

New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

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The New Mexico Register

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Notices of Rulemaking and Proposed Rules

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

POSTPONEMENT OF NOTICE OF PUBLIC RULE HEARING

The New Mexico Children, Youth and Families Department hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding CHILD CARE ASSISTANCE as authorized by Section 9-2A-7 NMSA 1978:

8.15.2.7 NMAC - DEFINITIONS
8.15.2.9 NMAC - PRIORITIES FOR ASSISTANCE
8.15.2.12 NMAC - RECERTIFICATION
8.15.2.13 NMAC - CLIENT RESPONSIBILITIES
8.15.2.15 NMAC - PROVIDER REQUIREMENTS
8.15.2.17 NMAC - PAYMENT FOR SERVICES

No technical scientific information was consulted in drafting these proposed rules.

Purpose of proposed rules: The purpose of the rules is to amend the eligibility levels for child care assistance, to eliminate the waiting list for child care assistance, to provide an explanation of the co-payment calculation and where to find the co-payment schedule, to comply with federal regulation to pay for registration/educational fees for children receiving child care assistance benefits on behalf of client, and to address the overlap of care hours under payment for services.

Copies of the proposed rules may be found at CYFD's website at <https://www.newmexicokids.org/> or may be obtained from 1120 Paseo De Peralta, Santa Fe, New Mexico, 30 days prior to the Public Hearing.

Notice of public rule hearing: CYFD is postponing the public hearing set for July 8, 2019 at 11:00 a.m. in Apodaca Hall, 1120 Paseo de Peralta, Santa Fe, New Mexico 87502. CYFD will enlarge the public comment period to accommodate new proposed language in accordance with the rules, and will issue notice for a public hearing at a later date. The public hearing will be conducted in a fair and equitable manner by a CYFD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Debra Gonzales at debra.gonzales@state.nm.us. CYFD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comment, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may also be submitted via email to CYFD-ECS-PublicComment@state.nm.us with the subject line "8.15.2 NMAC Public Comment," or via first class mail to, or by hand delivery to Kimberly Brown, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160. The comment period ends at the conclusion of the public hearing.

GAME AND FISH DEPARTMENT

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission ("Commission") has scheduled a regular meeting and rule hearing for Thursday, August 22, 2019, beginning at 9:00 a.m., at the New Mexico State Capitol Room 317, 490 Old Santa Fe Trail, Santa Fe, NM 87501, to hear and consider action as appropriate on the following: Presentation of proposed changes to the Migratory Game Bird rule.

Synopsis:

The proposal is to adopt a new Migratory Game Bird rule, 19.31.6 NMAC, which will become effective September 1, 2019. The current Migratory Game Bird rule expired on March 31, 2019.

The proposed new rule will include adjusting regular waterfowl season dates, extending the Middle Rio Grande Valle dark goose season by 17 days, decreasing the number of sandhill crane permits, decreasing the bag limit for northern pintail from 2 to 1, extending the hunting days and hours at some Wildlife Management Areas, and moving the youth crane hunt one week later to December 7th. A full text of changes will be available on the Department's website at: www.wildlife.state.nm.us.

Interested persons may submit comments on the proposed changes to the Migratory Game Bird rule at DGF-waterfowl@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 5:00 p.m. on August 21, 2019. The final proposed rule will be voted on by the Commission during a public meeting on August 22, 2019. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on August 22, 2019.

Full copies of text of the proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department's website at www.wildlife.state.nm.us/commission/proposals-under-consideration/. 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.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

PUBLIC REGULATION COMMISSION

NOTICE OF EMERGENCY RULEMAKING

The New Mexico Public Regulation Commission (NMPRC) gives notice that on 6/26/2019 it issued an "Emergency Repeal of Void Rules and Order Adopting Emergency Rules" regarding certain State Fire Marshal Rules. That order adopted temporary emergency rules to amend 10.25.1 and 10.25.6 NMAC and

to repeal and replace 10.25.3 and 10.25.5 NMAC. Also on 6/26/2019, the NMPRC found it necessary to adopt the emergency rules for Title 10, Chapter 25, Parts 1, 3, 5, and 6 of the New Mexico Administrative Code for the preservation of the peace, health, safety, and general welfare of the public, and further found that the emergency rules shall become effective immediately upon filing with the State Records Administrator or its designee under the authority granted by the State Rules Act.

The NMPRC found that emergency rules are necessary in this case to prevent an imminent peril to the public health, safety, or welfare because the objectives of the emergency rules are: (a) to establish provisions governing fire prevention, control of fires, safe egress from and use of public occupancies (see 10.25.1.6 NMAC); (b) to issue, renew, suspend, or revoke fireworks vendor licenses in compliance with the law (see 10.25.3.6 NMAC); (c) to prescribe minimum requirements for the operation and maintenance of buildings and structures necessary to reasonably project life and property from the hazards created by fire, explosion, and similar emergencies (see 10.25.5.6 NMAC); and (d) to increase the observance of safety precautions in handling fireworks and to decrease the number of fireworks related accidents in New Mexico (see 10.25.6.6 NMAC).

The temporary emergency State Fire Marshal rules are posted on the Rulemaking Proceedings section of the NMPRC's website at <http://www.nmprc.state.nm.us> under case number 18-00323-FM, and are publically available for inspection at the NMPRC's Records Management Bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or in person at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501. A public comment period and a public hearing will be held in order to adopt permanent State Fire Marshal rules within 180 days of the effective dates of the temporary emergency rules. The proposed permanent language revisions to the

State Fire Marshal Rules are posted on the NMPRC's website, and are publically available for inspection as described above.

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Regulation Commission (Commission) gives notice that it will repeal and replace the emergency rules with permanent rules in Parts 1, 3, 5, and 6 of Title 10, Chapter 25 of the New Mexico Administrative Code (10.25.1, 10.25.3, 10.25.5, and 10.25.6 NMAC, respectively) of the State Fire Marshal Rules.

Rulemaking Legal Authority:

The Commission has the legal authority to promulgate rules in general by the New Mexico Constitution, Article XI, Section 2. The State Fire Marshal is a division of the Commission pursuant to Subsection F of Section 8-8-6 NMSA 1978 of the Public Regulation Commission Act, and the Commission is authorized to adopt the State Fire Marshal Rules pursuant to Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978, and by Section 8-8-15 NMSA 1978 of the Public Regulation Commission Act. In addition to having the authority to adopt reasonable rules necessary or appropriate to carry out its powers and duties, the authority to promulgate rules as to the subject matter of the affected parts of Title 10, Chapter 25 of the New Mexico Administrative Code are the State Fire Marshal statutes, Sections 59A-52-1 through 59A-52-26 NMSA 1978, which authorize revisions to Parts 1, 3, 5, and 6; the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978, which authorizes revisions to Part 3; and the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-26 NMSA 1978, authorizes revisions to Parts 1, 3 and 6 of the State Fire Marshal Rules.

Proposed Rule Summary and Explanation of Purpose:

The purposes of the proposed rulemaking revisions to Title 10, Chapter 25 of the New Mexico Administrative Code are: to amend Part 1 to update language to accurately show "New Mexico State Fire Marshal Division" as being the current name of the division; to repeal and replace Part 3 to update language to accurately show the "Public Regulation Commission" as being the current name of the commission; to substantially rewrite, repeal and replace Part 5 to update the language and to repeal the currently adopted 2003 International Fire Code standards to be replaced with the 2015 International Fire Code standards; and to amend Part 6 to make minor language changes. Copies of the Order Reopening Rulemaking Docket and Issuing Notice of Proposed Rulemaking containing the full text of the proposed rules as an Exhibit thereto, as well as additional information and filing instructions, may be downloaded from the Rulemaking Proceedings section of the Commission's website at <http://www.nmprc.state.nm.us> under Case No. 18-00323-FM or may be otherwise obtained by calling the Commission's Records Management Bureau at (505) 827-6968.

Technical Information:

Proposed revisions to Part 5 of Title 10, Chapter 25 of the New Mexico Administrative Code make reference to various codes. These code references are identified and may be viewed or accessed online as follows:

2015 International Building Code at <https://codes.iccsafe.org/content/IBC2015>

2015 International Existing Building Code at <https://codes.iccsafe.org/content/IEBC2015>

2015 International Fire Code at <https://codes.iccsafe.org/content/IFC2015>

NFPA 1 at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/Free-access>

NFPA 101 at <https://www.nfpa.org/Codes-and-Standards/All->

Codes-and-Standards/Free-access
2012 Uniform Mechanical Code at <http://epubs.iapmo.org/2012/UMC>

2012 Uniform Plumbing Code at <http://epubs.iapmo.org/2012/UPC>

Comments/Deadlines:

Written initial comments and written response comments must be filed with the Commission's Records Management Bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the Commission Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501 by these deadlines: Written initial comments must be filed by **Tuesday, July 30, 2019**, and written response comments must be filed by **Tuesday, August 13, 2019** at 5:00 p.m. Filed written comments must refer to Case No. 18-00323-FM. All written comments will be posted on the Rulemaking Proceedings section of the Commission's website at <http://www.nmprc.state.nm.us> under Case No. 18-00323-FM and also are available for public inspection at the Commission's offices at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501.

Rulemaking Public Hearing:

The rulemaking public hearing will be held on **Friday, August 16, 2019** beginning at 10:30 a.m. at the Commission's 4th Floor Hearing Room at 1120 Paseo de Peralta in Santa Fe. The purpose of the rulemaking public hearing is to receive oral comments about the proposed rule revisions. Because commenters are afforded the opportunity to submit written comments and written responses to the Commission, the time duration for any individual delivering oral comments may be limited by the hearing's Presiding Officer to a set number of minutes, subject to the Presiding Officer's discretion. The Presiding Officer may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that share(s) the same message or seek(s)

the same goals, in order to maximize the efficiency of the rulemaking public comment hearing. Because this case is a rulemaking proceeding, no testimony or other evidence will be taken at the rulemaking public comment hearing. The record of this case will close on **Monday, August 19, 2019** at 5:00 p.m.

This official Notice of Proposed Rulemaking contains official dates and deadlines and is published in the New Mexico Register and in two newspapers of general circulation. A copy of this Notice of Proposed Rulemaking will be posted on the Rulemaking Proceedings section of the Commission's website at <http://www.nmprc.state.nm.us> under Case No. 18-00323-FM and on the New Mexico Sunshine portal at <https://www.sunshineportalnm.com>. Because rulemaking public comment hearing dates, times, or locations are occasionally rescheduled, due to inclement weather conditions or other conditions outside of the control of the Commission, interested persons should access the Rulemaking Proceedings section of the Commission's website at <http://www.nmprc.state.nm.us> under Case No. 18-00323-FM, or should contact the Commission through Mr. Isaac Sullivan-Leshin at (505) 827-4501, to confirm the date, time, and place of the hearing. If you are an individual with a disability that requires assistance or an auxiliary aid (such as a sign language interpreter) to participate in any aspect of this process, please contact Mr. Sullivan-Leshin at least 48 hours prior to the commencement of the rulemaking public comment hearing.

**REGULATION AND
LICENSING DEPARTMENT
MESSAGE THERAPY BOARD**

**PUBLIC RULE HEARING AND
REGULAR BOARD MEETING**

The New Mexico Massage Therapy Board will hold a rule hearing on Tuesday, August 27, 2019, at 10:00

a.m. Following the rule hearing, the Board will convene a board meeting to consider adoption of the rules and address regular business. The rule hearing and board meeting will be held at the New Mexico Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, New Mexico, in the Rio Grande Room.

The purpose of the rule hearing is to consider proposed amendments to the following rules:

16.7.1 NMAC - General Provisions
 16.7.2 NMAC - Professional Conduct
 16.7.3 NMAC - Fees
 16.7.4 NMAC - Requirements for Licensure
 16.7.5 NMAC - Requirements for Schools
 16.7.6 NMAC - Requirements for Instructors
 16.7.7 NMAC - Students
 16.7.10 NMAC - Examinations
 16.7.11 NMAC - Continuing Education
 16.7.12 NMAC - License/Registration Renewal
 16.7.14 NMAC - Complaints
 16.7.16 NMAC - Parental Responsibility Act

The changes to Parts 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 14, and 16 of the Board's rules are primarily intended to address the significant changes to the Massage Therapy Practice Act, Sections 61-12C-1 to -28 NMSA 1978 (1991, as amended through 2019) (the "Act"), which occurred this past Legislative Session. *See* S.B. 200, 54th Leg., 1st Sess. (N.M. 2019), available at <https://www.nmlegis.gov/Sessions/19%20Regular/final/SB0200.pdf>. The most significant of these changes to the Act was to deregulate massage therapy instructors. The changes to the Board's rules, therefore, are primarily intended to remove rules pertaining to massage therapy instructors and heavily revise rules addressing continuing education. More broadly, the rule changes are intended to comply with the provisions of the Act, incorporate more consistent

terminology, and clarify existing provisions.

To obtain and review copies of the proposed changes you may go to the Board's website at: http://www.rld.state.nm.us/boards/Massage_Therapy_Rules_and_Laws.aspx, or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Martha Gallegos, Acting Board Administrator, via electronic mail at massage.board@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Monday, August 26, 2019. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board's website at: http://www.rld.state.nm.us/boards/Massage_Therapy_Rules_and_Laws.aspx, no more than three business days following receipt to allow for public view.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Martha Gallegos, Acting Board Administrator at (505) 476-4622.

Statutory Authority: The Massage Therapy Practice Act, Sections 61-12C-1 to -28 NMSA 1978 (1991, as amended through 2019), among other provisions, specifically authorizes the Board to "adopt and file ... rules necessary to carry out the provisions of the Massage Therapy Practice Act."

Summary of Proposed Changes:

In addition to making minor clarification changes and removing all language related to registrations for massage therapy instructors, the proposed rules are summarized as follows:

16.7.1 NMAC - General Provisions

The amendments to Part 1 add new definitions for the terms "curriculum," "syllabus," "Continuing Education Provider," and "Non-Continuing Education Provider." Provisions pertaining to scope of practice and the definition of massage therapy would be amended to mirror those found in the Massage Therapy Practice Act (the "Act").

16.7.2 NMAC - Professional Conduct

The amendments to Part 2 Supplement the code of professional conduct to provide that licensees and applicants may not be convicted of any crime that substantially relates to the qualifications, functions, and duties of a massage therapist.

16.7.3 NMAC - Fees

The amendments to Part 3 add new fees (as authorized by Senate Bill 200 this past Legislative Session) pertaining to continuing education courses.

16.7.4 NMAC - Requirements for Licensure

The amendments to Part 4 replace existing language pertaining to licensure exemptions with language found directly in the Act. In addition, the amendments propose to authorize the Board to, in the future, accept other licensing or certification exams beyond those already specifically accepted.

16.7.5 NMAC - Requirements for Schools

The amendments to Part 5 add new provisions setting qualifications and required documentation for instructors and teaching assistants within registered massage therapy schools' minimum curricula, as authorized by Senate Bill 200 this past Legislative Session. Instructors within the minimum curricula would be required to hold a valid New Mexico massage therapy license, have completed at least fifty contact hours of teaching instruction, and have practiced massage therapy for a minimum of two years out of the past three.

Schools would be required to submit documentation to that end.

16.7.6 NMAC - Requirements for Instructors

Part 6, which previously regulated massage therapy instructors, would be repealed in its entirety, as effectively mandated by Senate Bill 200 this past Legislative Session.

16.7.7 NMAC - Students

The amendments to Part 7 exclusively remove all language related to registrations for massage therapy instructors.

16.7.10 NMAC - Examinations

The amendments to Part 10 would include language similar to that in the amendments to Part 4 with respect to licensing examinations. Specifically, the amendments would allow applicants to take a licensing examination that itself had previously been approved by the Board.

16.7.11 NMAC - Continuing Education

The amendments to Part 11 propose significant changes to licensees' continuing education requirements as effectively mandated by Senate Bill 200 this past Legislative Session. Specifically, the Board would utilize a two-track process for approving continuing education courses, differentiating between those courses taught by "Continuing Education Providers" and "Non-Continuing Education Providers." While the Board would accept either towards a licensee's continuing education requirements, the approval process differs among providers as set forth in greater detail in the amended rule. The Board would utilize a ten-percent audit and ninety-percent attestation process to ensure compliance among licensees.

16.7.12 NMAC - License/Registration Renewal

The amendments to Part 12 are exclusively clarification changes and other alterations removing all language related to registrations for massage therapy instructors.

16.7.14 NMAC - Complaints

The amendments to Part 14 are exclusively clarification changes and other alterations removing all language related to registrations for massage therapy instructors.

16.7.16 NMAC - Parental Responsibility Act

The amendments to Part 16 exclusively remove all language related to registrations for massage therapy instructors.

SECRETARY OF STATE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING CANCELLATION

The Office of the New Mexico Secretary of State ("Office") hereby gives notice that the Office will cancel the public comment hearing for proposed new rule 1.10.17 NMAC - Election Fees, originally scheduled for the State Capitol Room 322, 491 Old Santa Fe Trail, Santa Fe, New Mexico 87501, on Monday, July 29, 2019, from 9:00 am to 12:00 pm; the Vincent E. Griego Chambers, Albuquerque/Bernalillo County Government Center, 1 Civic Plaza NW, Albuquerque, NM 87102, on Tuesday, July 30, 2019, from 9:00 am to 12:00 pm; and the Doña Ana County Commission Chambers, 1st Floor, Doña Ana County Government Center 845 North Motel Boulevard, Las Cruces, NM, on Wednesday, July 31, 2019, from 1:00 pm to 4:00 pm. It is important to note that the Office will still hold public comment hearings on its proposed new rules relating to Top-Two Runoff Elections and Ranked Choice Voting and Ballot Questions; to be codified as Parts 1.10.14 and 1.10.16 NMAC originally noticed with rule 1.10.17 NMAC, at the same time and locations provided above.

SECRETARY OF STATE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING CHANGE

The Office of the New Mexico Secretary of State ("Office") hereby gives notice of a time and place change for the final rule hearing for the proposed new rules relating to Top-Two Runoff Elections and Ranked Choice Voting and Ballot Questions; to be codified as Parts 1.10.14 and 1.10.16 NMAC, originally published as being held at the City Council Chambers, City Hall, 700 N Main St, Las Cruces, NM 88001, on Wednesday, July 31, 2019, from 9:00 am to 12:00 pm. The time of this rule hearing has been changed to 1:00 pm to 4:00 pm. The location of this hearing has been changed to Doña Ana County Commission Chambers, 1st Floor, Doña Ana County Government Center, 845 North Motel Boulevard, Las Cruces, NM. Therefore, the final rule hearing for the noticed rules will be held at Doña Ana County Commission Chambers, 1st Floor, Doña Ana County Government Center, 845 North Motel Boulevard, Las Cruces, NM, on Wednesday, July 31, 2019, from 1:00 pm to 4:00 pm. Please contact Dylan K. Lange by phone at: 505-827-3629, or by email at: Dylan.Lange@state.nm.us, with any questions or comments about this change.

SECRETARY OF STATE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

The Office of the New Mexico Secretary of State ("Office") hereby gives notice that the Office will conduct a public hearing on amendments to the campaign finance rule that is currently codified in Part 1.10.13 NMAC - Campaign Finance. The public hearing will be held at

the State Capitol Room 322, 491 Old Santa Fe Trail, Santa Fe, New Mexico 87501, on Friday, August 16, 2019, starting at 1:00 pm. Every effort will be made to ensure that this hearing will be live streamed on the Office's website. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed amendments to the rule.

