's bid resulting in the modified bid amount.

O. Prequalification factor year or Pqfyr means the yearly calculation of a contractor's performance factors.

P. Prequalification factor or Pqf means the overall mathematical analysis of the performance factors that measures contractor responsibility. Prequalification factor is abbreviated Pqf.

Q. Prequalification packet means the New Mexico department of transportation form submitted annually.

R. Responsibility means an objective determination based on past performance by the New Mexico department of transportation of the contractor's capability in all respects to perform fully and make satisfactory delivery the requirements of the contract including the integrity and reliability that will assure good faith performance.

S. Rolling average means a calculation to analyze data points by creating a series of averages of different subsets of the full data set.

[18.27.5.7 NMAC - Rp, 18.27.5.7 NMAC, 01-01-15]

18.27.5.8

PREQUALIFICATION PROCEDURE:

The prequalification packet to obtain prequalified status may be obtained from the office of inspector general of the New Mexico department of transportation. Each contractor and subcontractor seeking to become prequalified shall submit the prequalification packet and any supporting information to the New Mexico department of transportation office of inspector general at the address indicated in the prequalification packet. Deadlines are calculated from the date office of inspector general receives the new or renewal packet. Requests for prequalification will not be processed without the submission of a timely, complete and conforming packet. All packets shall contain a complete affidavit, executed under penalty of perjury by an authorized individual, certifying that the information contained in the packet

is true and correct. Untimely, incomplete and non-conforming packets will not be processed.

A. Prequalified status will be granted upon the approval of a timely, complete and conforming prequalification packet by the office of inspector general.

B. An untimely, incomplete, or nonconforming packet will result in delays affecting prequalification status and will negatively impact the prime contractor's ability to bid on New Mexico department of transportation projects.

(1) Obtaining prequalified status is a condition to submitting a bid. Prime contractors submitting a new prequalification packet or renewal prequalification packet must submit it no later than seven days before the opening of any bid.

(2) Prime contractors submitting a bid without timely obtaining prequalified status shall result in a determination that its bid is non-responsive and the bid shall be rejected.

C. Subcontractors must obtain prequalified status before performing any work or supplying goods or services to the project.

(1) Subcontract packets for subcontractors who fail to obtain prequalified status before performing any work or supplying goods or services to the project shall be rejected.

(2) Work performed or goods or services supplied without prequalified status shall be non-compensable.

D. For prime contractors and subcontractors who are currently prequalified by the effective date of this rule the applicant will not need to submit a new prequalification packet until the anniversary date of their last packet.

E. For prime contractors and subcontractors submitting new packets, within five days from the receipt of a new prequalification packet the office of inspector general will provide notice of receipt of the packet.

(1) If the packet submitted is complete and conforming then the office of inspector general will provide written notice to the applicant of approved prequalified status.

(2) If the packet submitted is incomplete or does not conform to the requirements then the office of inspector general will provide written notice to the applicant that the packet will not be processed until the packet is complete and conforms to the requirements.

(3) The date of the written notice of approved prequalified status shall establish prequalification eligibility for a period of one year. Prequalified status shall automatically

terminate if not renewed prior to the expiration date established by the written notice of approved prequalification status.

F. Renewal packets shall be submitted no later than seven days before the expiration date on the document published by the office of inspector general titled prequalified contractors and subcontractors list. Prequalified status shall automatically terminate for the failure to submit a timely, complete and conforming renewal packet. Prequalified status shall be re-established upon the approval of a complete and conforming renewal packet.

G. Appeal of the denial of prequalification eligibility based upon the receipt of untimely, incomplete or non-conforming packet shall be submitted in writing to the office of inspector general with supporting documentation within seven days of the denial of prequalified status. If the appeal is untimely the aggrieved party waives the right to appeal. The inspector general, or designee, will issue a final written decision upholding or reversing the denial of prequalified status within seven days of the receipt of a timely appeal. The inspector general's decision constitutes the final action taken by the office of inspector general related to a denial of prequalified status under this section.

H. Obtaining prequalification status, a performance factor, or a prequalification factor rolling average does not grant a license do business, a right to bid or to be awarded a contract.