Authority: This rule is authorized by Sections 1-2-1 and 1-19-26.2 NMSA 1978, of the Campaign Practices Act, ("Act"), which authorizes the Office to adopt and promulgate rules and regulations to implement and provide uniform effective procedures and regulations to enable the provisions of the Act. Further, Senate Bill 3 (2019), mandated the Office, in consultation with the Attorney General, to promulgate rules to implement the amendatory provisions of the Act.
1.10.13 - Campaign Finance

Purpose: The purpose of this amendment is to provide clear guidance regarding the application and implementation of the provisions of the Act to affected parties, while also providing for clear and specific guidance to the Office in administering and enforcing the law. This amendment provides clarifying language on the regulation of independent expenditure reporting, advertising, and legislative caucus committees.

Summary of Full Text: These proposed amendments reflect the changes to the Act based on the passage of Senate Bill 3 (2019). The proposed amendment corrects and clarifies portions of Section 27 relating to the handling of contribution limits collected during primary and general election reporting cycles. The amendment further clarifies and defines the regulation and registration requirements for the newly created legislative caucus committees. Section 11 reflects the changes in law relating to the reporting of independent

expenditures. Finally, the rule clarifies language relating to advertising.

Details for Obtaining a Copy of Rules and Submitting Oral or Written Comments:

Copies of the proposed rule are available on the Office's website at www.sos.state.nm.us or can be obtained from the Bureau of Elections by calling (505) 827-3600 or emailing sos.rules@state.nm.us. Interested individuals may provide comments at the public hearing and/or submit written comments to Dylan Lange, Deputy Elections Director via email at sos.rules@state.nm.us, or Dylan.Lange@state.nm.us, fax (505) 827-8081, or by regular mail at Attn: Dylan Lange – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. Written comments must be received no later than 5:00 pm on the date prior to the hearing. All written public comment will be posted on the website throughout the written comment period at: www.sos.state.nm.us.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email Dylan.Lange@state.nm.us (5) business days prior to the hearing.

End of Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

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

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.26.4 NMAC, Sections 5 thru 21, and adding new Sections 22 and 23, effective 7/16/2019.

Explanatory paragraph: Some amendments to Sections 8, 10, 15 and 21, effective 6/25/2019, were inadvertently left out of earlier filing and so all amendments for these Sections are listed in full herein. Section 15 – Foster Care Provider Training has been renumbered back to Section 14 in this amendment, due to re-arrangement of sections, as recommended by the Administrative Law Division. Section 21 – Denial, Revocation, Suspension or Non-Renewal of a License has been renumbered back to Section 19 in this amendment, due to re-arrangement of sections, as recommended by the Administrative Law Division. Statute citations throughout the rule were corrected to conform to correct legislative styles.

8.26.4.5 EFFECTIVE DATE: ~~[May 29, 2009]~~ July 16, 2019, unless a later date is cited at the end of a section.
[8.26.4.5 NMAC - Rp, 8 NMAC 27.3.5, 5/29/09; A, 6/25/2019; A, 7/16/2019]

8.26.4.6 OBJECTIVE:
To create uniform standards for licensing of foster care and adoptive homes in New Mexico which are consistent with the best interest, safety, permanency, and well-being of children by:

A. enabling protective services division or licensed child placement agencies to license and

monitor foster and adoptive homes;

B. enabling protective services division to set standards for the application and operation of foster and adoptive homes to protect the best interest of children in foster or adoptive placement; and

C. complying with the New Mexico Children's Code, the New Mexico Adoption Act and regulations, the Indian Child Welfare Act, the Adoption and Safe Families Act, the Interstate Compact on Placement of Children, the Interstate Compact on Adoption and Medical Assistance, the Multi-Ethnic Placement Act, as amended by the Inter-Ethnic Adoption Provisions of 1996, the Safe and Timely Interstate Placement of Foster Children Act, the Adam Walsh Act, the Fostering Connections for Success and Increasing Adoptions Act, the Child Abuse Prevention and Treatment Act Reauthorization of 2010, Every Student Succeeds Act, Family First Prevention Services Act, and the New Mexico Administrative Code.
[8.26.4.6 NMAC - Rp, 8 NMAC 27.3.6, 5/29/09; A, 8/15/11; A, 7/16/2019]

8.26.4.7 DEFINITIONS:

A. **"Administrative appeal"** is a formal hearing for families whose license has been revoked, suspended, or not renewed. The family has the opportunity to present evidence to an impartial hearing officer in accordance with CYFD's Administrative Appeals regulations 8.8.4 NMAC.

B. **"Administrative review"** ~~[is an informal process in which may include an informal conference or a record review, and does not create any substantive rights for the family.]~~ is an informal process for families whose application for license has been denied. The review

may include an informal conference or a record review, and does not create any substantive rights for the family.

C. **"Adoptee"** refers to any person who is the subject of an adoption petition.

D. **"Adoption"** is the establishment of a court sanctioned legal parental relationship between an adult and a child.

E. **"Adoptive home"** refers to:

(1) ~~— a foster family licensed by PSD or by a licensed child placement agency who chooses to adopt a foster child; or~~
(2) ~~— a family approved by PSD and a private agency or a licensed individual to adopt a child.]~~ "Adoptive parent" refers to a foster parent licensed by PSD or by a licensed child placement agency who has finalized the adoption of a foster child.

F. **"Agency"** means any PSD licensed individual, partnership, association or corporation, for profit or non-profit, undertaking to place a child in a home in this or any other state for the purpose of providing foster care or adoption services. An agency may be licensed as an adoption agency, a foster care agency or both.

(1) **"Adoption agency"** means an agency licensed by PSD to facilitate the adoption of a child or perform a service within the adoption process.

(2) **"Foster care agency"** means an agency licensed by PSD for the purpose of supervising foster care homes, treatment foster care homes, or other levels of foster care as developed by PSD.

G. **"Applicant"** is any person who applies to ~~[be considered as a potential foster care provider, treatment foster care provider, or an~~

adoptive family.] become licensed as a foster parent to be considered as a potential foster care provider, treatment foster care provider, or an adoptive parent.

H. “Application” is the document by which persons who wish to become foster or adoptive parents request an assessment of their home and family, and the issuance of a license. The document also authorizes the department or licensed child placement agency to obtain relevant information from the applicant and other authorized persons in order to conduct an assessment of the applicant’s qualifications. The applicant shall certify that there are no willful misrepresentations in the application.

I. “Assessment” is the process of collecting information and conducting interviews with applicants by the licensing agent, and evaluating that information to determine the suitability of an applicant for a foster parent license.

J. “Child abuse and neglect check” is a review of the PSD information management system (also known as FACTS), or another state’s central abuse or neglect registry to determine if there have been any previous referrals on the family to this state’s or any other state’s child protective services division.

K. “Client” means a foster care or adoptive parent applicant, foster care or adoptive family, a foster or adoptive child, or the child’s biological family who receives services from a child placement agency or protective services.

[E.] “Concurrent planning” refers to case planning and legal practices providing reunification services while simultaneously implementing an alternative case plan.]

[M:] L. “Criminal records check (CRC)” means federal, state or local checks for criminal offenses conducted by CYFD on potential and current foster and adoptive parents, and of all adults living in the foster or adoptive home.

M. “CRC Clearance letter” is a document provided to the licensing agent to inform them if the prospective foster or adoptive parent is cleared to proceed with licensing process.

N. “CYFD” means the New Mexico children, youth and families department.

O. “FACTS” means the PSD management information system.

P. “Fictive kin” [is a person not related by birth or marriage who has an emotionally significant relationship with the child.] means a person not related by birth, adoption or marriage with whom a child has an emotionally significant relationship.

Q. “Foster care provider” or “foster parent” means a person, including a relative of the child, licensed by the department or a child placement agency to provide care for children in the custody of the department or agency.

[Q:] R. “Foster child” [is a child who is placed in the care and custody of children, youth and families department protective services division either under the legal authorization of the Children’s Code or through a voluntary placement agreement signed by the parent or legal guardian, or a child who is placed with a licensed child placement agency under the authority of the Child Placement Agency Licensing Act. If the court orders legal custody to a relative, person, facility, or agency other than the children, youth and families department protective services division, the child is not a foster child of protective services division:] as referred to as “child” herein, means a child who is placed in the care and custody of children, youth and families department protective services division either under the legal authorization of the Children’s Code or through a voluntary placement agreement signed by the parent or legal guardian, or a child who is placed with a licensed child placement agency under the authority of the Child Placement Agency Licensing Act. If the court

orders legal custody to a relative, person, facility, or agency other than the children, youth and families department protective services division, the child is not a foster child of protective services division.

[R.] “Foster home” refers to a person or persons licensed by PSD, or a licensed child placement agency to provide foster care services including emergency, respite, non-relative, relative, or treatment foster care. The persons may also be concurrently licensed to adopt.]

S. “Foster home license” is the document which bears the name [or names] and address [or addresses] of those [who] individuals who have met these licensing requirements and are foster parents for the protective services division or licensed child placement agency. The license displays the ages and number of foster children the licensees [is] are authorized to care for and the date such authorization begins and ends. The license shall bear the signature of the authorized person who issued the license.

[T.] “Foster parent” is the person named on the license issued by protective services division or a licensed child placement agency who is authorized to care for foster children. Throughout this policy, the term foster parent also refers to an adoptive parent whose adoption has not yet finalized.]

[U:] T. “Home study” is the final written document that results from the assessment process to determine the suitability of an applicant for a foster parent license.

[V:] U. “Licensing agent” means the qualified individual [with the proper credential and qualifications conducting] who conducts a home study.

V. “Pre-adoptive parent” refers to a foster care provider who has signed an adoption agreement to adopt a foster child, but whose adoption has not yet finalized.

[W:] W. “Protective services division (PSD)” refers to the protective services division of the children, youth and families department, and is the state’s designated child welfare agency.

X. “PSD custody”

means custody of children as a result of an action filed pursuant to the New Mexico Children’s Code, 32A-4-1 et seq. NMSA 1978 or 32A-3B-1 et seq. NMSA 1978.

Y. “Relative” [refers to mothers, fathers, brothers, sisters, grandparents, aunts, uncles, nieces, nephews, first cousins, mother-in-laws, father-in-laws, sister-in-laws, and brother-in-laws, as well as fictive kin.]

means a person related to another person by birth, adoption or marriage, within the fifth degree of consanguinity or affinity. Fictive kin, as defined herein, may be considered a relative if it is determined to be in the best interest of the child.

Z. “Resident of New Mexico”

means a person who has become domiciled in the state by establishing legal residence with the intention of maintaining residency indefinitely.

[Z:] AA. “Respite care”

[means a licensed foster parent(s) who are able to care for foster children for short periods of time when the child’s original foster parents are unable to provide care:] is a short period of time when a foster child is cared for by an alternate foster parent because the original foster parent is temporarily unavailable to provide care.

[AA:] BB. “SAFE”

means the structured analysis family evaluation© home study format, which is the only home study format approved for use in New Mexico.

[BB:] CC.

“Specialized foster home” means a family foster home licensed by PSD in which at least one adult has the required education, training or experience necessary to care for a child who has been certified as special needs.

[CC:] DD.

“Treatment foster care home” is a foster home licensed by a child placement agency to provide intensive therapeutic support, intervention and treatment for a child who would otherwise require a more restrictive placement.

[8.26.4.7 NMAC - Rp, 8 NMAC 27.3.7 & 8.27.2.7 NMAC, 5/29/09; A, 8/15/11; A, 7/16/2019]

8.26.4.8 ELIGIBILITY:

A. Any adult age 18 or older who is a legal resident of the United States and who is a resident of New Mexico can apply to become a licensed foster parent.

[B.] ~~A petition for adoption may be filed in New Mexico by any adult, age 18 or older, who:~~

(1) ~~is a New Mexico resident as defined in the Adoption Act, 32A-5-3(Y) NMSA-1978, and pursuant to the Adoption Act, 32A-5-11(B) NMSA 1978; or~~

(2) ~~is a non-resident, who meets the requirements pursuant to the Adoption Act, 32A-5-11(C) NMSA 1978, and the child was placed by CYFD or a New Mexico-licensed child placement agency and the adoptee is a resident of New Mexico or was born in New Mexico, but is less than six months of age.~~

C. ~~Any adult seeking to adopt a child in PSD custody must be approved as an adoptive parent and licensed as a foster parent.~~

D. ~~CYFD employees who meet all licensing requirements may serve as foster or adoptive parents. A CYFD employee is not allowed to foster or adopt any child with whom he or she is working with in an official capacity.]~~

B. Any person wishing to adopt a child in PSD custody shall be a licensed foster parent and shall obtain approval for adoption from PSD.

C. CYFD employees and their families who have met all licensing requirements may serve as foster or adoptive parents. A CYFD employee and their family members shall not be allowed to foster or adopt any child with whom the employee is working with in an official capacity.

[E:] D. A foster or adoptive family may be a single parent, a married couple or an unmarried couple.

[F:] E. No persons shall be licensed as foster parents whose own children are currently in foster

care. No person shall be licensed as a foster parent whose parental rights have been terminated. Persons whose children have been formerly in foster placement may be licensed if the assessment of their application determines that the problems leading to the placement have been resolved.

[G:] F. ~~To be considered for [a PSD foster parent license issued by PSD:] foster care, applicants shall have sufficient income, apart from the reimbursement, to support themselves and their families, which includes shelter, food, utility cost, clothing, and other household expenses;~~

G. Applicants must be able to communicate with the child, the licensing agency, health care providers and other service providers.

H. [PSD recruits foster and adoptive families who demonstrate the ability to care for children in PSD custody and may deny applicants who are not willing to accept children in PSD custody.] At least one applicant in the home must have functional literacy such as having the ability to read medication labels.

[8.26.4.8 NMAC - N, 5/29/09; A, 8/15/11; A, 6/25/2019; A, 7/16/2019]

8.26.4.9 APPLICATION FOR INITIAL LICENSURE:

A. All persons wishing to become licensed foster [parents] parent [or an eligible adoptive home] for PSD or for a child placement agency [must] are required to complete the following:

(1) [complete an] a foster care application [form];

(2) [consent to] a home study;

(3) [consent to] a criminal records check and child abuse and neglect check; and

(4) [complete] the required pre-service training.

B. Applicants shall complete and sign the foster [home-licensing] care application provided by PSD or licensed child placement agency. The application shall include, but not be limited to the following:

(1) demographic data such as name,

address, telephone number, date of birth and social security number of all ~~[persons]~~ adults living ~~[in or frequently residing]~~ in the home;

(2) previous addresses for the past five years, including the dates;

(3) at least three year employment history preceding the date of application, if applicable;

(4) a statement from the applicant asserting that, if approved for license, the applicant shall adhere to the ~~[applicable]~~ statutes and regulations ~~[applying to]~~ governing foster ~~[or adoptive]~~ homes and their responsibilities which shall include:

(a) working with children and families on reunification or alternate case plan;

(b) working with PSD or an agency to ensure placement stability, such as accepting only children who can remain in the placement until adopted or discharged from care;

(c) working with PSD or an agency to ensure siblings are placed together or, if siblings are not jointly placed, to ensure ongoing sibling interaction;

(d) working with PSD or an agency to ensure the child's relative connections are maintained while in foster care;

(~~(e)~~) (e) ensuring that the safety of children is paramount;

(~~(f)~~) (f) adherence to foster parent responsibilities as set forth in Placement Services, 8.26.2.12 NMAC;

(g) disclosure of the identity and demographic information of all occupants living in the home;

(5) each applicant shall submit the names, addresses and telephone numbers of ~~[three]~~ two related persons and two non-related persons who have knowledge of the ~~[applicant]~~ applicant's character and suitability to be foster or adoptive parents; ~~[in addition to the names, addresses~~

~~and telephone numbers of all adult children residing out of the home shall be provided for references;]~~

(6) each applicant shall submit the names, addresses and telephone numbers of all adult children residing in and out of the home;

(~~(6)~~) (7) a statement of monthly income and expenditures;

(~~(7)~~) (8) information regarding past or present medical conditions and hospitalizations, including any institutionalization or treatment for behavioral or psychiatric disorders for all adults and children living in the home;

(~~(8)~~) (9) a [summary] disclosure of current and past marriages and significant adult interpersonal relationships;

(~~(9)~~) (10) a history of any application or licensure for foster care ~~[or adoptive homes]~~ in [this] New Mexico or any other state; if such history exists, the application shall also include a PSD approved notification form signed by the applicant that will serve the purpose of notifying the previous agency of the applicant's current application to the new agency and allow the release of assessment information and the home study to any agency considering the foster ~~[or adoptive]~~ family;

(~~(10)~~) (11) a history of arrests ~~[and investigations by PSD; and];~~

(12) any history with a child protective service agency; and

(~~(11)~~) (13) signature and date: the applicant's signature shall certify the information provided in the application form is true and complete and the application contains no willful misrepresentation. [8.26.4.9 NMAC - Rp, 8 NMAC 27.3.10 & 8.27.2.14 NMAC, 5/29/09; A, 8/15/11; A, 7/16/2019]

8.26.4.10 CRIMINAL RECORDS CHECKS (CRC): All persons wishing to become licensed foster ~~[parents or an eligible adoptive home]~~ care providers for PSD or for a child placement agency must

complete a ~~[criminal records check]~~ CRC.

A. CRCs are required for all applicants and adults living ~~[in the foster or adoptive]~~ home. Applicants who have a completed homestudy by a private agency must complete the CRC requirement for foster care providers.

B. ~~[CYFD-CRC unit conducts federal and state criminal records checks for all applicants and adults living in the home. PSD placement staff or agency staff shall submit to the CYFD-CRC unit two completed finger print cards for each applicant and adult living in the applicant's home. Agency staff shall also submit a certified check or money order payable to CYFD protective services division for the required fingerprinting fee for each applicant and adult living in the applicant's home. (Finger print packets including cards and instructions may be obtained from the CRC unit.)]~~ CRC clearance letter for all adults living in the home must be received by PSD or the child placement agency (CPA) prior to issuing a license and prior to a child being placed in a home. The CRC unit conducts federal and state criminal record checks for all adults living in the home.

C. ~~[PSD and agency staff shall conduct an additional criminal record check of the applicant and all adults living in the applicant's home through a search of nmcourts.com.]~~ PSD staff and CPA staff shall register applicants to be fingerprinted.

D. PSD staff and CPA staff shall complete the CRC application and submit to the PSD CRC Unit.

E. PSD and CPA staff shall conduct a search of the applicant and all adults living in the applicant's home through www.nmcourts.gov.

(~~(D)~~) F. Licensure shall not be approved in any case in which the CRC results for the applicant or any adult living in the applicant's home reveal any of the following federally mandated automatic disqualifiers:

(1) a felony conviction for child abuse or neglect;

(2) a felony conviction for spousal abuse;

(3) a felony conviction for a crime against children, including child pornography;

(4) a felony conviction for any crime involving violence, ~~[such as]~~ including rape, sexual assault, ~~[or]~~ homicide, robbery, and aggravated assault, but ~~[does]~~ not ~~[include]~~ including other ~~[physical]~~ assault (not aggravated) or battery; or

(5) a felony conviction within the past five years for ~~[physical]~~ assault, battery, or a drug or alcohol related offense.

~~[E.]~~ **G.** Applicants who have a conviction for crimes other than those noted above are not automatically disqualified; however this information shall be used to determine suitability for licensure. All police or court records relating to the applicant or other adult living in the home shall be considered in determining suitability for licensure.

~~[F.]~~ **H.** The home study process for any applicant or adult living in the home with a pending criminal charge and no disposition shall be closed. The applicant may reapply after disposition of the charge. [8.26.4.10 NMAC - Rp, 8.27.2.16 NMAC, 5/29/09; A, 8/15/11; A, 6/25/2019; A, 7/16/2019]

8.26.4.11 CHILD ABUSE AND NEGLECT CHECK:

A. For families applying to be licensed by PSD, staff shall conduct a FACTS ~~[review]~~ search for abuse and neglect referrals on the applicant and all adults living in the applicant's home. If the applicant or any other adult living in the home resided in any state(s) other than New Mexico in the five years prior to the date of the application, PSD shall request that each such state ~~[review]~~ search its abuse and neglect information system or registry for information on the applicant or other adults living in the home and submit the results of that ~~[review]~~ search to PSD. PSD must receive the results of the check or a letter from the other state if they do not have central registry prior to the issuing of a license and prior to a child being placed in a home.

B. For families seeking to become foster ~~[or adoptive homes]~~ care providers through agencies other than PSD, the agency shall submit ~~[- at the time they submit finger print cards;]~~ a signed and notarized PSD approved "child abuse and neglect check ~~[for prospective foster or adoptive parents]~~" form to request that the CRC unit conduct a FACTS ~~[review]~~ search for abuse and neglect referrals on the applicant and each adult living in the applicant's home. If the applicant or any other adult living in the home resided in any state(s) other than New Mexico in the five years prior to the date of the application, the agency shall request that each such state ~~[review]~~ search its abuse and neglect information system or registry for information on the applicant or other adults living in the home and submit the results of that ~~[review]~~ search to ~~[PSD]~~ the requesting agency. CPA must receive the results of the check or a letter from the other state if they do not have central registry prior to the issuing of a license and prior to a child being placed in a home.

C. If the applicant or any adult living in the applicant's home has been the subject of a substantiated allegation of sexual exploitation or sexual abuse of a child, or has been substantiated for child abuse that resulted in a child fatality, then the applicant shall not be licensed.

D. In the event of a substantiated report of child abuse or neglect, other than substantiated sexual exploitation, ~~[or]~~ sexual abuse or child abuse resulting in death as listed above, involving the applicant or any adult living in the home, the application is assessed on a case-by-case basis to determine if the safety of any child in the home can be assured. This information shall be used to determine suitability for licensure.

E. Persons who have been referred to PSD for investigation of allegations of child abuse, ~~[or]~~ neglect or exploitation may be considered for licensure. The best interest of children is paramount. Licensure may be denied based on the

professional judgment of the licensing agent.

F. The home study process for any applicant or adult living in the applicant's home with a pending child abuse or neglect investigation and no disposition shall be closed. The applicant may reapply when the investigation is complete. [8.26.4.11 NMAC - Rp, 8.27.2.17 NMAC, 5/29/09; A, 8/15/11; A, 7/16/2019]

8.26.4.12 ASSESSMENT PROCESS FOR FOSTER OR ADOPTIVE HOME LICENSE:

A. Only qualified ~~[persons employed by]~~ PSD and CPA staff ~~[qualified staff of licensed child placement agencies]~~ or individuals certified by PSD as licensing agents shall conduct home studies. (See process for certification as a licensing agent as set forth in the Adoption Act Regulations, 8.26.3.17 NMAC)

B. Upon receipt of the application to become a foster ~~[or adoptive family]~~ care provider, the licensing agent has five days to contact the family.

C. Home study forms and requirements are determined by PSD. The SAFE home study is the approved format to be used in New Mexico.

D. All ~~[foster or adoptive]~~ applicants are assessed for their suitability to care for children who might be placed in their home. Although any previous foster care assessments and home studies that are obtainable shall be considered, the licensing agent shall conduct an independent assessment and home study.

~~[E.]~~ PSD gives priority to applicants that meet the needs of children in PSD custody;

~~[F.]~~ **E.** In addition to the CRC and abuse and neglect checks, as described herein at 8.26.4.10 and 8.26.4.11 NMAC, the minimum documentation required for the assessment process includes:

(1) a physical exam report, paid for by the applicant, which certifies that all ~~[adult household members]~~ applicants are

in good mental and physical health with a statement from the physician as to whether any medical or mental health conditions may affect the applicant's ability to care for a foster child. The medical report shall be dated within ~~[twelve]~~ 12 months of the application date and include a list of any prescribed medications and the reasons for which they are prescribed to include use of medical marijuana;

(2)

immunization records or waiver issued by the department of health for any child residing in the home;

(3) all

household members who will be caregivers of infants must have an up to date pertussis (whooping cough) vaccine consistent with the recommendations of the Advisory Committee on Immunization Practices (ACIP), unless the immunization is contrary to the individual's health as documented by a licensed care professional;

(4) all

household members who will be caregivers of infants and children with special needs must have an up to date annual influenza vaccine consistent with the recommendations of the ACIP, unless the immunization is contrary to the individual's health as documented by a licensed care professional;

(~~(3)~~) (5) a copy

of the applicant's current and valid driver's license and proof of motor vehicle insurance for any vehicle used to transport a foster child;

(~~(4)~~) (6) a copy

of the applicant's current marriage license and all previous divorce decrees, if applicable;

(~~(5)~~) (7) proof of

school enrollment or home schooling for all school aged children residing in the home;

(~~(6)~~) (8) [proof of]

the applicant's Permanent Residency Card or proof of U.S. citizenship such [as a social security card, or proof of permanent residency, such as a green card] a birth certificate or certificate of naturalization;

(~~(7)~~) (9) a signed

PSD approved release of information form; and

~~(8)~~ (10)

a signed foster parent agreement [~~if applicable~~].

~~(G)~~ F. The licensing agent shall contact the ~~[three]~~ four ~~(two related and two non-related)~~ references provided by ~~[the]~~ each applicant and shall contact any adult children living in and out of the parental home. The purpose of the contact is to assist in determining the applicant's suitability to become a foster ~~[or adoptive parent]~~ care provider. In addition to completion of the SAFE reference form, the licensing agent shall contact the adult children in person or by phone.

~~(H)~~ G. The licensing agent shall conduct at least one individual interview with each [adult] person living in the applicant's home, ~~[This includes]~~ including children and any relatives or other adults living in the home. The individual interviews shall be conducted separately, in private, and away from other household members. If any person(s) who lives in the home declines to be interviewed or participate in the home study process, the foster ~~[or adoptive home]~~ care provider shall not be licensed ~~[or certified]~~.

~~(I)~~ H. A minimum of ~~[two]~~ three home visits shall be made to the ~~[proposed]~~ prospective foster ~~[or adoptive home]~~ care provider.

I. The licensing agent shall assess the physical and mental health history of the applicant, including any history of drug and alcohol abuse or treatment. This information shall be used to determine suitability for licensure.

J. If it is determined by the licensing agent that the applicant has willfully misrepresented any information during the home study process, the licensing agent may deny licensure.

~~(J)~~ K. The results of a foster home ~~[or relative foster]~~ home study are documented in PSD's approved home study format and filed in the foster ~~[parent]~~ care provider record maintained by the licensing agent.

~~(K)~~ L. ~~[Once the home study process has been initiated,]~~

From the date of application, the licensing agent shall complete the home study within ~~[120 days for non-relative foster or adoptive homes, and 90 days for relative foster or adoptive home:]~~ the following timeframes:

(1) For a non-relative applicant: 120 days;

(2) For a relative or fictive kin applicant who takes placement of the child upon the child's initial entry into foster care: 60 days with one possible 30 day extension approved by the regional manager;

(3) For a relative or fictive kin applicant who is applying for placement of a child already in a currently licensed foster home: 90 days.

[8.26.4.12 NMAC - Rp, 8 NMAC 27.3.14 & 15, 5/29/09; A, 3/31/10; A, 8/15/11; A, 7/16/2019]

8.26.4.13 [SAFETY-CHECKLIST FOR FOSTER AND ADOPTIVE HOMES] HOME HEALTH AND SAFETY:

A. Heating, cooling, and ventilation:

(1) A foster home shall be adequately ventilated. There shall be an effective means of providing fresh air to children's sleeping rooms, including at least one window.

(2) Fuel-burning equipment, including natural gas or liquid propane gas cooking ranges, shall be vented appropriately and ~~[meet applicable safety code requirements]~~ free of clutter or flammable material.

(3) Heating and cooling equipment shall be adequate in order to maintain an interior temperature, in all living areas, [of 65 degrees fahrenheit in all rooms] that will not pose a hazard or risk to a child's safety or health. Gas furnaces shall have a cut-off valve.

(4) The heating, cooling and ventilation systems and associated equipment shall meet all requirements of state and local safety codes.

(5) Space heaters and other heating devices shall

be used in a manner that does not pose a safety risk to children.

B. Water:

(1) A foster home shall have ~~[an adequate]~~ continuous supply of ~~[sanitary]~~ safe drinking water.

(2) A foster home shall be properly equipped to dispense temperature regulated hot water for bathing.

~~[(2)]~~ (3) If water is not obtained from a public supply, a well water certificate from the New Mexico environment department shall be provided for initial licensure, and at five year intervals. Well water testing instructions and an application form are available on the environment department website. Bottled water may be used for cooking and drinking if the water source is assessed to be unsuitable.

~~[(3)]~~ (4) Water supply piping and associated equipment shall be installed and maintained in in a manner that will not pose a hazard or risk to a child's safety or health and in compliance with state and local safety codes. There shall be a pop-off valve on the hot water heater.

C. Sewage, waste and sanitation:

(1) A foster home shall be kept clean and free of accumulation of dirt, waste, and infestations of insects and rodents.

(2) At least one properly operating toilet, sink, and bathing facilities shall be provided and maintained in a sanitary manner.

(3) There shall be sanitary methods of household waste disposal ~~[which meet applicable safety codes].~~

(4) Foster homes shall be free of clutter that ~~[may cause tripping or falling hazards]~~ will pose a hazard or risk to a child's safety or health.

D. Electrical wiring and communication:

(1) Electrical wiring shall ~~[comply with state and local safety codes]~~ be installed and maintained in a manner that will

not pose a hazard or risk to a child's safety or health. If the licensing agent has doubt of the adequacy of electrical wiring, the licensing agent shall request the applicant arrange and pay for a local electrical inspector to inspect the wiring and submit a report to the licensing agent.

(2) Electrical extension cords shall not be used for general wiring.

(3) Foster homes shall have a readily available mobile phone or landline telephone in case of emergencies.

E. Kitchen and food storage:

(1) ~~[A]~~ The foster home shall have [a kitchen with sufficient] designated, sanitary storage space to store food [shall be stored] separately from cleaning supplies and other household chemicals.

(2) The kitchen shall be equipped with a sink, stove, oven, and refrigerator sufficient to maintain cold food storage ~~[in a temperature range between 33 degrees and 45 degrees Fahrenheit]~~ safely.

(3) The kitchen and food preparation equipment and storage shall be maintained in a sanitary condition.

F. First aid and medical supplies:

(1) Foster parents shall maintain a stock of first aid supplies or a first aid kit in the foster home. ~~[The minimum acceptable stock includes]~~ Examples of first aid supplies may include but are not limited to:

(a) ~~[one box of]~~ non-medicated adhesive bandages;

~~[(b)]~~ one pair of blunt scissors;

~~[(c)]~~ [one roll of two inch or three inch] adhesive roller bandage;

~~[(d)]~~ [one roll of one-half inch] adhesive tape;

~~[(e)]~~ [one box of] sterile first aid dressings in sealed envelopes;

~~[(f)]~~ [e] first aid cream or ointment.

(2) These shall be stored ~~[in a single cabinet or kit,]~~ together and separate from food storage or household cleaning supplies or other chemicals or poisons.

(3) ~~[Prescription medicines shall be supplied and]~~ All medications, including legal prescriptions and non-prescription drugs, shall be supplied and administered only as prescribed. They shall be properly labeled, and stored separately from food, cleaning agents or other household chemicals and poisons and inaccessible to children. After the prescribed course of treatment has been completed, leftover medicine shall be disposed of in an appropriate manner and in accordance with the applicable law.

G. Personal items:

(1) Each foster child shall be provided an individual comb, toothbrush, night clothes, and under garments which shall not be interchanged between children.

(2) Linens and bedding shall be stored and maintained in a sanitary manner ~~[assuring that they will be clean].~~ All linens and bedding shall be laundered before use by another child.

H. ~~[Any animal, birds, and]~~ Household pets shall be in good health with documentation of required current vaccinations. Foster homes shall be in compliance with city and county ordinances related to domesticated animals. All animals owned by the foster care provider shall [and] have a temperament such that they will not be frightening or hazardous to foster children.

I. Foster home space, furnishing and sleeping arrangement:

(1) The home must be a house, mobile home, housing unit or apartment occupied by the applicant.

(2) The interior and exterior of the home must be free from dangerous objects and conditions, and from hazardous materials.

~~[(4)]~~ (3) A foster home shall have a separate bedroom for the foster parents and for any other

adults living in or frequently residing in the home. This shall not preclude a foster child under the age of [18] 24 months from sleeping in the same room with [his or her] their foster parents provided that the bedroom space is available for the foster child when [he or she] they [reaches] reach the age of [18] 24 months.

(4) Cribs must be of sturdy construction with bars closely spaced so that a child's head cannot be caught between the bars. Drop side cribs are prohibited.

(a) Cribs must have clean, individual crib size bedding.

(b) Crib mattress must be completely and securely covered with waterproof material.

[(2)] (5) There shall be a separate bed provided for each foster child [, ~~except that two children of the same gender may sleep in the same double bed~~].

[(3)] (6) A foster child over the age of five years shall not share a bedroom with another non-related child of the opposite gender.

[(4)] (7) The licensing agent may allow exceptions to the sleeping arrangement requirements to permit placement of siblings together in the same foster home.

[(5)] (8) Sleeping quarters for foster children shall be a contiguous part of the main family residential building or apartment. Exceptions can be made for those children over 16 years of age who are preparing for independent living.

[(6)] (9) There shall be sufficient closet space or furniture storage space to permit the [sanitary] clean storage of children's clothes, linens and bedding. There shall also be a designated receptacle for dirty clothes and linens.

[(7)] (10) Furnishings shall be clean and maintained in a sanitary and safe condition [at all times].

J. Doors and locks:

(1) A foster home shall have at least two

designated exits [that meet fire code standards] in case of a fire.

(2) [There shall be no interior door hardware which makes it possible for a child to be locked inside] Doors shall not be equipped with locking mechanisms that could allow for locking a child inside an interior space within the home. All privacy locks [shall be provided] shall be equipped with emergency unlocking mechanisms.

K. Yard and play space:

(1) A foster home shall have access to a safe indoor and outdoor designated play area.

(2) In areas which have a high density of traffic or other hazards to children, the yard or play space shall be adequately fenced for the children's protection.

(3) All outdoor play space and toys, swings and other outdoor equipment shall be maintained in a sound state of repair and free of projecting sharp edges, splinters or other hazards to children.

L. Trampoline Safety: PSD and child placement agencies shall require that all foster care providers be aware of trampoline safety issues and acknowledge their understanding of trampoline safety issues for a child that may be placed in their home. Trampolines may only be used at the foster home if the following requirements have been met:

(1) Installation of a trampoline enclosure;

(2) Placement of the trampoline on level ground;

(3) Placement of the trampoline a safe distance from trees and other structures;

(4) Shock-absorbing pads cover the springs, hooks, and frame;

(5) No ladder is used with the trampoline; and

(6) A caregiver provides supervision as follows:

(a) Only one child is on the trampoline at a time;

(b) Flips are not allowed on the trampoline;

(c) For children under 15 years old, the caregiver must be immediately present, watching the child(ren) at all times, enforcing safety rules, and able to respond in an emergency; and

(d) For children 15 years old and older, the caregiver must be on the premises, visually check on the child(ren) at frequent intervals, and able to respond in an emergency.

[L.] **M. Other safety issues:**

(1) Applicants shall have reliable, legal and safe transportation. If the applicant or family member operates an automobile, [he or she] the applicant and family members providing transportation shall have valid automobile insurance and registration as required by law and a valid driver's license. Motor vehicles shall have safety restraints as required by law and shall have properly installed car seats for age appropriate children.

(2) For age appropriate children, a foster home shall have child safety covers on electrical outlets, safety gates and locking mechanisms for cabinets that contain flammable materials, cleaning agents, [or] chemicals or hazardous materials.

(3) Alcohol beverages shall be stored in a manner that is inaccessible to children.

(4) A foster home shall have a carbon monoxide detector on each level of occupancy of the home and at least one near all sleeping areas.

[(3)] (5) A foster home shall have at least one operable fire extinguisher that is readily accessible.

[(4)] (6) A foster home shall have a smoke [detectors] detector on each level of occupancy of the home and at least one near all sleeping areas [appropriate for the square footage].

[(5)] (7) A foster family shall have a written emergency [develop a fire] evacuation plan to be

reviewed with the child and posted in a prominent place in the home.

~~(8)~~

A foster family shall maintain a comprehensive list of emergency telephone numbers, including poison control and post those numbers in a prominent place in the home.

~~(6)~~ **(9)** A foster family shall provide to PSD or the agency contact information for at least two locations, including one out of town location, where the foster family would go in the event that a community evacuation is necessary.

~~(7)~~ **(10)**

All weapons [owned or acquired by a foster family] shall be stored and locked and inaccessible to children.

All firearms shall be unloaded, locked and [with ammunition] stored separately from ammunition. Ammunition shall be locked and stored separately as per the PSD approved weapons safety agreement. The foster family shall provide a signed copy of the PSD approved weapons safety agreement to the licensing agent.

~~(8)~~ **(11)**

All pool areas, including hot tubs, shall [be adequately fenced or secured in order to prevent the access of children when not accompanied by an adult] have a barrier on all sides, shall be equipped with a safety device such as a bolt lock and shall be equipped with a life saving device. If the swimming pool cannot be emptied after each use, the swimming pool must have a working pump and filtering system. Spas or hot tubs [shall] must [be securely covered to prevent the access of children] have safety covers that are locked when not in use. All children using swimming pools or hot tubs must be accompanied by an adult. Outdoor ponds shall not be within the immediate play area of children.

~~(9)~~ **(12)**

Farm and ranch equipment shall not be easily accessible to foster children as a safety precaution. Farm animals shall be properly housed and secured as a safety precaution.

~~(10)~~ **At**

initial licensure, the licensing agent

will check the list of properties on clandestine drug laboratories in New Mexico website located on the New Mexico environment department homepage to verify the home has not been listed as a contaminated property. This verification shall be documented in the home study. Homes that are listed as contaminated properties shall not be licensed. For homes that have been previously licensed, the licensing agent shall check the clandestine drug laboratories in New Mexico website at the time of re-licensure. If a home has not been listed as a contaminated property, the licensing agent need not check the home again in further re-licensure.]

~~(11)~~ **(13)**

Smoking, including the use of electronic smoking devices, shall be prohibited in the house and in any vehicle used for transporting foster children.

(14) Any

material of a sexual nature shall not be accessible by children. Child pornography is illegal and never allowed in a foster home and will be reported to law enforcement.

[8.26.4.13 NMAC - Rp, 8 NMAC 27.3.11, 5/29/09; A, 3/31/10; A, 8/15/11; A, 7/16/2019]

8.26.4.14 FOSTER [AND-ADOPTIVE PARENT] CARE PROVIDER TRAINING:

A. All foster [and-adoptive parent] care applicants licensed by PSD and all foster care applicants licensed by child placement agencies shall successfully complete the required pre-service training prior to being licensed in New Mexico.

B. All foster care providers licensed by PSD and child placement agencies shall obtain first aid training which must include cardiopulmonary resuscitation (CPR) certification.

~~[B:]~~ **C.** All foster [and-adoptive parents] care providers licensed by PSD and all foster parents licensed by child placement agencies shall participate in at least [twelve] 12 hours of PSD or agency approved training each year.

(1) Foster

[parents] care providers licensed by PSD: Six of the [twelve] 12 [hours] required training hours shall be determined by the PSD foster care and adoption bureau. The remaining hours shall be determined by the [foster family and shall be approved by their PSD] placement worker in collaboration with the foster family and approved by the county office manager. The PSD worker shall document training hours in FACTS prior to annual re-licensure.