I. In the event a contractor or subcontractor is suspended or debarred, its prequalification status shall immediately and automatically terminate without further notice. In order to obtain renewed prequalification status after a period of suspension or debarment a new complete and conforming prequalification packet must be submitted and approved.

[18.27.5.8 NMAC - Rp, 18.27.5.8, 18.27.5.9, 18.27.5.10, 18.27.5.11, 18.27.5.12 NMAC, 01-01-15]

18.27.5.9 DEFICIENT, FALSE OR MISLEADING STATEMENTS:

Any deficient, deceptive, false, fraudulent or misleading statements in the prequalification packet or incomplete affidavit may subject the offending party to an automatic rejection or revocation of prequalified status, suspension, debarment proceedings or other civil and criminal penalties under the New Mexico department of transportation rules and may be reported to the New Mexico attorney general and the federal highway administration for further action.

[18.27.5.9 NMAC - Rp, 18.27.5.14 NMAC, 01-01-15]

18.27.5.10 LICENSING: Only contractors licensed in New Mexico may perform highway construction work for the New Mexico department of transportation. The timing and requirements for licensure appear in the invitation for bids for the project. All persons seeking additional information should refer to the New Mexico CID rules and regulations and the Construction Industries Licensing Act. Contractors are not required to have the necessary construction industry licenses to submit a prequalification packet. [18.27.5.10 NMAC - Rp, 18.27.5.9 NMAC, 01-01-15]

18.27.5.11 PREQUALIFICATION

CALCULATION: The New Mexico department of transportation will gather prime contractor performance data from each project upon project closure. The data collected will be used to calculate a yearly prequalification factor. The prequalification factor rolling average will be applied to each prequalified prime contractor to evaluate the prime contractor's bid for department projects as indicated in the invitation for bids.

A. The performance factors are claims, disincentives, liquidated damages, non-conformance, safety, and subcontractor.

(1) Pf claim data will be documented on the compass form and will be collected from the New Mexico department of transportation's closed project records.

(2) Pf disincentive data will be documented on the compass form and will be collected from the New Mexico department of transportation's closed project records indicating whether disincentives were assessed on standard specification division for surface treatment and pavements and division for quality criteria items.

(3) Pf liquidated damages data will be documented on the compass form and will be collected from the New Mexico department of transportation's closed project records indicating whether liquidated damages were assessed.

(4) Pf non-conformance data will be documented on the compass form and will be collected from the New Mexico department of transportation's closed project records indicating whether non-conformances were assessed.

(5) Pf safety data will be the contractor's experience modifier rating as reported on its prequalification packet.

(6) Pf subcontractor data will be documented on the compass form and will be collected

from the New Mexico department of transportation's state construction bureau records indicating findings for the failure to promptly pay subcontractors or suppliers without good cause.

B. The performance factors are assigned percentage values within the yearly prequalification factor calculation.

(1) The percentage associated with claims is 15%.

(2) The percentage associated with disincentives is 30%.

(3) The percentage associated with the liquidated damages is 30%.

(4) The percentage associated with non-conformances is 10%.

(5) The percentage associated with safety is 5%.

(6) The percentage associated with subcontractor is 10%.

C. Pf claim or Pfc is calculated in the following manner:

(1) Claims that are not pursued beyond the cabinet secretary administrative remedy level will not be included in the calculation for Pf claim.

(2) For claims that are pursued beyond the cabinet secretary administrative remedy level a binary system will be used to assign a value of zero or one to evaluate claims.

(a) Claims resolved for the value of the claim or more brought beyond the cabinet secretary level will be assigned a value of zero.

(b) Claims resolved for less than the value of the claim brought beyond the cabinet secretary level will be assigned a value of one.

(3) Pf claim is calculated by adding the number one to the outcome of the sum of the claim value divided by the sum of closed projects.

(4) Pf claim resulting in a value of one will be assigned a bonus value for Pf claim equal to 0.9.

(5) Pf claim will then be multiplied by the percentage associated with Pf claim. The resulting value will be incorporated into Pqfyr.

D. Pf disincentive or Pfd is calculated in the following manner:

(1) For each closed project:

(a) Sum paid and accepted applicable contract items.