(2) Foster

[parents] care providers licensed by child placement agencies: Child placement agencies shall provide a minimum of twelve hours of training annually to their licensed families. PSD may in its sole discretion mandate the specific topics in those twelve hours.

[8.26.4.14 NMAC - Rp, 8 NMAC 27.3.12 & 8.27.2.15 NMAC, 5/29/09; A, 8/15/11; A, 6/25/2019; A, 7/16/2019]

8.26.4.15 INITIAL FOSTER HOME LICENSE:

A. A foster home license shall be granted or denied based upon the assessment and participation in the licensing process. The issuance of a foster parent license is not an entitlement.

B. The applicant and all adults living in the home shall complete all licensing requirements before the home can be licensed.

C. A license is only valid for the physical location reviewed during the assessment of the application. Licensed foster parents shall notify the licensing agent [prior to moving to a new address] 30 calendar days prior to moving to a new address. If the new residence meets licensing standards, the licensing agent shall issue a new license within [30] 10 business days after moving to the new address, for the remainder of the licensing period. A foster home license is not transferable.

D. A foster home license shall be valid for a period of two years from the date of issuance.

E. An initial foster ~~[parent]~~ care provider agreement outlining the stipulations of licensure shall be reviewed by the licensing agent and the foster parent. Signing of the agreement is an acknowledgement that ~~[the]~~ all stipulations are understood and accepted by all concerned. The initial agreement shall be signed prior to placing children in the home.

F. The maximum number of children in a foster home shall ~~[be determined by space limitations and the ability of the foster parent(s) to provide for adequate physical and emotional care. For homes licensed by PSD, a maximum number of]~~ not exceed six [is recommended, and any more than six children including children already living in the home must be approved the PSD regional managers], however, exceptions may be made when:

(1) To allow a parenting youth in foster care to remain with their child;

(2) To allow siblings to remain together;

(3) To allow a child with an established meaningful relationship with the foster family to remain with that foster family; and

(4) To allow a family with special training or skills to provide care to a child who has a severe disability.

G. No foster home shall be ~~[concurrently]~~ dually licensed ~~[or certified]~~ by more than one licensing entity ~~[-unless necessary for the purpose of adoption with approval from the PSD director].~~

H. Adoption of a child in the custody of PSD by a treatment foster care provider shall be approved by PSD regional manager. [8.26.4.15 NMAC - Rp, 8 NMAC 27.3.17 & 8.27.2.23 NMAC, 5/29/09; A, 8/15/11; A, 7/16/2019]

8.26.4.16 RELATIVE FOSTER CARE:

A. Protective services division shall give placement preference to relatives and fictive kin as foster care providers. In the event that a child is not placed in

a relative foster care placement. PSD shall continue to make diligent efforts to search for, identify and assess relatives throughout the life of the case for potential placement of the child. PSD shall assist relatives with meeting licensing requirements by mitigating barriers and offering support throughout the licensing process. If a relative cannot be licensed to provide foster care for a child, this shall not preclude the relative from maintaining a meaningful relationship with the child while in foster care.

B. The placement of a child in a non-relative home upon emergency removal shall be approved by the county office manager prior to placement of the child in the home.

~~[A:]~~ C. Relatives and fictive kin who provide foster care to children in PSD custody must be licensed.

~~[B:]~~ D. A child in PSD custody may be placed on a provisional basis with a relative or fictive kin provided [that] the PSD worker:

(1) completes a home visit to the home of the relative or fictive kin to begin the initial relative assessment;

(2) informs the relative or fictive kin foster care provider of the requirements to submit an application within three days of the child's placement in the home.

~~[(H)]~~ (3) [completes] conducts the initial relative assessment by collecting and assessing the following information:

(a) the child's attitude toward the prospective caregiver;

(b) the prospective caregiver's attitude toward the child and child's parents;

(c) the prospective caregiver's motivation to foster the child;

(d) the prospective caregiver's ability to safely parent the child;

(e) the prospective caregiver's ability to support the child's permanency plan;

(f) the national crime information center (NCIC) check completed by law enforcement or statewide central intake (SCI) on all adults residing within the relative's home.

~~[(e)]~~ (g) local background records check [that does not contain a disqualifying conviction];

~~[(H)]~~ (h) a check of nmcourts.com [for a disqualifying conviction];

~~[(g)]~~ (i) check of CYFD management information system for [a] abuse or neglect referral history with PSD; and

~~[(H)]~~ (i) completion of the [physical standards-checklist] home health and safety requirements;

~~[(2)]~~ (4) obtains supervisory approval.

~~[(C)]~~ E. The safety of the child is the primary consideration. If this is ever in conflict with the placement of the child with a relative, PSD makes the placement decision in favor of the child's safety and may deny licensure based upon PSD's initial relative assessment.

~~[(D)]~~ F. A provisional license is limited to 60 days, with one possible 30 day extension at the discretion of the PSD ~~[deputy-director]~~ regional manager. When a child is placed in the home under a provisional license, the relative foster parents are expected to complete all requirements of foster home licensing within 60 days of placement. Failure to meet these timeframe requirements ~~[within the 60 day time frame]~~ shall result in denial of licensure and the removal of the child.

[8.26.4.16 NMAC - Rp, 8.27.2.24 NMAC, 5/29/09; A, 8/15/11; A, 7/16/2019]

8.26.4.17 TYPE OF LICENSES AND CERTIFICATION:

A. Provisional license: A provisional license is a license issued by PSD to a relative or fictive kin upon satisfactory completion of the relative initial assessment. A provisional license may be issued to

facilitate or expedite placement of a child with a relative. A provisional license is valid for 60 days, with the possibility of one 30 day extension as described herein at Subsection [D] F of 8.26.4.16 NMAC.

B. [Family] Foster home license: A two year license issued by PSD only after all licensing requirements have been completed.

C. Specialized foster home [license] requirements: Foster homes shall be deemed specialized when it is determined they are able to meet the needs of the special needs child place in the home. Specialized foster homes are child-specific and are determined following the completion of at least 10 hours of training regarding the special needs of the child placed in the home. [A license issued by PSD to a family foster home in which at least one adult has the PSD specified education or training necessary to care for a child needing specialized care.] Such homes are limited to no more than three special needs certified children who need specialized care. When there are three special needs children in placement, no other children shall be placed.

D. Treatment foster care license: A license issued by a child placement agency to a [family] foster home to accept a child requiring intensive services when the agency has met both the child placement agency licensing regulations, and the treatment foster care standards contained in Treatment Foster Care Services, Certification Requirements for Child and Adolescent Mental Health Services, 7.20.11.29 NMAC. PSD does not license treatment foster care homes.

[8.26.4.17 NMAC - Rp, 8 NMAC 27.3.16, 5/29/09; A, 8/15/11; A, 7/16/2019]

8.26.4.18 [UPDATES- AND RENEWAL OF FOSTER HOME LICENSE] REVIEW AND RENEWAL OF FOSTER HOME LICENSE:

A. The licensing agent shall conduct an annual review of each foster home to include:

(1) documentation of completion of the training requirements and the plan for continued training as described herein at Subsection [B] C of 8.26.4.14 NMAC;

(2) [a] an abuse and neglect check [of] in FACTS [is conducted] on all adults living in the home;

(3) a check of nmcourts.com [shall be conducted] on all adults living in the home;

(4) a review of the agreement between the foster [parent] care provider, licensing agency, and PSD or child placement agency; the agreement shall be signed again to cover the remainder of the licensing period or the new licensing period;

(5) a review of placements made during the year, identification of strengths and training needs, and a review of current policies affecting foster care; and

(6) a review of incident reports made during the year;

[~~(6)~~] (7) a review with the foster [parent] care provider of their duty to disclose any arrests or abuse and neglect referrals; and

(8) a review and acknowledgement of receipt of the foster parent assurances with the foster care provider.

B. Foster families must meet the following re-licensure requirements every two years. The SAFE home study update shall be used for re-assessment for re-licensure. The reassessment shall include all requirements listed above in Paragraphs (1) – [~~(5)~~] (8) of Subsection A of 8.26.4.18 NMAC.

C. Before the end of the licensure period, both foster [parents] care providers and PSD or licensed child placement agency shall ensure that all requirements are met to qualify the family for a renewed license.

D. PSD or child placement agency foster home licenses shall be issued every two years, if they continue to meet requirements.

[8.26.4.18 NMAC - Rp, 8 NMAC

27.3.17, 5/29/09; A, 8/15/11; A, 7/16/2019]

8.26.4.19 DENIAL, REVOCATION, SUSPENSION, OR NON-RENEWAL OF A LICENSE:

A. Denial of a license:

(1) PSD or child placement agency staff may deny an applicant's request for licensure based on a documented professional assessment that the applicant cannot adequately provide safety, permanency, and well-being for children or when in the professional opinion of the licensing agent, conditions in the prospective foster home are not conducive to the fostering of children.

(2) Applicant's may be denied licensure at any point in the licensing process. The applicant shall be notified in writing of the denial within 10 business days of PSD or child placement agency's [the] final decision.

(3) Applicants who have been denied an initial foster parent license may request an administrative review of the reasons for the denial of the initial license. The request must be in writing and within 10 days of date of the notice of denial. This review is an informal process completed by the licensing agent, which may include an informal conference or record review. The administrative review does not create any substantive rights for the family.

B. Revocation or non-renewal of a license: A foster home license may be revoked or not renewed by the licensing agent at any time for reasons which may include but are not limited to:

(1) disqualifying criminal records check results as described herein at Subsection F, G, or H of 8.26.4.10 NMAC;

(2) disqualifying abuse and neglect check results as described herein at Subsection A through F of 8.26.4.11 NMAC;

(3) failure to comply with 8.26.2, 8.26.4, 8.26.5 NMAC or agency policies;

~~(4)~~ failure to immediately report any arrests to PSD or agency;

~~(5)~~ failure to report changes in the family, including the addition of new adult household members;

~~(6)~~ willful misrepresentation of any information during the home study process;

~~(4)~~ (7) failure to comply with health and safety measures, including those requirements described herein at 8.26.4.13 NMAC;

~~(5)~~ (8) returning a child to PSD or an agency without seeking support services provided by PSD or the agency or community service providers in order to preserve the placement;

~~(6)~~ (9) refusal to comply with case plan;

~~(7)~~ (10) inability to adequately meet the needs of the child;

~~(8)~~ (11) failure to include children in family activities;

~~(9)~~ (12) overuse or inappropriate use of respite care and reasonable and prudent parenting;

~~(10)~~ (13) failure to actively preserve connections with foster children and their birth families and community of origin such as:

(a) siblings or other birth relatives;

(b) church community; and

(c) fictive kin, or the child's friends;

~~(11)~~ (14) failure to demonstrate the ability to provide emotional support during [important developmental points in the course] fundamental times of a child's life;

~~(12)~~ (15) repeated refusals by the family to accept children who have been matched for placements;

~~(13)~~ (16) failure to participate in required training;

~~(14)~~ (17) failure to comply with PSD decisions regarding the child's safety, permanency, and well-being;

~~(15)~~ (18) misuse use or abuse of substances including but not limited to:

(a) alcohol;

(b) illegal [drugs] substances [; or]

(c) legal prescription drugs [or controlled substances] and non-prescription drugs;

~~(16)~~ (19) exposure of the child to cigarette smoking and tobacco products; and

~~(17)~~ (20) a documented professional assessment that continued licensure would be contrary to the safety, permanency, and well-being of the child, or in the opinion of the licensing agent that conditions in the foster home are not conducive to the fostering of children.

C. Corrective Action Plan (CAP): Corrective action plans may be implemented as an alternative to revocation of a license when, in PSD or the child placement agency's assessment, the foster care provider is capable of resolving the violations within a period of six months.

(1) It shall be PSD or the child placement agency's sole discretion whether a foster care provider may continue to have children placed in their home during the pendency of a CAP;

(2) A CAP must be in writing, signed and dated by the foster care provider and the licensing agent.

(3) The CAP shall set forth the policy violations of the foster care provider as described herein at Paragraphs (1) - (20) of Subsection B of 8.26.4.19 NMAC;

(4) The CAP shall set forth the conditions the foster care provider must meet in order to rectify the policy violations and the deadline within which they must meet the conditions. Conditions may include, but are not limited to the following:

(a) additional training;

(b) increased scheduled or unscheduled home visits by PSD or the child placement agents;

(c) compliance with the case plan for the child;

(d) participation in therapeutic, parenting, or other services.

(5) Failure of the foster care provider to agree to the terms of a CAP shall result in revocation for the policy violations that led to the proposed CAP;

(6) Failure to comply with the conditions of the CAP may result in revocation of the foster care license.

~~(E)~~ **D.** Suspension of a license: Suspension of a license can be voluntary or involuntary and last not more than six months.

(1) Voluntary reasons for suspension must be approved by the licensing agency and may include, but not limited to:

(a) medical conditions;

(b) adoption; or

(c) life changes within the household.

(2) Involuntary reasons for suspension may include all the reasons described herein at Paragraphs (1) - ~~(17)~~ (20) of Subsection B of 8.26.4.19 NMAC, as well as:

(a) screened-in abuse or neglect referrals; or

(b) during the period of a [professional-development] corrective action plan.

~~(F)~~ **E.** Notification: The foster [family] care provider shall be notified in writing, by return of receipt mail, of the [proposed action and] the reason for revocation, involuntary suspension or non-renewal of the license and shall provide the foster [family] care provider the opportunity to request an appeal before an impartial hearing officer appointed by or approved by the CYFD secretary

where the family has the opportunity to present evidence on their behalf and to be assisted by counsel. The foster family shall request an appeal within 10 business days of receipt of the notification of the proposed action. If the family does not request an appeal within the 10 business days, then the decision to revoke, suspend or not renew a license shall be final. Administrative hearings are conducted in accordance with 8.8.4 NMAC.

~~[E.]~~ **E.** Reinstatement ~~[or reissuance or]~~ of license: A foster ~~[or adoptive family]~~ care provider whose license has been revoked, suspended, ~~[placed on probation,]~~ or not renewed may petition the licensing agency that issued the license to have the license reinstated ~~[, or reissued]~~ upon proof that the noncompliance with the ~~[rules]~~ policies have ceased. The best interest of children shall be the primary consideration in determining whether reinstatement is appropriate. PSD or the child placement agency must ensure that all licensing requirements are met prior to reinstatement. A PSD decision to reinstate a license must be approved by the PSD regional manager. [8.26.4.19 NMAC - Rp, 8.27.2.25 & 26 NMAC, 5/29/09; A, 3/31/10; A, 8/15/11; A, 6/25/2019; A, 7/16/2019]

8.26.4.20 ~~[CHANGES IN HOUSEHOLD EFFECTING LICENSURE STATUS:~~

~~A.~~ Licensed foster parents must notify their licensing agent immediately of any circumstance that may impact their license. Such circumstances may include but are not limited to:

- ~~(1)~~ birth or death of household member;
- ~~(2)~~ serious illness of household member;
- ~~(3)~~ criminal arrest or conviction of any household member;
- ~~(4)~~ child abuse or neglect referrals involving a household member;
- ~~(5)~~ new person living in the home or a person leaving the home; or

~~(6)~~ change in address;

~~B.~~ The licensing agent shall assess changes within the foster home that may affect licensing status and take appropriate action based upon the assessment.

~~C.~~ Any adult intending to move into the foster or adoptive home shall meet all licensing requirements prior to residing in the home. **[RESERVED]**
[8.26.4.20 NMAC - Rp, 8.27.2.27 NMAC, 5/29/09; Repealed, 7/16/2019]

8.26.4.21 DOCUMENTATION RELATED TO LICENSING OF FOSTER AND ADOPTIVE HOMES:

A. Maintenance of records:

(1) Foster ~~[home parent]~~ care provider files: The agency and PSD shall maintain records concerning the evaluation of a foster ~~[home]~~ care provider, including but not limited to the application, assessment information, recertification of information, releases of information, criminal records and background checks, medical examination records, a copy of the foster home license and correspondence. PSD and licensed agencies shall retain records ~~[concerning the evaluations of a foster home for 10 years after the case is closed]~~ permanently in accordance with NMAC Retention and Disposition of Public Records 1.21.2.804 NMAC. If an agency is closed or goes out of business, the agency shall comply with the Child Placement Agency Licensing Standards currently codified at 8.26.5.30 NMAC.

(2) Adoption files: The agency, attorney, independent agent or PSD shall maintain records concerning adoptive families, including the foster ~~[home parent]~~ care provider file as described above at Paragraph (1) of Subsection A of 8.26.4.21 NMAC, as well as adoption case information including but not limited to the adoption decree, annual contact reports, and adoption assistance agreements.

(a) Finalized adoption cases: PSD and agencies shall retain finalized adoption records in locked files for 100 years from the date of birth of the youngest child. The agency may preserve records through microfilming or other electronic measures. In the ~~[even]~~ event an agency is closed or goes out of business, the agency shall comply with the Child Placement Agency Licensing Standards currently codified at 8.26.5.30 NMAC.

(b) Disrupted or proposed adoptions not finalized: PSD and agencies shall retain cases for five years after the case is closed. In the event an agency is closed or goes out of business, the agency shall comply with the Child Placement Agency Licensing Standards currently codified at 8.26.5.30 NMAC.

B. Confidentiality: Under CYFD's general rulemaking authority Section 9-2A-7 NMSA 1978, the confidentiality provisions of the New Mexico Children's Code, Sections 32A-3B-22 and 32A-4-33 NMSA 1978, the specific authority related to certification of foster homes, Subsection D of Section 40-7-4 NMSA 1978 and the Adoption Act, Sections 32A-5-6 and 32A-5-8 NMSA 1978, all client case records and client identifying information including foster and adoptive families, and applicant files are confidential and may not be publicly disclosed.

(1) Release in response to court order: PSD and agencies may release such files only upon a valid court order provided that confidential criminal and abuse and neglect information may not be released, unless a court order specifically orders such a release.

(2) Release to another agency that is considering a previously licensed family for licensure: An agency that has licensed a foster or adoptive family may release assessment information and an unofficial copy of the home study to any agency that is considering the foster or adoptive family for licensure, upon receipt of the signed notification by the foster family of its licensure

history with previous agencies as described herein at Paragraph [(9)] 10 of Subsection B of 8.26.4.9 NMAC.

C. Foster [~~or adoptive parents~~] care provider files:

(1) Upon request foster [~~or adoptive parents~~] care providers shall be allowed to review their own file with the exception of letters of reference and the identity of any abuse or neglect report source regarding the foster or adoptive parents. Copying the file is not permitted.

(2) PSD shall provide an unofficial copy of the home study to the foster [~~or adoptive family~~] care provider upon written request to PSD.

(3) Foster [~~or adoptive parents~~] care providers may purchase an official copy of their home study for a reasonable fee to be determined by the PSD director. [8.26.4.21 NMAC - Rp, 8.27.2.30 NMAC, 5/29/09; A, 8/15/11; A, 7/16/2019]

8.26.4.22 FOSTER PARENT ASSURANCES:

Applicants must agree to comply with their roles and responsibilities when a child is placed in their home. The following assurances are required:

A. Applicant and other adults living in the home shall not use corporal punishment or degrading punishment;

B. Applicants and other adults living in the home shall not use illegal substances, abuse alcohol by consuming it in excess amounts, or abuse legal prescription and or non-prescription drugs by consuming them in excess amounts or using it contrary to as indicated.

C. Applicants, other adults living in the home and their guests shall not smoke in the foster family home, in any vehicle used to transport a child, or in the presence of the child in foster care; and

D. Applicants shall adhere to PSD reasonable and prudent parent standards per 8.26.2.13 NMAC.

E. Applicants shall acknowledge receipt of and intent to comply with the foster child and youth bill of rights.

F. Applicants shall acknowledge receipt of and intent to comply with the memorandum of agreements for foster parents. [8.26.4.22 NMAC - N, 7/16/2019]

8.26.4.23 CHANGES IN HOUSEHOLD EFFECTING LICENSURE STATUS:

A. Licensed foster parents must notify their licensing agent immediately of any circumstance that may impact their license. Such circumstances may include but are not limited to:

(1) birth or death of any household member;

(2) serious illness of any household member;

(3) criminal investigation, arrest or conviction of any household member;

(4) child abuse or neglect referrals involving a household member;

(5) new person living in the home or a person leaving the home;

(6) significant financial changes, such as a change in employment status or bankruptcy;

(7) a minor child reaching the age of 18; or

(8) change in address.

B. Any adult intending to move into the foster home or a minor reaching the age of 18 shall meet licensing requirements prior to residing or remaining in the home.

C. The licensing agent shall assess changes within the foster home that may affect licensing status and take appropriate action based upon the assessment.

[8.26.4.23 NMAC - N, 7/16/2019]

NEW MEXICO BEEF COUNCIL

TITLE 21 AGRICULTURE AND RANCHING

CHAPTER 35 LIVESTOCK MARKETING

PART 7 NM BEEF COUNCIL STATE ASSESSMENT COLLECTION PROCEDURES

21.35.7.1 ISSUING

AGENCY: New Mexico Beef Council, 1209 Mountain Road Pl. NE, Suite C, Albuquerque, NM 87110, (505) 841- 9407.

[21.35.7.1 NMAC – N, 7/16/2019]

21.35.7.2 SCOPE: This rule establishes the council assessment to be paid by owners/producers of New Mexico cattle upon the transfer of ownership.

[21.35.7.2 NMAC – N, 7/16/2019]

21.35.7.3 STATUTORY

AUTHORITY: Granted to the New Mexico Beef Council under the New Mexico Beef Council Act, Chapter 77, Article 2A, Section 1-9 NMSA 1978 Compilation.

[21.35.7.3 NMAC – N, 7/16/2019]

21.35.7.4 DURATION:

Permanent.

[21.35.7.4 NMAC – N, 7/16/2019]

21.35.7.5 EFFECTIVE

DATE: July 16, 2019, unless a later date is cited at the end of the section. [21.35.7.5 NMAC – N, 7/16/2019]

21.35.7.6 OBJECTIVE: To establish the council assessment for cattle.

[21.35.7.6 NMAC – N, 7/16/2019]

21.35.7.7 DEFINITIONS:

“Council assessment” means an assessment levied and imposed upon all cattle involved in a transfer of ownership in New Mexico.

[21.35.7.7 NMAC – N, 7/16/2019]

21.35.7.8 ASSESSMENT:

A. The council assessment rate is set at one dollar (\$1.00) per head.

B. The council assessment will be collected in accordance with Subsection A of Section 77-2A-7.1 NMSA 1978.

C. Any producer who elects to not participate in the council assessment shall do so by opting out in accordance with Subsection B of Section 77-2A-7.1 NMSA 1978.

D. Refunds of the council assessment shall be conducted

in accordance with Section 77-2A-7.3 NMSA 1978
[21.35.7.8 NMAC – N, 7/16/2019]

**HISTORY OF 21.35.7 NMAC:
[RESERVED]**

**PUBLIC REGULATION
COMMISSION**

The Public Regulation Commission approved the emergency repeal of its rule 10 NMAC 25.3 - Parental responsibility (filed 5/9/1997) and replace it with 10.25.3 NMAC - Parental responsibility, adopted on 6/26/2019 and effective 6/28/2019.

The Public Regulation Commission approved at its 3/22/2019 hearing to repeal its rule 10.25.5 NMAC - Fire prevention and public occupancy (filed 11/1/2007) and replace it with 10.25.5 NMAC - Fire prevention and public occupancy, adopted on 6/26/2019 and effective 6/28/2019.

**PUBLIC REGULATION
COMMISSION**

**TITLE 10 PUBLIC SAFETY
AND LAW ENFORCEMENT
CHAPTER 25 STATE FIRE
MARSHAL
PART 3 PARENTAL
RESPONSIBILITY**

10.25.3.1 ISSUING

AGENCY: New Mexico Public Regulation Commission, State Fire Marshal Division, Post Office Box 1269, Santa Fe, NM 87504-1269.
[10.25.3.1 NMAC - Rp/E, 10 NMAC 25.3.1, 6/28/2019]

10.25.3.2 SCOPE: This rule applies to all persons required to have a license issued by the state fire marshal in order to sell fireworks.
[10.25.3.2 NMAC - Rp/E, 10 NMAC 25.3.2, 6/28/2019]

**10.25.3.3 STATUTORY
AUTHORITY:** Section 40-5A-9 NMSA 1978. As required by Subsection C of Section 8-8-15

NMSA 1978 of the Public Regulation Commission Act and by Paragraph (1) of Subsection A of Section 14-4-5.6 NMSA 1978 of the State Rules Act, this rule is adopted as an emergency rule because the rule is necessary to prevent an imminent peril to, and to preserve, the public peace, health, safety, or general welfare to implement the requirements of the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978, as they apply to the issuance, renewal, suspension or revocation of fireworks vendor licenses.
[10.25.3.3 NMAC - Rp/E, 10 NMAC 25.3.3, 6/28/2019]

10.25.3.4 DURATION:

Temporary. As provided by Subsection E of Section 14-4-5.6 NMSA 1978 of the State Rules Act, this emergency rule is temporary and shall remain in effect until a permanent rule takes effect under the normal rulemaking process. If no permanent rule is adopted within 180 days from the effective date of the emergency rule, the emergency rule shall expire and may not be readopted as an emergency rule.
[10.25.3.4 NMAC - Rp/E, 10 NMAC 25.3.4, 6/28/2019]

10.25.3.5 EFFECTIVE

DATE: June 28, 2019, unless a later date is cited at the end of a section or paragraph.
[10.25.3.5 NMAC - Rp/E, 10 NMAC 25.3.5, 6/28/2019]

10.25.3.6 OBJECTIVE: The purpose of this rule is to implement the requirements of the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978, as they apply to the issuance, renewal, suspension or revocation of fireworks vendor licenses.
[10.25.3.6 NMAC - Rp/E, 10 NMAC 25.3.6, 6/28/2019]

10.25.3.7 DEFINITIONS:

All terms defined in the Parental Responsibility Act shall have the same meanings in this rule unless defined below.

A. HSD means the New Mexico human services department.

B. License means a display distributor, distributor, manufacturer, retailer, specialty retailer or wholesaler license issued to an individual pursuant to the Fireworks Licensing and Safety Act, Sections 60-2C-1 to 60-2C-11 NMSA 1978.

C. Statement of compliance means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support.

D. Statement of non-compliance means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support.
[10.25.3.7 NMAC - Rp/E, 10 NMAC 25.3.7, 6/28/2019]

10.25.3.8 SANCTIONS:

If an applicant or licensee is not in compliance with a judgment and order for support, the state fire marshal shall:

A. deny an application for a license;

B. deny the renewal of a license;

C. have grounds for suspension or revocation of a license.
[10.25.3.8 NMAC - Rp/E, 10 NMAC 25.3.8, 6/28/2019]

**10.25.3.9 CERTIFIED
LIST:**

A. Receipt of certified list from HSD: Upon receipt of HSDs certified list of obligors not in compliance with a judgment and order for support, the state fire marshal shall match the certified list of obligors against the current list of applicants and licensees. By the end of the month in which the certified list of obligors is received from HSD, the state fire marshal shall report to HSD the names of applicants and licensees who are on the certified list of obligors and the action the state fire marshal has taken in connection with such applicants and licensees.

B. Receipt of application: Upon the later receipt of an application for license or renewal, the state fire marshal shall match the applicant against the most recent certified list of obligors.
[10.25.3.9 NMAC - Rp/E, 10 NMAC 25.3.9, 6/28/2019]

10.25.3.10 INITIAL NOTICE:

A. Notification by letter: Upon determination that an applicant or licensee appears on HSD's certified list of obligors, the state fire marshal shall notify the applicant or licensee by letter that the applicant or licensee must provide the state fire marshal with a subsequent statement of compliance within 30 days of the date the state fire marshal mailed the notification.

B. Contents of letter:
The notice letter to applicants and licensees shall advise that failure to timely provide the statement of compliance shall result in commencement of a formal hearing brought by the state fire marshal before the state fire board for rejection of an application or suspension or revocation of an issued license as provided in [10.25.3.11 NMAC].

C. Retailer permits:
In order to ensure compliance with the Parental Responsibility Act, every distributor, wholesaler, or manufacturer, before issuing retail permits to individuals, must receive a letter of clearance from the state fire marshal or his designee, stating that the individual applicant is not on the HSD certified list of obligors in violation of a child support judgment and order. Retail permits issued by distributors, wholesalers, and manufacturers to individuals are invalid without state fire marshal's clearance being attached and available for display. Telefaxed transmission of the state fire marshal's clearance letter is permissible.
[10.25.3.10 NMAC - Rp/E, 10 NMAC 25.3.10, 6/28/2019]

10.25.3.11 PROCEEDING TO REJECT APPLICATION OR TO SUSPEND OR REVOKE LICENSE: If an applicant or

licensee fails to respond to the initial notice as required by 10.25.3.10 NMAC, the state fire marshal shall file and serve a complaint upon the applicant or licensee. If the state fire marshal's complaint for rejection of an application or suspension or revocation of a license is based solely on the respondent's failure to comply with a judgment and order of support, and there are no additional grounds based on violations of the Fireworks Licensing and Safety Act, Sections 60-2C-1 to 60-2C-11 NMSA 1978, the complaint shall state:

A. the grounds for the state fire marshals proposed action, and

B. that a hearing shall be held before the state fire board at least 30 days after the date the complaint is mailed, unless the respondent applicant or licensee provides the state fire marshal with a statement of compliance prior to the hearing date.

[10.25.3.11 NMAC - Rp/E, 10 NMAC 25.3.11, 6/28/2019]

10.25.3.12 EVIDENCE AND PROOF:

In any hearing under 10.25.3.11 NMAC, relevant evidence is limited to the accuracy or veracity of the statement of non-compliance. The statement of non-compliance is conclusive evidence requiring the state fire marshal to take the rejection, suspension or revocation action under 10.25.3.11 NMAC, and is rebuttable only with a subsequent statement of compliance. Upon presentation of the subsequent statement of compliance, the state fire marshal shall dismiss the rejection, suspension or revocation action if it is based solely upon licensee or permittees failure to comply with a judgment and order for support.

[10.25.3.12 NMAC - Rp/E, 10 NMAC 25.3.12, 6/28/2019]

10.25.3.13 ORDER: When an action to reject an application or suspend or revoke a license or permit is taken by the state fire marshal solely because the applicant, licensee or permittee is not in compliance with a judgment and order for support, the final order shall state that:

A. in application rejection actions, the respondent may reapply for a license at any time upon presentation of a subsequent statement of compliance filed with the state fire marshal;

B. in suspension actions, the respondent may be reinstated for a license at any time upon presentation of a subsequent statement of compliance filed with the state fire marshal;

C. in revocation actions, the respondent may reapply for a license at any time upon presentation of a subsequent statement of compliance filed with the state fire marshal.

[10.25.3.13 NMAC - Rp/E, 10 NMAC 25.3.13, 6/28/2019]

10.25.3.14 PROCEDURES:

Proceedings and administrative hearings held pursuant to this rule shall be governed by Section 60-2C-11 NMSA 1978 and the New Mexico public regulation commission rules of procedure.

[10.25.3.14 NMAC - Rp/E. 1- NMAC 25.3.14, 04/23/19]

HISTORY OF 10.25.3 NMAC:

Pre-NMAC History: The material in this rule was originally filed with the State Records Center as:
SCC Rule 95-03-FM, Parental Responsibility Act Rule, filed 10/18/95.

History of Repealed Material:

10 NMAC 25. 3, State Fire Marshal - Parental Responsibility filed (5/9/1997) effective 6/28/2019.

NMAC History:

10 NMAC 25. 3, State Fire Marshal - Parental Responsibility filed (5/9/1997) was replaced by 10.25.3 NMAC State Fire Marshal - Parental Responsibility, effective 6/28/2019.

PUBLIC REGULATION COMMISSION

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT CHAPTER 25 STATE FIRE MARSHAL PART 5 FIRE PREVENTION AND PUBLIC OCCUPANCY

10.25.5.1 ISSUING

AGENCY: New Mexico Public Regulation Commission.

[10.25.5.1 NMAC - Rp/E, 10.25.1 NMAC, 6/28/2019]

10.25.5.2 SCOPE:

A. This rule applies to structures, processes, premises and safeguards regarding:

- (1) the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices;
- (2) conditions hazardous to life, property or public welfare in the occupancy of structures or premises;
- (3) fire hazards in the structure or on the premises from occupancy or operation;
- (4) matters related to the construction, extension, repair, alteration or removal of fire protection systems; and
- (5) conditions affecting the safety of firefighters and emergency responders during emergency operations.

B. This rule does not apply to detached, -single, -double, or -three family dwellings.

C. Other agencies have adopted rules that may apply and that are not affected by these rules.

(1) **CID** has adopted rules for housing and construction that include provisions on fire prevention in Title 14, Chapters 5 through 10 NMAC.

(2) The environmental improvement board has adopted rules for aboveground and underground storage tanks containing petroleum or hazardous substances and rules governing hazardous waste administered by the

environment department in Title 20, Chapter 5 NMAC.

(3) The board of licensure for professional engineers and surveyors has adopted rules for the design of fire protection and alarm systems in Title 16, Chapter 39 NMAC.

D. AHJs may adopt fire protection requirements that are more stringent or comprehensive than 10.25.5 NMAC, as long as the requirements do not conflict with these rules.

[10.25.5.2 NMAC - Rp/E, 10.25.5.2 NMAC, 6/28/2019]

10.25.5.3 STATUTORY

AUTHORITY: Sections 8-8-21, 59A-52-15, and 59A-52-16 NMSA 1978.

[10.25.5.3 NMAC - Rp/E, 10.25.5.3 NMAC, 6/28/2019]

10.25.5.4 DURATION:

Permanent.

[10.25.5.4 NMAC - Rp/E, 10.25.5.4 NMAC, 6/28/2019]

10.25.5.5 EFFECTIVE

DATE: June 28, 2019 unless a later date is cited at the end of a section.

[10.25.5.5 NMAC - Rp/E, 10.25.5.5 NMAC, 6/28/2019]

10.25.5.6 OBJECTIVE:

The purpose of this rule is to prescribe minimum requirements for the operation and maintenance of buildings and structures necessary to reasonably protect life and property from the hazards created by fire, explosion, and similar emergencies.

[10.25.5.6 NMAC - Rp/E, 10.25.5.6 NMAC, 6/28/2019]

10.25.5.7 DEFINITIONS:

In addition to the definitions in 10.25.1 NMAC:

A. fire code official shall have the meaning provided in Section 202 of the IFC;

B. IFC means the international fire code, 2015 edition, published by the international code council, inc. and available by contacting: Publications, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795;

C. NFPA 1 means the fire prevention code, 1997 edition, published by the national fire protection association and available by contacting: Secretary, Standards Council, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101;

D. NFPA 101 means the life safety code, 1997 edition, published by the national fire protection association and available by contacting: Secretary, Standards Council, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101; and [10.25.5.7 NMAC - Rp/E, 10.25.5.7 NMAC, 6/28/2019]

10.25.5.8 ADOPTION OF NATIONAL STANDARD: The fire marshal adopts and incorporates by reference IFC as revised in this rule. In this rule, revisions are numbered to correspond with the numbering of the IFC and further amend such section of the IFC. All references in the IFC to the International Mechanical Code mean the New Mexico Mechanical Code. All references in the IFC to the International Plumbing Code mean the New Mexico Plumbing Code. [10.25.5.8 NMAC - Rp/E, 10.25.5.8 NMAC, 6/28/2019]

10.25.5.9 CHAPTER 1 ADMINISTRATION:

A. Section 101

General.

(1) **Section 101.1 Title.** Insert in brackets: New Mexico.

(2) **Section 101.2 Scope.** This section of the IFC shall not apply. 10.25.5.2 NMAC defines the scope of this rule.

(3) **Section 101.2.1 Appendices.** The appendices of the IFC shall not apply, except where adopted by an AHJ.

B. Section 104 General authority and responsibilities. If Section 104.6 (official records) or any other provision of the IFC conflicts with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978, the provisions of the

Inspection of Public Records Act shall control.

C. Section 105

permits. Section 105.6, required operational permits of the IFC shall not apply. Section 105.7.2 through 105.7.5 shall not apply. Section 105.7.8 through 105.7.16 shall not apply. Section 105.7.18 shall not apply. These rules do not affect the requirements imposed by those counties and municipalities with concurrent jurisdiction that require permits relating to fire protection. The fire marshal issues only the following permits with the following exceptions.

(1) Permits

and licenses for fireworks. The fire marshal requires permits and licenses for fireworks as provided in 10.25.6 NMAC.

(2)

Certificates of fitness. The fire marshal requires certificates of fitness for the installation, inspection, maintenance and repair of fire protection systems as provided in 10.25.2 NMAC.

(3) Section

105.3 Conditions of a Permit. This section is deleted in its entirety and replaced with the following language: "105.3 conditions of a permit. Such permission, if granted in Section 105.1.2.2, shall not be construed as authority to violate, cancel or set aside any other provisions of this code or other applicable regulations or laws of the jurisdiction."

(4) Section

105.4.1 Construction documents: submittals. This section is deleted in its entirety and replaced with the following language:

(a)

Two sets of construction documents shall be submitted.

(b)

All construction documents shall be submitted with the applicant's certificate of fitness number, permit application and permit number or building official unique identifier and shall comply with the approval process provided in 10.25.5.16 NMAC.

D. Section 106.2.2

Insert "when required" after "fire code official" at the end of the last sentence of this section.

E. Section 108 Board

of appeals. This section of the IFC shall not apply. The appeal processes provided in Sections 59A-52-21 and 59A-52-22 NMSA 1978 shall apply and may be initiated by filing an appeal as provided in 10.25.1.NMAC.

F. Section 109

Violations. The penalties in section 109.4 of the IFC shall not apply in New Mexico. The penalties authorized in Sections 59A-52-24 and 59A-52-25 NMSA 1978 shall apply.

G. Section 111 Stop

work order. The penalties in section 111.4 of the IFC shall not apply. The penalties authorized in Sections 59A-52-24 and 59A-52-25 NMSA 1978 shall apply.

H. Section 113 Fees.

This section of the IFC shall not apply. [10.25.5.9 NMAC - Rp/E, 10.25.5.9, 6/28/2019]

**10.25.5.10 CHAPTER 2
DEFINITIONS:**

A. Unless defined by the fire marshal in Title 10 NMAC or by CID in Title 14 NMAC, terms used herein shall have the definition provided in Chapter 2 of the IFC. Where a term is defined by the fire marshal, the fire marshal's definition shall supersede all other definitions. Where a term is not defined by the fire marshal, but is defined by CID in Title 14 NMAC, the CID definition shall apply.

B. Section 202

General Definitions. The definition of "record drawings" is deleted in its entirety and replaced with the following language: "record drawings" means "as built" that document the location of all appurtenances of fire protection systems.

[10.25.5.10 NMAC - Rp/E, 10.25.5.10 NMAC, 6/28/2019]

**10.25.5.11 CHAPTER 3
GENERAL REQUIREMENTS:**

A. Section 301.1

Scope. This section applies as mandated by the local AHJ.

B. Section 301.2

Permits. Permits shall only and to the extent mandated by the local AHJ.

C. Section 304.1.2

Vegetation. This section applies to the extent mandated by the local AHJ.