(b) Sum of paid and accepted applicable contract

items less applicable contract disincentives.

(c) Divide the total of Subparagraph (a) by the total of Subparagraph (b) of Paragraph (1) of Subsection D of this section.

(2) Sum all closed projects of Subsection D Paragraph (1) Subparagraph (c) of this section in a given year and divide by the count of closed projects resulting in Pfd.

(3) Pf disincentive resulting in a value of zero or one will be assigned a bonus value for Pf disincentive equal to 0.9.

(4) Pf disincentive will then be multiplied by the percentage associated with Pf disincentive. The resulting value will be incorporated into Pqfyr.

E. Pf liquidated damages or Pfd has two separate methods of calculation one for mandatory completion date projects and one for calendar or working day projects:

(1) For mandatory completion date projects liquidated damages equivalence is calculated:

(a) Subtract the mandatory completion date including any awarded time from the notice to proceed date to equate to a whole number.

(b) Subtract the actual completion date from the notice to proceed date to equate to a whole number.

(c) Divide the total of Subparagraph (b) by the total of Subparagraph (a) of Paragraph (1) of Subsection E of this section.

(d) A resulting value less than or equal to one from Subparagraph (c) of Paragraph (1) of Subsection E of this section will be assigned a bonus value equal to 0.9.

(2) For calendar or working day projects liquidated damages equivalence is calculated:

(a) Sum of the total days charged.

(b) Sum of the total days contracted.

(c) Divide the total of Subparagraph (a) by Subparagraph (b) of Paragraph (2) of Subsection E of this section.

(d) A resulting value less than or equal to one from Subparagraph (c) of Paragraph (2) of Subsection E of this section will be assigned a bonus value equal to 0.9.

(3) Pf liquidated damages for a given year is the calculated from all project liquidated damages. Pf liquidated damages is the sum of liquidated damages equivalence for mandatory

completion date, calendar or working day projects divided by the count of closed projects resulting in Pfd.

(4) Pf liquidated damages will then be multiplied by the percentage associated with Pfd. The resulting value will be incorporated into Pqfyr.

F. Pf non-conformance or Pfn is calculated in the following manner:

(1) Sum the number of progress payments per project.

(2) Sum the number of progress payments without non-conformance.

(3) Divide Paragraph (1) by Paragraph (2) of this subsection.

(4) A resulting value of one for Paragraph (3) of this subsection will be assigned a bonus value equal to 0.9.

(5) Sum all closed projects of Paragraph (4) of this subsection in a given year and divide by the count of closed projects resulting in Pfn.

(6) Pf non-conformance for a given year will then be multiplied by the percentage associated with Pfn. The resulting value will be incorporated into Pqfyr.

G. The performance factor for safety or Pfs is the contractor's experience modifier rate supplied annually by the contractor at the time of submission of the prequalification packet.

(1) Pfs for a given year is the numerical value of the contractor's experience modifier rate.

(2) If the experience modifier is equal to or less than one the Pfs is assigned a value of 0.9.

(3) The experience modifier rate is multiplied by the percentage associated with Pfs. The resulting value will be incorporated into Pqfyr.

H. Pf subcontractor or Pfsc is calculated in the following manner:

(1) Negative findings against the prime contractor per project will result in a value of one per finding.

(2) Pfsc for a given year is the sum of all negative findings in the year.

(3) Zero findings on all closed projects within the year will receive a bonus of Pf subcontractor equal to 0.9.

(4) The sum of Pfsc for a given year is multiplied by the percentage associated with Pfsc. The resulting value will be incorporated into Pqfyr.

I. The contractor's yearly performance factor is the sum of the

individual performance factors multiplied by their associated percentages.

J. The equation is $Pqfyr = Pfc * 15\% + Pfd * 30\% + Pfd * 30\% + Pfn * 10\% + Pfs * 5\% + Ppsc * 10\%$.

K. In the absence of data for any given year a contractor's Pqfyr will be assigned a value of one.

L. For joint ventures the higher value of all joint venture applicant's Pqfra will be used for the modified bid amount.

M. The contractor's prequalification factor rolling average will be denoted as Pqfra.

(1) The Pqfra will be calculated through the use of a rolling average covering a period of three years. Each rolling average year will be assigned a weighting factor and will be multiplied by the appropriate weighting factor starting with the most recent year.