D. Section 307, Open burning, recreational fires and portable outdoor fireplaces. This section of the IFC applies only and to the extent mandated by the local AHJ.

E. Section 308.3

Group A Occupancies Exception #2. Delete the word "international" and replace with the word "New Mexico". [10.25.5.11 NMAC - N, 6/28/2019]

**10.25.5.12 CHAPTER 4
EMERGENCY PLANNING AND
PREPAREDNESS:**

In section 405.5 Record keeping, item number 7 is deleted and replaced with the following language: "Problems encountered and corrective actions for the problems encountered." [10.25.5.12 NMAC - Rp/E, 10.25.5.11 NMAC, 6/28/2019]

**10.25.5.13 CHAPTER 6
BUILDING SERVICES AND
SYSTEMS:** Amend section 603.9 to add "if required by the fire code official" at the end of the section. [10.25.5.13 NMAC - Rp/E, 10.25.5.12 NMAC, 6/28/2019]

**10.25.5.14 CHAPTER 9
FIRE PROTECTION SYSTEMS:
Throughout chapter 9, the following
shall apply:**

A. Delete the term "International Mechanical Code" where used in this chapter and replace with the term "New Mexico Mechanical Code".

B. Delete the term "International Plumbing Code" where used in this chapter and replace with the term "New Mexico Plumbing Code".

**C. Section 904.12
Commercial cooking systems.** The exception described in Section 904.12 of the IFC shall not apply. The replacement of commercial

cooking equipment, including but not limited to a stove, hood, deep fryer, grill, griddle, or any other device used in the cooking process, requires the simultaneous installation of an automatic fire suppression system.

D. Section 905.3.4.1

Hose and Cabinet. Insert the following sentence at the end of this section, "Unless required by a fire code official, one and one-half inch hoses and hose cabinets are not required for class II and class III standpipe systems.

[10.25.5.14 NMAC - Rp/E,
10.25.5.13 NMAC, 6/28/2019]

10.25.5.15 CHAPTER

10 MEANS OF EGRESS: This chapter of the IFC applies, except Table 1004.1.2 is amended to add the following: "New and existing correctional facilities and detention centers: the occupant load for which the means of egress is calculated by the maximum number of persons intended to occupy the floor or area, shall be no less than 60 square feet of gross floor area per person".

[10.25.5.15 NMAC - Rp/E,
10.25.5.14 NMAC, 6/28/2019]

10.25.5.16 CHAPTER
56 EXPLOSIVES AND

FIREWORKS: This chapter of the IFC and 10.25.6 NMAC apply to fireworks. If there is any conflict between this chapter of the IFC and the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978, the Fireworks Licensing and Safety Act shall control.

[10.25.5.16 NMAC - N, 6/28/2019]

10.25.5.17 REPEAL OF

CODES: NFPA 1 and NFPA 101 are repealed except as provided in 10.25.5.17 NMAC.

[10.25.5.17 NMAC - Rp/E,
10.25.5.16 NMAC, 6/28/2019]

10.25.5.18 APPROVAL OF
FIRE PROTECTION SYSTEMS:

Prior to beginning construction or occupancy of any building or structure regulated by the IFC, the owner shall apply for approval from

the fire marshal or AHJ, whichever is applicable, of a fire protection system for the building or structure. The review and approval of fire protection systems is in addition to any review required by CID in Title 14 of the New Mexico administrative code.

A. Filing drawings for review.

(1)

Documents required. The owner shall submit two sets of shop drawings for the building or structure. For his own convenience, an owner may submit additional sets of drawings and an envelope with prepaid postage for the fire marshal's use in returning the drawings after review. Electronic filing of fire protection plans (shop drawings) will be accepted via electronic plans review software that is compatible with software used by the New Mexico state fire marshal division. The state fire marshal division shall keep a copy of all submitted file drawings for 20 years.

(2) Where

to submit. The owner shall submit drawings to the fire code enforcement division of the fire marshal division in compliance with 10.25.1 NMAC or to an AHJ as provided by the AHJ. The fire marshal shall not accept drawings by facsimile transmission.

(3)

Requirements for drawings.

The drawings shall show the fire protection systems in sufficient detail to allow the fire marshal or AHJ to analyze compliance with applicable codes and standards, and shall provide the signature and seal of the engineer that prepared the drawings. The fire marshal has optional guidelines available to assist in compliance with applicable codes and standards that may be obtained as provided in 10.25.1.9 NMAC.

(4) Fees.

The fire marshal division does not require any fees for review of fire protection systems.

B. Third party

review. The fire marshal, in his sole discretion, may require and arrange for third party review of drawings if specialized expertise or knowledge is

needed. If the fire marshal determines third party review is necessary, he shall so notify the owner in writing with an estimate of the cost. If the owner decides to proceed with review, he shall file written approval by the method provided in 10.25.1.8 NMAC and shall pay directly to the third party the cost of such review before the fire marshal returns the drawings.

C. Return of

drawings. If the owner has provided an envelope with prepaid postage, the fire marshal shall mail the drawings back to the owner after review. If the owner did not supply a postage-prepaid envelope, the fire marshal shall call the owner to pick up the drawings. The fire marshal shall keep one set of electronically filed fire protection plans (shop drawings). If the fire marshal or AHJ approves the drawings, the drawings shall be stamped "approved". If the fire marshal or AHJ rejects or does not approve the drawings, an explanation for the basis for rejection or non approval shall be given to the owner.

D. Rejection. The fire marshal or AHJ may reject drawings for the following reasons:

(1) the

drawings are incomplete;

(2) the

drawings indicate a violation of these rules or applicable codes and standards;

(3) the

engineer that prepared the drawings did not sign, seal or prepare the drawings in accordance with Title 16, Chapter 39 NMAC;

(4)

the drawings or certificate of fitness documentation contain a misrepresentation or inaccuracy;

(5) third party

review indicates that the drawings indicate a violation of these rules, applicable codes or standards, or specialized requirements presented by the drawings; or

(6) any other

reason provided in the authorizing legislation of an AHJ.

E. Re-submission.

If drawings are rejected, the owner may correct the deficiencies indicated

in the rejection letter. A new set of shop drawings shall be submitted by the same process for filing original drawings for review.

F. Construction.

(1) After an AHJ has approved and returned drawings, but not before, an owner may start the installation or construction of the building or structure in compliance with the approved drawings.

(2) After the owner has completed the installation or construction, he may request that the AHJ perform an inspection. The request may be made orally or in writing to the fire marshal at the address or phone number provided in 10.25.1.9 NMAC or as otherwise required by another AHJ.

G. Inspection and testing. The AHJ will inspect the building or structure within a reasonable period of time after the responsible party's request for inspection and if applicable, the AHJ may request a letter indicating the system is in compliance with approved plans and applicable codes and standards. The AHJ will not approve the installation or construction if the inspection indicates:

(1) a violation of these rules or applicable codes and standards;

(2) the building or structure was not installed or constructed in compliance with the drawings;

(3) the building or structure fire protection system(s) was not installed or constructed by the responsible party through a person with an applicable certificate of fitness;

(4) The record of completion shall be completed at the time of final acceptance testing of each fire protection system; or

(5) any other reason provided in the authorizing legislation of an AHJ.

H. Re-inspection.

If the AHJ does not approve the installation or construction and the responsible party corrects the

deficiencies noted in the inspection, the responsible party may re-apply for inspection following the same procedure as for the initial inspection. [10.25.5.18 NMAC - Rp/E, 10.25.5.17 NMAC, 6/28/2019]

10.25.5.19 CODE REQUIREMENTS FOR EXISTING BUILDINGS AND STRUCTURES:

For purposes of this section, "constructed" shall mean that the owner has begun any substantial portion in the design, permitting or building of a building or structure. A change in occupancy requires approval from the appropriate building code official. All new construction, alteration, repair, and additions require adherence to applicable building codes and laws.

A. Existing buildings and structures.

(1) An owner is not required to renovate or adapt an existing building or structure to comply with the IFC 2015, but shall comply with the requirements in place when the existing building or structure was constructed.

(2) Following the adoption of this provision, an existing structure that changes its classification, however done, must comply with the IFC 2015.

(3) Following the adoption of this provision, an existing structure that is renovated, as the term "renovated" is defined by the applicable local or state building code, but whose classification does not change, shall comply with IFC 2015.

(4) Buildings or structures constructed prior to November 15, 2007, which fall under NFPA 1, 1997 edition, and NFPA 101, 1997 edition, shall be required to have a permit using the requirements of IFC 2015, section 105, prior to installation of any new, renovated, or partial fire protection system.

(5) Buildings which were initially inspected under IFC 2015 as per the requirements for new construction under Subsection B of 10.25.2.19 NMAC will be inspected per IFC 2015.

B. New construction.

Any new building, new alteration, new addition, or new structure after the effective date of the adoption of the IFC 2015 shall comply with the IFC 2015.

C. Variance. The fire marshal may grant a variance from any of the requirements of this subsection if the applicant demonstrates to the fire marshal's satisfaction that the variance sought does not degrade the overall protection of individuals from fire and similar emergencies.

D. Hazard to life or property. Notwithstanding any other provision of these rules, if the fire marshal or AHJ determines that a nonconforming facility constitutes a hazard to life or property, the fire marshal or AHJ shall so notify the owner of the facility in writing, and shall permit the owner a reasonable period of time to comply with current rules. If the owner does not comply with the notification and its requirements within the time specified, the fire marshal or AHJ may order the owner to take the facility out of service.

[10.25.5.19 NMAC - Rp/E, 10.25.5.18 NMAC, 6/28/2019]

HISTORY OF 10.25.5 NMAC:

Pre-NMAC History: none.

History of Repealed Material:

10 NMAC 25.5, Fire Prevention (filed 05/09/1997) repealed 11/15/2007.

10.25.5 NMAC, Fire Prevention and Public Occupancy (filed 11/1/2007) repealed, effective 6/28/2019.

NMAC History:

10 NMAC 25.6, Safe Handling and Sale of Fireworks, effective 6/9/1997.

10 NMAC 25.5, Fire Prevention (filed 05/09/1997) was replaced by 10.25.5 NMAC, Fire Prevention and Public Occupancy, effective 11/15/2007.

10.25.5 NMAC, Fire Prevention and Public Occupancy (filed 11/1/2007) was replaced by 10.25.5 NMAC, Fire Prevention and Public Occupancy, effective 6/28/2019.

PUBLIC REGULATION COMMISSION

This is an emergency amendment to 10.25.1 NMAC, Sections 3, 4, 8, 9, 12 and 15 effective 6/28/2019.

10.25.1.3 STATUTORY

AUTHORITY: Sections 8-8-15, 8-8-21, 59A-52-2, 59A-52-15, 59A-52-16, and 60-2C-3 NMSA 1978. As required by Subsection C of Section 8-8-15 NMSA 1978 of the Public Regulation Commission Act and by Paragraph (1) of Subsection A of Section 14-4-5.6 NMSA 1978 of the State Rules Act, this rule is adopted as an emergency rule because the rule is necessary to prevent an imminent peril to, and to preserve, the public peace, health, safety, or general welfare to govern fire prevention, control of fires, and safe egress from and use of public occupancies. [10.25.1.3 NMAC - N, 11/15/2007; A/E, 6/28/2019]

10.25.1.4 DURATION:

[Permanent.] Temporary. As provided by Subsection E of Section 14-4-5.6 NMSA 1978 of the State Rules Act, this emergency rule is temporary and shall remain in effect until a permanent rule takes effect under the normal rulemaking process. If no permanent rule is adopted within 180 days from the effective date of the emergency rule, the emergency rule shall expire and may not be readopted as an emergency rule. [10.25.1.4 NMAC - N, 11/15/2007; A/E, 6/28/2019]

10.25.1.8 REQUIREMENTS FOR FILED DOCUMENTS:

In addition to the requirements stated here, particular rules may include other filing requirements. All documents required by these rules to be filed with the fire marshal, including applications referenced in 10.25.6 NMAC, shall be filed as follows.

A. Address for filing documents.

(1) Documents filed by mail shall be addressed to the New Mexico Fire [Marshal's Office]

Marshal Division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) Documents filed in person or by delivery service shall be delivered to the New Mexico Fire [Marshal's Office] Marshal Division located on the [second] fourth floor of [142 West Palace Avenue] 1120 Paseo de Peralta, in Santa Fe, New Mexico.

B. Required format.

All reports, articles, applications and other documents filed with the fire marshal shall be typewritten, clearly legible, on good quality white paper 8 1/2 x 11 inches in size, have a 1 inch margin on each side and at least a one-inch margin at the top and bottom of each page, and be signed or executed in black or blue-black ink.

C. **Facsimile filing prohibited.** The fire marshal will not accept documents for filing or applications submitted by facsimile.

D. Date of filing.

The fire marshal shall consider any document filed pursuant to this rule as filed on the date it was received and stamped by the fire marshal's [office] division, unless the document is returned pursuant to 12.3.1.11 NMAC, except that if the fire marshal receives a document after regular business hours, the fire marshal shall stamp and consider it received on the next regular business day. [10.25.1.8 NMAC - N, 11/15/2007; A/E, 6/28/2019]

10.25.1.9 APPLICATIONS, FORMS AND GUIDELINES:

A. **Mandatory applications.** For ease and consistency of data entry, the fire marshal has prepared mandatory permit and license applications for compliance with 10.25.2 and 10.25.6 NMAC.

B. **Optional permit application and guidelines.** The fire marshal provides an optional permit application for display fireworks, described in Subsection E of 10.25.6.8 NMAC, and other guidelines to aid in fire prevention and safety, and to assist in carrying out certain requirements of these rules.

C. How to obtain.

Interested persons may obtain copies of mandatory and optional applications, forms, and guidelines:

(1) by calling the fire [marshal's office] marshal division at [505-827-3550] 505-476-0080 or 1-800-244-6702;

(2) at the fire [marshal's office] marshal division located on the [second] fourth floor of [142 West Palace Avenue] 1120 Paseo de Peralta in Santa Fe;

(3) by writing to the fire [marshal's office] marshal division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269; or

(4) from the fire [marshal's] marshal website: [http://www.nmprc.state.nm.us/\[sfm.htm\]](http://www.nmprc.state.nm.us/[sfm.htm]). [10.25.1.9 NMAC - N, 11/15/2007; A/E, 6/28/2019]

10.25.1.12 REQUESTS FOR COPIES:

A. Filing of request.

A person shall make a request in writing for copies of a document or report and shall list all documents or information requested. A request may be mailed or delivered as provided in 12.3.1.9 NMAC, or sent by facsimile to (505) 827-3778. If a person cancels a request within [twenty-four (24)] 24 hours, the fire marshal shall not assess any fees.

B. Estimate of fees.

When the fire marshal receives a request for copies, the fire marshal's office shall issue an informal estimate of fees. The fire marshal shall charge the fees enumerated in Subsection C of 1.2.2.8 NMAC, *Public Regulation Commission Rules of Procedure*.

C. Completion of request.

(1) If the person approves the estimate, the fire marshal shall prepare the copies within the time periods provided in the Inspection of Public Records Act, Section 14-2-1 *et seq.* NMSA 1978.

(2) When the requested documents are ready, the fire marshal shall provide a written statement of fees due and shall release the copies electronically upon

payment of all fees due.

[10.25.1.12 NMAC - N, 11/15/2007; A, 9/1/2008; A/E, 6/28/2019]

10.25.1.15 APPEALS: A person aggrieved by any order of the fire marshal may appeal the decision:

A. to the commission in accordance with Section 59A-52-21 NMSA 1978, by filing an appeal with the New Mexico Public Regulation Commission Docketing Office by mail to P.O. Box 1269, Santa Fe, New Mexico 87504-1269 or by delivery to the P.E.R.A. Building, Room [406] 413, 1120 Paseo de Peralta, Santa Fe, New Mexico 87501; or

B. to district court in accordance with Section 59A-52-22 NMSA 1978.

[10.25.1.15 NMAC - N, 11/15/2007; A/E, 6/28/2019]

PUBLIC REGULATION COMMISSION

This is an emergency amendment to 10.25.6 NMAC, Sections 3, 4 and 8 effective 6/28/2019.

10.25.6.3 STATUTORY AUTHORITY: Sections 8-8-15, 8-8-21, 59A-52-15, and 60-2C-3 NMSA 1978. As required by Subsection C of Section 8-8-15 NMSA 1978 of the Public Regulation Commission Act and by Paragraph (1) of Subsection A of Section 14-4-5.6 NMSA 1978 of the State Rules Act, this rule is adopted as an emergency rule because the rule is necessary to prevent an imminent peril to, and to preserve, the public peace, health, safety, or general welfare to increase the observance of safety precautions in handling fireworks and decrease the number of fireworks related accidents in New Mexico.

[10.25.6.3 NMAC - N, 11/15/2007; A, 6/28/2019]

10.25.6.4 DURATION: [Permanent.] Temporary. As provided by Subsection E of Section 14-4-5.6 NMSA 1978 of the State Rules Act, this emergency rule is temporary and shall remain in effect until a

permanent rule takes effect under the normal rulemaking process. If no permanent rule is adopted within 180 days from the effective date of the emergency rule, the emergency rule shall expire and may not be readopted as an emergency rule.

[10.25.6.4 NMAC - N, 11/15/2007; A, 6/28/2019]

10.25.6.8 LICENSES AND PERMITS FOR SALE OF FIREWORKS:

The fire marshal issues licenses and permits as provided in Section 60-2C-4 NMSA 1978. Local governing bodies may have additional requirements for fireworks sale or use.

A. Application procedures and forms. Any person may apply for a license or permit to sell fireworks as provided in Section 60-2C-4 NMSA 1978 by submitting a required application to the fire marshal as provided in 10.25.1.9 NMAC. The following information shall be included in each application for a permit or license involving fireworks:

(1) the applicant's name and mailing address;

(2) the applicant's telephone number and social security number;

(3) any company or corporate name or name the applicant is using for business purposes;

(4) the type of permit or license requested;

(5) the physical address where applicant ~~proposes to~~ will sell fireworks and a description of the type of structure in which applicant proposes to sell fireworks;

(6) name and phone number of a contact person at the location where applicant proposes to sell fireworks;

(7) the name and address of applicant's primary supplier of fireworks; and

(8) the following statement: "All information provided on and with this form is true and correct to the best of my knowledge and belief. I have read,

reviewed and understand the New Mexico laws and rules regarding safe packaging, handling and sale of fireworks. I agree to fully comply with these laws and rules as a condition of obtaining and operating pursuant to a fireworks license or permit. I understand that the approval of this application depends upon compliance with Sections 60-2C-1 through 60-2C-11 NMSA 1978 of the Fireworks Licensing and Safety Act. In the event that my license or permit is lost or destroyed, I understand that I shall immediately notify the Fire Marshal's office and that I am not entitled to a refund of the original application fees, but must submit a new application and pay a \$20.00 replacement fee for the type of license or permit required for that location. I understand that Section 60-2C-4 NMSA 1978 does not permit the fire marshal to process applications for a license or permit during any holiday selling periods";

(9) each application shall contain the date and notarized signature of the applicant; and

(10) an applicant shall submit fees required by Section 60-2C-4 NMSA 1978 with each application following the provisions of 10.25.1.13 NMAC.

B. Review of application. The fire marshal shall review all applications for licenses and permits. Unless otherwise prohibited by law, the fire marshal shall issue licenses and permits within 30 days of receipt of complete applications. The fire marshal shall disapprove and return incomplete applications within 30 days of receipt.

C. Damaged or lost license or permit. The fire marshal will not issue duplicate fireworks licenses or permits. If a license or permit is lost or damaged, the vendor shall immediately notify the fire marshal who shall revoke the license or permit. The fire marshal will not refund any fees for a lost or damaged license or permit. If the vendor wishes to continue to sell fireworks at that location, the vendor shall submit the \$20.00 fee required by section 60-

2C-4 NMSA 1978 for a replacement license or permit.

D. Special provisions for retailer permits. Applicants may obtain retailer permits for the sale of fireworks from the fire marshal or from a licensed manufacturer, distributor or wholesaler.

(1) Products list. Any person with a retailer permit shall maintain a complete written list of products for sale, available on inspection by an AHJ, of all fireworks at each retail location.

(2) Obtaining books of 20 retailer permits. A licensed manufacturer, distributor or wholesaler may obtain books of 20 retailer permits from the fire marshal by following the process in Subsection A of 10.25.6.8 NMAC.

(3) Requirements for resale of retailer permits. A licensed manufacturer, distributor or wholesaler may resell retailer permits in books of 20, by requiring the same mandatory application form, fees and other requirements in Subsection A of 10.25.6.8 NMAC. A licensed manufacturer, distributor or wholesaler shall account for all fees collected and permits sold.

(a) Semi-annual report. On January 31 and July 31 of each year, a licensed manufacturer, distributor or wholesaler that has purchased any books of 20 retailer permits shall provide a report to the fire marshal detailing the numbers of sold and unsold permits, with all information required by Section 60-2C-3 NMSA 1978. The report shall include a copy of each permit application and permit issued, as well as the name and address of each location permitted for the sale of fireworks.

(b) Unsold permits. If a licensed manufacturer, distributor or wholesaler has not sold all permits in books of 20 purchased, it may request in writing that the fire marshal issue to it credit toward new permits. The written request shall contain a list of all unsold permit numbers and shall include the original unsold permits.

(c) Inspection list. On or before June 15 of each year, each licensed manufacturer, distributor and wholesaler shall provide to the fire marshal a list of locations of sales of fireworks for the retailer permits it has sold to assist the fire marshal in conducting inspections of these locations.

E. Display permit. The fire marshal provides an optional permit application for display fireworks as required by Section 60-2C-9 NMSA 1978, available as provided in 10.25.1 NMAC, for the use of counties and municipalities requiring such display permits.

F. Revocation of license or permit.

(1) Notwithstanding any other provision of these rules, if the fire marshal determines that any licensee's or permittee's actions or facility constitutes:

(a) a hazard to life or property, the fire marshal shall so notify the licensee or permittee in writing, and shall permit him a reasonable period of time to comply with these rules and to eliminate the hazard; if the licensee or permittee does not comply with the notification and its requirements within the time specified, the fire marshal may revoke the applicable license or permit; for reinstatement, the licensee or permittee must comply with initial application requirements;

(b) an imminent hazard to life or property, the fire marshal shall order the licensee or permittee to eliminate the hazard immediately; if the licensee or permittee fails to eliminate the hazard immediately, the fire marshal shall revoke the applicable license or permit; for reinstatement, the licensee or permittee must comply with initial application requirements and demonstrate that the hazard has been eliminated.

(2) If any retailer possesses fireworks not permitted by Section 60-2C-7 NMSA 1978, the fire marshal shall revoke the retailer's permit and confiscate

the impermissible fireworks using the procedure required by 10.25.6.11 NMAC.
[10.25.6.8 NMAC - N, 11/15/2007; A, 6/28/2019]

REGULATION AND LICENSING DEPARTMENT PHYSICAL THERAPY, BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 20 PHYSICAL THERAPISTS PART 13 DRY NEEDLING PROVISION

16.20.13.1 ISSUING
AGENCY: New Mexico Physical
Therapy Board
[16.20.13.1 NMAC - N, 7/28/2019]

16.20.13.2 SCOPE: All
individuals who wish to practice
physical therapy in New Mexico.
[16.16.13.2 NMAC - N, 7/28/2019]

16.20.13.3 STATUTORY
AUTHORITY: Section 61-12-10
NMSA 1978.
[16.16.13.3 NMAC - N, 7/28/2019]

16.20.13.4 DURATION:
Permanent
[16.16.13.4 NMAC - N, 7/28/2019]

16.20.13.5 EFFECTIVE
DATE: 30 days from filing date
unless a later date is cited at the end
of the section.
[16.16.13.5 NMAC - N, 7/28/2019]

16.20.13.6 OBJECTIVE: the
objective for Part 13 of Chapter 20 is
to establish regulations for applicants
applying for dry needling for physical
therapists.
[16.20.13.6 NMAC - N, 7/28/2019]

16.20.13.7 DEFINITIONS:
A. "Dry needling"
is defined as a skilled technique
performed by a physical therapist
using filiform needles to penetrate
the skin or underlying tissues or both

to effect change in body structures and functions for the evaluation and management of neuromusculoskeletal conditions, pain, movement impairments, functional limitations and disability.

B. “High risk areas” are defined as any area that the physical therapist has not been formally trained to needle, via a board approved course.
[16.20.13.7 NMAC - N, 7/28/2019]

16.20.13.8 REQUIREMENTS FOR PHYSICAL THERAPIST TO PROVIDE DRY NEEDLING

A. Dry needling may be performed by a physical therapist who meets the following requirements:

(1) the physical therapist must complete and maintain documentation of a board approved dry needling course that includes, but is not limited to, training in indications, contraindications, potential risks, proper hygiene, proper use and disposal of needles, and appropriate selection of clients.

(2) the physical therapist must complete a minimum of 24 hours of a dry needling course, with both a written and practical (in-person) training.

(3) dry needling in a high-risk area, without formal training, is not to be performed until the physical therapist has received appropriate training.

(4) a physical therapist must have at least 6 months of experience as a licensed physical therapist before providing dry needling to any patients.

(5) the physical therapist bears the burden of proof of sufficient education and training to ensure competence. If requested by the board or a member of the public, the physical therapist practicing dry needling shall provide documentation of completion of the training required by this regulation. Failure to provide written document to the board of meeting the training requirement shall be deemed prima facie evidence that the physical therapist is not competent and shall

not be permitted to perform dry needling.

B. Dry needling shall only be performed by a competent and licensed physical therapist and may not be delegated to a physical therapist assistant, aide or assistive personnel.

C. Gradual implementation of this dry needling provision (16.20.13.8 NMAC) will allow all physical therapists who are currently practicing dry needling to continue while they submit the required documentation during the 2019-2020 licensing renewal period. The transition period will be completed by 2021. All physical therapists practicing dry needling thereafter, will be required to follow the provision outlined in this document, prior to implementing this treatment technique on patients.
[16.20.13.8 NMAC - N, 07/28/2019.]

History of 16.20.13 NMAC:
[RESERVED]

REGULATION AND LICENSING DEPARTMENT PHYSICAL THERAPY, BOARD OF

This is an amendment to 16.20.2 NMAC, Section 8, effective 07/28/2019.

16.20.2.8 REQUIREMENTS FOR THE NATIONAL PHYSICAL THERAPY EXAMINATION:

A. All applicants for licensure must take the national physical therapy examination (NPTE), or show proof of having taken the NPTE in another state. The examination must be taken in English, without the use of an interpreter, and without the aid of an English/foreign language dictionary.

B. ~~[A complete licensure application, all required fees, and verification of successful completion of a physical therapy or physical therapist assistant program MUST be received by the board for verification of eligibility for licensure in New Mexico prior to registering to~~

~~sit for the exam.] Alternate Approval Pathway: the alternate approval pathway is an alternate method of licensure application for the physical therapist or the physical therapist assistant applying for an initial license in the state of New Mexico. The applicant will follow these steps, prior to completing the application process for New Mexico licensure:~~

(1) Apply directly to the federation of state boards of physical therapy (FSBPT) for permission to sit for the physical therapist or physical therapist assistant national licensing exam.

(2) Once the national licensing exam has been completed, the FSBPT will send the score to the state of New Mexico, as identified by the physical therapist or physical therapist assistant applicant.

(3) The state of New Mexico will receive the score from the FSBPT and then determine if the licensing eligibility requirements have been met. The applicant MUST provide a complete licensure application with all required fees to the board for verification of eligibility for licensure in New Mexico, prior to the state of New Mexico, issuing a physical therapist or physical therapist assistant license, pursuant to Section 16.20.3.8 NMAC.

C. The federation of state boards of physical therapy (FSBPT) will notify applicants, in writing, of the procedure to follow in order to register for the exam with an approved computer based testing (CBT) company.

(1) Applicants MUST take the exam within 60 days from the date of notification to register by [FSBPT].

(2) Applicants will register in New Mexico, but may take the exam in any state.

(3) Applicants will be scheduled to sit for the exam within 30 days from the time they call the computer based testing (CBT) company.

(4) Applicants may change their appointment up to two days prior to the test date.

D. Effective August 28, 1995, an applicant for licensure as a physical therapist shall obtain a score on the NPTE for physical therapists that equals or exceeds the criterion-referenced passing point of 600, based on a scale ranging from 200 to 800. Per changes in the eligibility requirements through the FSBPT, effective January 2016, applicants scoring 400 or less on two exams will be unable to test again for licensure. In addition, applicants will be able to take the exam a maximum of six times (three attempts annually) with no additional attempts allowed.

Applicants may not complete more than three attempts on the NPTE, in a 12 month period.

(1) For applicants who took the NPTE during the period from June 10, 1971 to August 28, 1995, the passing score for the national examination shall be 1.5 standard deviation below the national mean on the date the exam was taken by the applicant.

(2) Exams taken prior to June 10, 1971 may be reviewed on a case-by-case basis or the applicant may qualify under 16.20.3.10 NMAC (Licensure by Endorsement).

E. Effective August 28, 1995, an applicant for licensure as a physical therapist assistant shall obtain a score on the NPTE for physical therapist assistants that equals or exceeds the criterion-referenced passing point of 600, based on a scale ranging from 200 to 800. Per changes in the eligibility requirements through the FSBPT, effective January 2016, applicants scoring 400 or less on two exams will be unable to test again for licensure. In addition, applicants will be able to take the exam a maximum of six times (three attempts annually) with no additional attempts allowed.

Applicants may not complete more than three attempts on the NPTE, in a twelve month period.

(1) For applicants who took the NPTE during the period from June 10, 1971 to August 28, 1995, the passing score for the national examination shall be 1.5 standard deviation below the national mean on the date the exam was taken by the applicant.

(2) Exams taken prior to June 10, 1971 may be reviewed on a case-by-case basis or the applicant may qualify under 16.20.3.10 NMAC (Licensure by Endorsement).

F. Any applicant who fails the NPTE may retake the exam at the next available opportunity.

G. Any applicant who has failed the NPTE will not be issued a temporary license, or if a temporary license has been issued, it will automatically be revoked. The revocation is effective upon recording of the test results by the registrar. The registrar will promptly notify the applicant of results by certified mail.

H. An applicant who fails the NPTE two or more times must complete and submit proof of completion of remedial work as recommended by the board before being permitted to take subsequent NPTE's. Refer to the remedial criteria for specific requirements for each subsequent exam failed, up to six lifetime attempts.

CRITERIA FOR REMEDIAL WORK, DESCRIBED BY THE PHYSICAL THERAPY BOARD			
Number of failures	Number of points from passing	Mentorship and tutorial	Other
2	Score is within 6 points of passing	20 hours of mentorship or tutorial or any combination of both	Proof of a national licensing exam review course
2	Score is greater than 6 points of passing	40 hours of either mentorship or tutorial or any combination of both	Proof of a national licensing exam review course
3	Score is within 6 points of passing	20 hours of mentorship and 40 hours of tutorial	NONE
3	Score is greater than 6 points of passing	60 hours of mentorship and 60 hours of tutorial	NONE

After the fourth failure of the NPTE for PT/PTA applicant, the applicant must complete the following remedial work, to sit for the exam

(1) Letter confirming completion of remedial clinical mentorship with a licensed PT/PTA Supervisor for:

- (a) 160 hours in an outpatient clinic/facility
- (b) 160 hours in an inpatient/rehabilitation clinic/ facility
- (c) 160 hours in a clinic/ facility of their choice

(2) Letter confirming (with both scores listed) completion of a National License Review course and the FSBPT PEAT exam.

(a) Applicant must retake a national licensing review course (providing proof of completion)

(b) Applicant must retake the FSBPT PEAT exam (providing both scores). Per FSBPT guidelines, beginning January 2016, all applicants will be restricted to six lifetime attempts at passing the national licensing exam. In addition, two scores at 400/800 will preclude the applicant from any additional attempts at examination.

[03-29-83; 02-19-88; 08-01-89; 05-08-91; 06-03-94; 07-28-95; 05-15-96; 16.20.2.8 NMAC - Rn & A, 16 NMAC 20.2.8, 08-31-00; A, 7-28-01; A, 8-16-10; A, 09-30-14; A, 07-28-2019]

**REGULATION AND
LICENSING DEPARTMENT
PHYSICAL THERAPY,
BOARD OF**

This is an amendment to 16.20.3 NMAC, Sections 8 and 12, effective 07/28/2019.

**16.20.3.8 APPLICATION
FOR LICENSURE.**

A. The board may issue a license to an applicant, other than one applying for licensure by reciprocity, who fulfills the following requirements:

- (1) completes the application;
- (2) includes a passport-size photograph taken within the preceding 12 months and affixes it to the application;
- (3) pays the non-refundable application fee in full as provided in Part 5;
- (4) passes the jurisprudence exam (as specified in 16.20.2.10 NMAC) and pays the non-refundable exam fee as provided in Part 5;
- (5) submits official college or university transcripts from a program approved by the commission on accreditation in physical therapy education (CAPTE) verifying one of the following:
 - (a) post-baccalaureate degree in physical therapy;

- (b) associate degree as a physical [therapy] therapist assistant;
- (6) if official transcripts are not available because of school closure or destruction of the records, e.g., the applicant must provide satisfactory evidence of meeting the required physical therapy educational program requirements by submitting documentation that will be considered on a case-by-case basis by the board and pursuant to the following:
 - (a) for applicants who graduated after January 1, 2002, documentation of graduation with a post-baccalaureate degree in physical therapy from an

educational program accredited by CAPTE;

- (b) for applicants who graduated prior to January 1, 2002, documentation of graduation with a baccalaureate degree in physical therapy or a certificate in physical therapy from an educational program accredited by CAPTE;

- (c) for physical therapist assistant applicants, documentation of graduation from an accredited physical therapist assistant program accredited by CAPTE and approved by the board;

- (7) passes the national physical therapy licensure examination (NPTE) (as specified in 16.20.2.8 NMAC); if the applicant has previously taken the NPTE, the testing entity shall send the test scores directly to the board; test scores sent by individuals, organizations or other state boards will not be accepted.

(8) effective February 1, 2020, all applicants for licensure must submit nationwide and statewide department of public safety (DPS) criminal history screening background check. All applicable application fees associated with the nationwide and statewide criminal history screening background check shall be paid by the applicant.

(a) applicants will follow the criminal background check process required by the New Mexico department of public safety or its agents.

(b) applications for exam or endorsement will not be processed without results of a criminal background check.

(c) if the criminal background check reveals a crime of moral turpitude or relevant felony or violation of the New Mexico physical therapy practice act, the applicant will be notified to submit copies of legal documents and other related information to the board that will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

B. For applicants who have not practiced since graduating from a physical therapy education program, or who have not practiced as a physical therapist or physical therapist assistant for a period of more than three consecutive years, full licensure requires fulfilling the following requirements:

- (1) satisfactory completion of all application requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC;

- (2) provides proof of having taken 15 continuing education contact hours for each year the applicant was not practicing as a physical therapist or physical therapist assistant (coursework to be pre-approved by the board);

- (3) provides evidence of additional competency to practice as required by the board.

C. Felony or misdemeanor convictions involving moral turpitude directly related to employment in the profession have to be satisfactorily resolved. The board may require proof that the person has been sufficiently rehabilitated to warrant the public trust if the prior conviction does not relate to employment in the profession. Proof of sufficient rehabilitation may include, but is not limited to: certified proof of completion of probation or parole supervision, payment of fees, community service or any other court ordered sanction.

D. A licensee requesting a name change must submit proof of name change, the original license and a replacement license fee.

E. Foreign educated applicants must meet all requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC as well as those requirements listed in 16.20.9 NMAC.

F. Initial application is valid for a period of 12 months. [16.20.3.8 NMAC - Rp, 16.20.3.8 NMAC, 11/1/2004; A, 3/2/2006; A, 1/12/2008; A, 8/1/2009; A, 8/16/2010; A, 7/27/2017; A, 7/16/2019; A, 7/28/2019]

**16.20.3.12 PROVISIONS
FOR EMERGENCY LICENSURE:**

A. Physical therapists and physical therapist assistants currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster upon:

(1) completing a signed application accompanied by proof of identity, which may consist of a copy of a driver's license, passport or other photo identification issued by a governmental entity;

(2) submitting documentation of graduation from an educational program approved by the commission on accreditation in physical therapy education (CAPTE), proof of successful completion of the national physical therapy examination (NPTE) and jurisprudence exam as specified in 16.20.3.8 NMAC, of these rules (verification may be obtained by email, online verification from the testing agency or university, mail or by fax);

(3) verification of licenses held in other states and verification of employment if applicable (verification may be sent to the board by mail, fax or email, through online verification from the state of licensure); and

(4) proof or documentation of residency and or employment in the area of the federal disaster.

B. The board may waive the following requirements for licensure:

(1) application [fee's] fees prorated for four months;

(2) the specific forms required under 16.20.3.8 NMAC if the applicant is unable to obtain documentation from the federal declared disaster areas.

C. Nothing in this section shall constitute a waiver of the requirements for licensure contained in the board's rules and regulations.

D. Licenses issued under (this emergency provision)

shall expire four months following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before February 1, following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

[16.20.3.12 NMAC - N/E, 11/16/2005; Re-pr & A, 3/2/2006; 16.20.3.12 NMAC - Rn, 16.20.3.11 NMAC, 8/1/2009; A, 8/16/2010; A, 7/28/2019]

REGULATION AND LICENSING DEPARTMENT PHYSICAL THERAPY, BOARD OF

**This is an amendment to 16.20.4
NMAC, Section 10, effective
07/28/2019.**

16.20.4.10 TEMPORARY LICENSES FOR PT'S OR PTA'S TEACHING AN EDUCATIONAL SEMINAR:

A. Completion of an instructor license application and pay the non-refundable application fee as provided in Part 5.

B. The instructing physical therapist must provide the board with proof of a valid current license [~~to practice~~] from the state in which they are currently practicing. This verification of licensure must be received by the New Mexico board directly from the state board where the instructing therapist is licensed.

C. A temporary license may not be used to practice physical therapy for any other purposes than for the continuing education program for which it was issued.

D. This section applies only to educational seminars which include hands-on demonstrations.

E. A temporary license for an instructor shall only be valid through the end of the calendar year in which the license is issued.

[10-15-97; 16.20.4.10 NMAC - Rn &

A, 16 NMAC 20.4.10, 08-31-00; A, 03-02-06; A, 8/16/10; A, 07-28-2019]

REGULATION AND LICENSING DEPARTMENT PHYSICAL THERAPY, BOARD OF

**This is an amendment to 16.20.6
NMAC, Section 8, effective
07/28/2019**

16.20.6.8 PHYSICAL THERAPIST ASSISTANTS:

A. A physical therapist assistant may work only under the direction and supervision of a New Mexico physical therapist who is licensed pursuant to Subsections A and B of Section 61-12-10 NMSA 1978 of the Physical Therapy Act. The referring physical therapist shall assume full responsibility for the professional activities of the assistant, which are undertaken pursuant to his/her direction or supervision.

B. A physical therapist may not be responsible for the direction and supervision of more than three full-time physical therapist assistants [~~of~~] working three FTE's (full-time equivalency, totaling 120 work hours per week) requiring supervision, including temporary physical therapists, temporary physical therapist assistants, or full-licensed physical therapist assistants.