(2) The most recent year, denoted as Pqfyr 1, will be multiplied by the weighting factor of 0.9.

(3) The preceding year, denoted as Pqfyr 2, will be multiplied by the weighting factor of 0.6.

(4) The preceding year, denoted as Pqfyr 3, will be multiplied by the weighting factor of 0.3.

(5) The sum of Pqfyr 1 through Pqfyr 3, is multiplied by their appropriate weighting factors and then divided by the sum of all weighting factors to result in the contractor's overall Pqfra.

N. The equation for $Pqfra = (Pqfyr 1 * 0.9 + Pqfyr 2 * 0.6 + Pqfyr 3 * 0.3) / (0.9 + 0.6 + 0.3)$.

O. All equations and calculations whether interim or final will be rounded to the thousandths place. [18.27.5.11 NMAC - N, 01-01-15]

18.27.5.12 POSTING, REVIEW AND APPLICATION OF PREQUALIFICATION FACTOR: The following procedures will apply to the posting, review and application of the prequalification factor:

A. The Pqfra will be calculated once a year on projects closed between January first and December thirty-first of the previous year.

B. The Pqfra will be posted on the office of inspector general list titled prequalified contractors and subcontractors list by the second Friday in January.

C. The Pqfra will be applied to a prime contractor's bid(s) beginning with the March bid opening until superseded by an updated Pqfra.

D. The Pqfra will be used to determine the modified bid amount. [18.27.5.12 NMAC - N, 01-01-15]

18.27.5.13 APPEAL

PROCEDURE: In the event of the appeal of a contractor's prequalification factor the following procedures shall apply:

A. Only a contractor disputing their own prequalification factor shall have the right to appeal.

B. To be considered an appeal must conform in timing, form and service to all requirements in this section or the appeal shall be rejected.

C. A contractor disputing only the misapplication of its prequalification factor to their bid shall file the appeal according the bidding dispute resolution procedures in the New Mexico department of transportation current edition of the standard specifications for highway and bridge construction bidding dispute resolution procedures.

D. A contractor disputing only the calculation of its prequalification factor shall file its appeal within seven days of the publication of their prequalification factor.

E. The appeal filed must conform to the requirements below and contain the following information:

(1) The appeal shall be in writing.

(2) Appeals made by electronic mail shall not be considered.

(3) The appeal shall clearly and concisely state the party's right to appeal, the grounds for appeal, the requested relief, and contain relevant laws, rules, regulations and documents to support the appeal.

(a) Sufficient copies of cited laws, rules, regulations, or documentary evidence shall be included with the appeal.

(b) Supporting documentary evidence not submitted at the time of filing the appeal shall be submitted no later than five days before the hearing.

(4) The documents submitted in the appeal process shall not be considered confidential and will be subject to the Inspection of Public Records Act, Sections 14-2-1 to 14-2-12 NMSA 1978 (1993, as amended through 2011).

F. Service of the appeal shall occur as follows:

(1) A contractor disputing its prequalification factor shall serve the appeal upon the New Mexico department of transportation's cabinet secretary. The contractor shall contemporaneously provide a copy of the appeal to the office of the general counsel and the office of inspector general at the respective address for each.

(2) Service upon the cabinet secretary must be made either

in person, by certified mail return receipt requested, or by delivery by a nationally recognized courier.

(3) Service must be made during regular business hours.

(4) Service made outside of regular business hours will be considered effective the next business day.

G. 10 days after receipt of a timely and complete appeal the cabinet secretary shall provide the following:

(1) Notice to all parties advising the parties that an informal hearing will be convened and designating a neutral hearing officer or designating himself as the hearing officer.

(2) Within seven days of the cabinet secretary's designation the hearing officer will provide a notice to all parties of hearing with the date, time and location of the hearing. The notice of hearing will be provided no later than seven days before the chosen hearing date for the informal hearing.

H. The formal rules of civil procedure, formal discovery processes, and the formal rules of evidence shall not apply to the informal hearing.