C. A physical therapist may supervise more than three physical therapist assistants provided combined FTE's do not exceed 120 hours per week.

D. The direction and supervision of the physical therapist assistant shall require the following:

(1) the referring physical therapist is responsible for the patient's care;

(2) when physical therapy services are being provided, a licensed physical therapist must be on call and readily available for consultation by phone, electronic mail or cellular phone when the referring physical therapist leaves the area or facility, for any length of time, or the referring physical therapist

must appoint a stand in physical therapist as a supervising therapist until such time the referring physical therapist returns to the facility;

(3) the referring physical therapist will formulate a current written plan of care for each patient; the referring physical therapist will review the plan of care at least every 30 days;

(4) the physical therapist should only delegate interventions to physical therapist assistant's that are competent and trained in these interventions; the physical therapist assistant shall not:

(a) interpret referrals;

(b) specify or perform definitive (initial, progress/re-evaluation, discharge) evaluative and assessment procedures;

(c) alter goals or a plan of care; or

(d) determine when to utilize the physical therapist assistant to perform selected interventions of physical therapy care.

(5) the physical therapist assistant may sign daily notes without the physical therapist's co-signing; each daily treatment note in a patient's permanent record completed by a physical therapist assistant must include the name of the referring physical therapist; and

(6) the physical therapist assistant shall respond to acute changes in the patient's physiological state; the physical therapist assistant shall notify the referring physical therapist of those changes prior to the next treatment session.

[03-29-83; 02-19-88; 08-01-89; 05-08-91; 09-03-92; 05-01-96; 16 NMAC 20.6.8 - Rn & A, 16 NMAC 20.7, 10-15-97; 16.20.6.8 NMAC - Rn, 16 NMAC 20.6.8, 08-31-00; A, 03-02-06; A, 1-12-08; A, 4-15-10; A, 8-16-10; A, 09-30-14; A, 02-27-15; A, 07-28-2019]

REGULATION AND LICENSING DEPARTMENT PHYSICAL THERAPY, BOARD OF

This is an amendment to 16.20.7 NMAC, Sections 8 and 9, effective 7/28/2019. Numerical values have been changed to conform with Legislative style.

16.20.7.8 SUPERVISION OF LICENSED PERSONNEL:

A. A physical therapist may not be responsible for the direction and supervision of more than three full-time physical therapist assistants, or three FTE's (full-time equivalency totaling 120 work hours per week) requiring supervision, including temporary physical therapists, temporary physical therapist assistants, and licensed physical therapist assistants.

B. A physical therapist may supervise three or more physical therapist assistants provided combined FTE's do not exceed more than 120 hours per week.

C. When physical therapy services are being provided, a licensed physical therapist must be on call and readily available for consultation by phone or electronic mail when the referring physical therapist leaves the area or facility, for any length of time or the referring physical therapist must appoint a stand in physical therapist as a supervising therapist until such time the referring physical therapist returns to the facility.

D. A physical therapist supervising a temporary licensee must notify the New Mexico physical therapy licensing board, in writing, when they are no longer responsible for supervision of a temporary licensee.

E. The referring physical therapist must hold documented conferences with the physical therapist assistant regarding the patient. The physical therapist is responsible for determining the frequency of the conferences consistent with accepted standards of practice within the facility in which

they work.

[10/15/1997; 16.20.7.8 NMAC - Rn, 16 NMAC 20.7.8, 8/31/2000; A, 3/2/2006; A, 1/12/2008; A, 8/1/2009; A, 9/30/2014; A, 7/28/2019]

16.20.7.9 SUPERVISION OF UNLICENSED ASSISTIVE PERSONNEL (PHYSICAL THERAPY AIDE/TECHNICIAN/ ATTENDANT):

A. A licensed physical therapist may only supervise unlicensed aides working as care-giving assistive personnel, provided the assistive personnel's combined full time equivalency does not exceed 120 hours per week.

B. Physical therapy aides and other assistive personnel shall perform patient care activities under on-site supervision of a physical therapist. "On-site supervision" means the supervising physical therapist:

(1) be continuously on-site and present in the department or facility where the assistive personnel are performing services;

(2) be immediately available to assist the person being supervised in the services being performed; and

(3) maintain continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel.

[10/15/1997; 16.20.7.9 NMAC - Rn, 16 NMAC 20.7.9, 8/31/2000; A, 1/12/2008; A, 8/1/2009; A, 8/16/2010; A, 9/30/2014; A, 7/28/2019]

TRANSPORTATION, DEPARTMENT OF

TITLE 18 TRANSPORTATION AND HIGHWAYS CHAPTER 27 HIGHWAY CONSTRUCTION GENERAL PROVISIONS PART 6 LOCAL GOVERNMENT TRANSPORTATION PROJECT FUND

18.27.6.1 ISSUING

AGENCY: New Mexico Department of Transportation, Post Office Box 1149, Santa Fe, New Mexico 87504-1149.

[18.27.1 NMAC - N/E, 7/16/2019]

18.27.6.2 SCOPE: This rule covers the application, contracting, construction and close out process for the local government transportation project fund (the program) and all local governments in the state of New Mexico applying for and receiving grant money from the fund.

[18.27.2 NMAC - N/E, 7/16/2019]

18.27.6.3 STATUTORY

AUTHORITY: Sections 67-3-11 and 67-3-28 NMSA 1978, and HB 694.

[18.27.3 NMAC - N/E, 7/16/2019]

18.27.6.4 DURATION:

Permanent.

[18.27.4 NMAC - N/E, 7/16/2019]

18.27.6.5 EFFECTIVE

DATE: July 16, 2019 unless a later date is cited at the end of a section.

[18.27.5 NMAC - N/E, 7/16/2019]

18.27.6.6 OBJECTIVE:

The purpose of this regulation is to describe the application, evaluation, contracting, and construction and close out processes to be administered by the department, for money appropriated to the fund by the New Mexico legislature for the development of transportation infrastructure.

[18.27.6 NMAC - N/E, 7/16/2019]

18.27.6.7 DEFINITIONS:

As used in this rule:

A. "ADA" means Americans with Disabilities Act.

B. "Commission" means the state transportation commission.

C. "Construction" means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a public highway.

D. "Department" means the New Mexico department of transportation.

E. "District" means one of the six New Mexico department of transportation districts.

F. "District engineer" means the department of transportation district engineer or designee.

G. "Fiscal year" means 12 calendar months commencing on July 1 and ending on June 30 of the year being described.

H. "Fund" has the same meaning as defined in Subsection A of section 1 of HB 694.

I. "DFA" means the department of finance and administration of the state of New Mexico.

J. "HB 694" means house bill 694 enacted in the 2019 legislative session and signed into law on April 3, 2019.

K. "Local funds" means revenue received from any locally imposed gross receipts tax, property tax, municipal gasoline tax, franchise fee, user fees or any other locally imposed fees or taxes, and enterprise activities, which can be lawfully used for transportation projects, but excluding state grants and loans and federal grants.

L. "Local government" has the same meaning as defined in Subsection A of section 2 of HB 694.

M. "Local government transportation project" has the same meaning as defined in Subsection A of section 3 of HB 694.

N. "MPO" means metropolitan planning organization.

O. "National Highway System" (NHS) means that system of highways designated and approved in accordance with the provisions of 23 U.S.C. 103(b).

P. "Non-state money" has the same meaning as defined in Subsection A of section 4 HB 694.

Q. "PFF" means project feasibility form.

R. "PPF" means project prospectus form.

S. "Public highway" means every public street, road, highway or thoroughfare of any kind in this state used by the public whether actually dedicated to the public and accepted by proper authority or otherwise.

T. "RTPO" means regional transportation planning organization.

U. "Secretary" means the cabinet secretary of the New Mexico department of transportation or designee.

V. "State highway" means every public highway which has been designated a state highway either by the legislature or by the state transportation commission.

W. "The Program" means the local government transportation project fund program.

X. "Transportation infrastructure" means highway, streets, and roadways, bridges, crossing structures and parking facilities, including all areas for vehicular use for travel, ingress, egress and parking.

Y. "Tribal/Local Public Agency Handbook" (T/ LPAH) means the most recent edition of the guidance developed by the NMDOT to assist tribal and local public agencies in successfully navigating the planning, design, and implementation of federally-funded transportation projects.

[18.27.7 NMAC - N/E, 7/16/2019]

18.27.6.8 GENERAL

GUIDELINES: The following general guidelines are established for administration of the fund authorized by HB 694.

A. All or parts of the funds appropriated in subsection 3 of section 9 of the general appropriation act of 2019 may be used by the department to make grants to local governments for local government transportation projects.

B. Only local governments submitting complete applications and requests for grant funds from the program by the deadlines specified in this rule are eligible for grants from the fund and for hardship waivers.

C. Eligible projects include environmental and other studies, planning, design, construction and acquisition of rights of way necessary for the development of transportation infrastructure, and includes highways, streets, roadways, and bridges, crossing structures, parking facilities, including all areas for vehicular use for travel, ingress, egress and parking.

D. The department will participate up to ninety-five percent of the total cost of the program provided that the local government has demonstrated an ability to provide the remainder of the project costs in non-state money. Non-cash contributions can be used on a project but will not count towards the required local match and should not be included in the project budget. The local government is responsible for any and all cost overruns.

E. The department will participate up to one hundred percent of the total cost of the program if a financial hardship qualification certificate is issued to the local government by the DFA.

F. All applications must have been received by the department by the deadline of June 14, 2019 at close of business or 5:00p.m.

G. The department's questions and responses dated May 7, 2019 will be used as general guidelines through the end of calendar year 2019.

H. Applications will be evaluated for project readiness and must have project scoping completed with project needs, limits,

and construction process already established and ready to move into the initial design phase, or if design is complete, then to the next phase of the project

I. All costs associated with preparing, reviewing, and submitting an application and any required supporting documentation by the local government are not eligible for grant funding participation. This includes the cost of any consultant services procured by the local government in the application process. The cost of the consultant's services can be considered part of the local government's share of the project costs.

J. The department will not perform any detailed technical reviews of project scope, cost budget, project schedule or any other required documentation.

K. Projects are expected to commence and be completed in a timely manner.

L. Applicants must have the ability to successfully deliver their project.

M. All awarded program funds must be spent by June 30, 2024.

N. All grant funding is subject to department audit. The findings of the audit are final.

O. Funds awarded to a local government will be provided for a specific project. Unexpended funds cannot be used for any other purpose or project. Unexpended grant funds will be returned to the department through the audit process.

P. If the local government will be combining the program funding with federal funding at any point in the project, the project must comply with the (T/LPAH).
[18.27.8 NMAC - N/E, 7/16/2019]

18.27.6.9 CALL FOR PROJECTS AND APPLICATION PROCEDURES:

A. The department invited local governments to submit applications for grants from the fund for local transportation infrastructure projects by a call for projects letter dated April 30, 2019. Criteria upon

which the submitted applications would be accepted were specified in the letter.

B. Completed applications were required to be submitted to the appropriate MPO or RTPPO planner no later than the date specified in the call for projects for forwarding to the NMDOT. Failure to timely submit the required documentation as required in the call for projects will result in the local government being ineligible for funding in fiscal year 2020.

C. Incomplete applications were subject to return to the local government submitting the application.
[18.27.9 NMAC - N/E, 7/16/2019]

18.27.6.10 FINANCIAL HARDSHIP:

A. Local governments eligible for participation in the program may request a waiver of their matching share in whole or in part due to financial hardship. Waiver requests with supporting documentation shall be submitted to the NMDOT's Project Oversight Division.

B. Waiver of matching funds will be considered in the manner provided for in 18.27.3 NMAC - local government road fund guidelines for waiver of local entities matching funds due to financial hardship.

C. If the local government's hardship application is approved, the local government shall submit a resolution or certification indicating that it cannot match all or a portion of its share. The resolution or certification shall be signed by the appropriate local government official(s).

D. A waiver must be requested and determination made before a grant agreement will be signed with the department.
[18.27.10 NMAC - N/E, 7/16/2019]

18.27.6.11 DEPARTMENT AND STATE TRANSPORTATION COMMISSION PROCEDURES:

A. The secretary shall by August 1, 2019 submit a proposed list of local government transportation

projects identified by the MPO and RTPO planning processes to the commission.

B. Final project selection and funding amounts will be determined by the commission no later than September 1, 2019. The commission's decision will be final. At its discretion, the commission may adjust the projects selected in an effort to program funds in a geographically equitable manner or any other manner. The commission may, in its sole discretion, reject all applications or award grants totaling less than the FY20 appropriated funds. The commission may approve subsequent changes to a priority list as it deems necessary.

C. After projects are selected, the department will send out award letters and grant agreements to the selected local governments. Applicants whose projects were not selected will be notified as well. Each awarded local government must execute a grant agreement with the department. Once a fully executed grant agreement has been received by the department, the local government may then proceed with preliminary engineering/project design activities. If the local government fails to execute and return the grant agreement within 30 days of receiving the notice of award, the project shall be considered lapsed and will be submitted to the commission for re-programming.

D. Subject to any terms and conditions contained in the grant agreement, the department shall disburse the grant to the local government after receipt of a request for disbursement submitted by the local government to the department. The format of the request for disbursement will be determined by the department.
[18.27.11 NMAC - N/E, 7/16/2019]

18.27.6.12 AGREEMENT CONDITIONS, REQUIREMENTS AND PROCEDURES:

A. The local government must expend and account for grant funds in accordance with state laws and procedures for

expending and accounting for its own funds.

B. If a local government commences performance on a transportation infrastructure project but fails to complete the project, the department may seek reimbursement of all grant money received by the local government for that project.

C. The department shall have the right to monitor the activities of local government as necessary to ensure grant awards are used for authorized purposes in compliance with laws, regulations and the provision of contracts or grant agreements and performance goals are achieved.

[18.27.12 NMAC - N/E, 7/16/2019]

18.27.6.13 DESIGN/ BIDDING/CONSTRUCTION:

A. If the local government will be combining the program funding with federal funding at any point in the project, the project must be administered in accordance with the (T/LPAH).

B. A permit must be obtained from the NMDOT in accordance with 18.31.6 NMAC - state highway access management requirements, whenever a local government will be using the fund but without the assistance of any Federal-aid to perform construction work on a portion of a state highway. Design and construction shall be in accordance with standards established by the NMDOT.

C. For local transportation projects funded entirely by the fund, or in combination with local funds, and no Federal-aid funds are involved, the following apply:

D. All design activities necessary to advance the project to construction will be the responsibility of the local government.

E. It will be the local government's responsibility to ensure compliance with any and all applicable state, local and federal regulations including the ADA and laws regarding noise ordinances, air quality, surface water quality, ground water quality, threatened

and endangered species, hazardous materials, historic and cultural properties, and cultural resources.

F. Projects on locally owned roadways are to be designed in accordance with the local government's established design standards. In the absence of formally established municipal geometric and other applicable design standards, the local government is responsible for ensuring that the plans, specifications and estimates meet required design criteria and standards.

G. In accordance with section 67-3-62 NMSA 1978, any transportation infrastructure projects for constructing highways along new alignments or for purposes of substantially widening highways along the existing alignments must consider provisions for pedestrian, bicycle, and equestrian facilities concurrent with the design of the project.

H. Pursuant to section 61-23-26 NMSA 1978, all local government transportation infrastructure projects involving engineering requires the responsible charge of a licensed professional engineer.

[18.27.13 NMAC - N/E, 7/16/2019]

18.27.6.14 PROJECT EVALUATION:

A. The local government's performance and administration of the grant funding will be monitored and evaluated by the department. If a local government exhibits an inability to properly administer a project future grant funds may be withheld.

B. The following criteria shall be used to determine whether a local government cannot properly administer a project:

(1) The local government has a history of unsatisfactory performance;

(2) The local government is not financially stable;

(3) The local government has a management system, which does not meet the management standards set forth;

(4) The local government is otherwise not responsible; or

(5) If random audits by the department determine that the local government has not performed in accordance with the terms of the grant agreement, the standards set forth in the grant agreement or in accordance with generally accepted governmental accounting principles.

[18.27.14 NMAC - N/E, 7/16/2019]

18.27.6.15 PROJECT DOCUMENTATION: The local government shall maintain a complete set of project files for a period of not less than five years following the completion of the project. The project files shall contain all documents that are specified as required by the grant agreement.

[18.27.15 NMAC - N/E, 7/16/2019]

18.27.6.16 PROJECT MONITORING AND CLOSE OUT:

A. Progress on funded projects may be monitored periodically by the department to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met.

B. The department reserves the right to request the local government to submit progress reports at any time. Reports are due within 30 days of such a request.

C. Within 60 days after the date of completion of the project, the local government must submit a written certification that it has complied with the requirements of this rule and the grant agreement.

D. The department reserves the right to request the local government to submit additional documentation to demonstrate completion of the terms and conditions required by the program. It is the responsibility of the local government to comply in full with all such requests and to submit the requested documentation in a timely manner.

E. Financial audits of the project may be required. Financial audits do not limit the authority of the department to conduct or arrange for additional audits, reviews, and evaluations. The local government must make records available for review or audit upon request by the department. The department is entitled to recover amounts based on the results of an audit.

[18.27.16 NMAC - N/E, 7/16/2019]

History of 18.27.16 NMAC:
[RESERVED]

End of Adopted Rules

Other Material Related to Administrative Law

HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT BUREAU

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The New Mexico Human Services Department, Child Support Enforcement Division, gives Notice of a Minor, Nonsubstantive Correction.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all published and electronic copies of the following rule:

Original paragraph (1) of Subsection B of 8.50.112.16 NMAC was deleted (due to lack of a paragraph (2)).

The Section has been re-formatted to read:

8.50.112.16 ADMINISTRATIVE OFFSET BY THE SECRETARY OF THE TREASURY:

A. Referral for administrative offset: federal administrative offset is utilized to pay support arrearages, including child support, medical support, and spousal support. Cases meeting specific criteria are referred to the U.S. department of treasury's financial management service. When referring a case for administrative offset by the secretary of the treasury, the IV-D agency shall comply with the provision of 31 CFR § 285.1.

B. Notification of administrative offset: written advance notice is sent to inform an obligor that the amount of his or her past due support will be referred to the secretary of the U.S. treasury for collection by administrative

offset. The notice shall be sent to the obligor's last address of record with the IV-D agency. The IV-D agency shall inform the obligor:

(1) of the right to contest the department's determination that past due support is owed;

(2) of the right to contest the amount of the past due support;

(3) of the right to an administrative review; and

(4) of the procedures and time frame for requesting an administrative review.

C. Contesting referral for administrative offset: The obligor has 30 days from the date of notification of a referral for administrative offset to notify the IV-D agency that he or she contests the referral. The notification issued by the IV-D agency provides the address and telephone number to be contacted in order for the obligor to request a hearing to contest the referral.

(1) Upon receipt of an appeal request from the obligor, a notice is generated by the administrative law judge and sent to the obligor and the IV-D agency.

(2) The notice shall set forth the time and place of the administrative hearing. The hearing is conducted in accordance with 8.50.130 NMAC.

[8.50.112.16 NMAC - N, 7/1/2019]

A copy of this Notification will be filed with the official version of the above rule.

End of Other Material Related to Administrative Law

2019 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXX, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 15
Issue 2	January 17	January 29
Issue 3	January 31	February 12
Issue 4	February 14	February 26
Issue 5	February 28	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 14
Issue 10	May 16	May 28
Issue 11	May 30	June 11
Issue 12	June 13	June 25
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Issue 19	September 26	October 15
Issue 20	October 17	October 29
Issue 21	October 31	November 12
Issue 22	November 14	November 26
Issue 23	December 5	December 17
Issue 24	December 19	December 31

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