(1) Any party to the appeal may choose to have legal counsel present.

(2) The hearing officer has the authority to determine the degree of formality of the hearing.

(3) The hearing officer has the authority to determine the total time allotted for the informal hearing and how the time will be apportioned between the parties.

I. The hearing officer shall be responsible for maintaining a record of the evidence and proceedings.

(1) The hearing officer will weigh the credibility of the evidence provided by both parties.

(2) The hearing officer may use any reliable information, no matter the source, in arriving at a determination.

(3) If the hearing officer uses information in the determination not provided by either party then the hearing officer will allow a reasonable amount of time for rebuttal from either party.

J. The hearing officer shall issue a decision regarding the appeal within seven days of the hearing unless otherwise extended by the hearing officer in writing.

(1) The hearing officer's decision will constitute the final department action on the appeal.

(2) No further action on the appeal may be taken by the either party if the hearing officer's decision is accepted by both parties.

(3) If the

appealing party does not fully accept the hearing officer's decision then the appealing party may proceed with litigation in state district court by filing the appropriate pleadings.

K. Record of the appeal through the hearing officer's decision will be maintained by the office of inspector general for seven years after the date of the informal hearing.

L. For bidding purposes and during the period of appeal the contractor's previous prequalification factor will apply.
[18.27.5.13 NMAC - N, 01-01-15]

18.27.5.14
PREQUALIFICATION COMMITTEE:
Members of the prequalification committee will be designated by the cabinet secretary of the New Mexico department of transportation and shall meet annually to review the prequalification process. Any information reported by a prime contractor or subcontractor during the prequalification process may be reviewed by the prequalification committee to determine responsibility.
[18.27.5.14 NMAC - N, 01-01-15]

18.27.5.15
PREQUALIFICATION FOR CONSOLIDATED COMPANIES, JOINT VENTURES AND OTHER SPECIAL BUSINESS FORMATIONS:
The following prequalification packet procedure and Pqfra will apply to consolidated companies, consolidated companies related by common ownership and joint ventures:

A. For consolidated companies not related by common ownership and the parent company is not included in the consolidation each subsidiary within the consolidated company must be individually prequalified before a notice to proceed will be issued for the project. The Pqfra scores of the subsidiaries survive the merger or consolidation and the highest Pqfra of the subsidiaries joined by consolidation will be used for the modified bid amount.

B. For consolidated companies related by common ownership each subsidiary and parent company in the merger or consolidated company must be individually prequalified before a notice to proceed will be issued for the project. The Pqfra scores of the subsidiaries survive the merger or consolidation and the highest Pqfra of the subsidiaries or parent company joined by consolidation will be used for the modified bid amount.

C. Each prime contractor participating in the joint venture must be individually prequalified seven days before bid opening to join forces as a joint venture

for bidding and performing work related to a single project. The joint venture itself need not prequalify.

(1) In addition to being individually prequalified each prime contractor participating in the joint venture shall file with the office of inspector general a statement of joint venture.

(2) For joint ventures the higher value of all joint venture applicant's Pqfra will be used for the modified bid amount.
[18.27.5.15 NMAC - Rp, 18.27.5.15, 01-01-15]

18.27.5.16 **ADOPTION OF THE NEW MEXICO STATE DEPARTMENT OF TRANSPORTATION CURRENT EDITION OF THE STANDARD SPECIFICATIONS FOR HIGHWAY AND BRIDGE CONSTRUCTION:**
This rule adopts by reference the current edition of the *New Mexico state department of transportation standard specifications for highway and bridge construction*, as amended by this rule.
[18.27.5.17 NMAC - N, 01-01-15]

HISTORY OF 18.27.5 NMAC:

Pre-NMAC History: None

History of the Repealed Material: 18 NMAC 27.5, Highway Construction General Provisions-Contractor Prequalifications, filed 11/13/98. This was a temporary rule expiring 120 days from effective date of 11/30/98. 18.27.5 NMAC, Contractor Prequalification Rule, (filed 12/07/00) repealed and replaced by 18.27.5 NMAC, Contractor Prequalification Rule, effective 01/01/15.

End of Adopted Rules Section

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