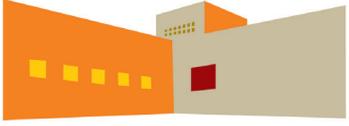


NEW MEXICO 
Commission of Public Records
at the State Records Center and Archives
Your Access to Public Information

New Mexico Register

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

Volume XXVII - Issue 2 - January 29, 2016

COPYRIGHT © 2016
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XXVII, Issue 2

January 29, 2016

Table of Contents

Notices of Rulemaking and Proposed Rules

| | |
|--|----|
| Cultural Affairs, Department of Historic Preservation Division Notice of Proposed Rulemaking..... | 24 |
| Water Quality Control Commission Notice of Public Hearing to Consider Proposed Amendment to 20.7.4 NMAC - Utility Operator Certification..... | 24 |

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

| | | | |
|--|---|---|----|
| Gaming Control Board | | | |
| 15.1.10 NMAC | R | Conduct of Gaming Activity Under the Gaming Control Act..... | 26 |
| 15.1.10 NMAC | N | Conduct of Gaming Activity Under the Gaming Control Act..... | 26 |
| 15.1.2 NMAC | A | Confidential Treatment of Certain Information..... | 38 |
| 15.1.6 NMAC | A | Premises Licensed Under the Gaming Control..... | 39 |
| Public Regulation Commission | | | |
| 17.11.10 NMAC | R | State Rural Universal Service Fund..... | 40 |
| 17.11.10 NMAC | N | State Rural Universal Service Fund..... | 40 |
| Regulation and Licensing Department | | | |
| Osteopathic Medical Examiners | | | |
| 16.17.9 NMAC | N | Physicians Supervising Pharmacist Clinicians..... | 50 |

The New Mexico Register
Published by the Commission of Public Records,
Administrative Law Division
1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.

Telephone: (505) 476-7942; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

Notices of Rulemaking and Proposed Rules

DEPARTMENT OF CULTURAL AFFAIRS HISTORIC PRESERVATION DIVISION

Notice of Proposed Rulemaking

Notice is hereby given that the State Historic Preservation Officer (SHPO), in conjunction with the Secretary of the Department of Cultural Affairs (DCA), is proposing to repeal 4.51.5 NMAC and replace it with a new rule, 4.10.19 NMAC. DCA is promulgating the proposed rule pursuant to Section 18-6-8 NMSA 1978. The proposed rule sets forth requirements for accessing the statewide historic and prehistoric databases and an archive maintained by the Historic Preservation Division (HPD) and establishes fees to cover the costs of using the databases and archives. The proposed rule initially maintains the fee schedule established in 4.51.5 NMAC and allows for a new consolidated fee schedule, which would go into effect on a date determined by the Historic Preservation Division. The new fee schedule would drop the annual access fee and increase the submission of records fees.

DCA will hold a public hearing on March 2, 2016 at 3:00 p.m., at room 238 in the Bataan Memorial Building, 407 Galisteo Street, Santa Fe, New Mexico 87501. The purpose of the hearing is to receive oral and written comments on the proposed rule.

The proposed rule is available at the HPD website: <http://www.nmhistoricpreservation.org> and at the HPD offices in the Bataan Memorial Building located at 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501. To request that a copy of the proposed rule be mailed to you, submit your request in writing to Historic Preservation Division, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501, by email to nm.shpo@state.nm.us, or via fax to (505) 827-6338.

Any person may appear at the hearing and make oral comments, or submit written comments, or both. Written comments may also be submitted by mail to: Historic Preservation Division, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501. The HPD will accept written comments for consideration as

provided above no later than the hearing date.

Individuals 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 should contact Lynn Jacks at 505-827-4259 or lynnis.jacks@state.nm.us at least five business days prior to the hearing.

WATER QUALITY CONTROL COMMISSION

Notice of Public Hearing to Consider Proposed Amendment to 20.7.4 NMAC - Utility Operator Certification

The New Mexico Water Quality Control Commission ("Commission" or "WQCC") will hold a public hearing on March 8, 2016, at 9:00 a.m., and continuing thereafter as necessary, in the old PERA building, Apodaca Hall, 1120 Paseo de Peralta, Santa Fe, New Mexico. The hearing location may change prior to March 8, 2016, and those interested in attending should check the WQCC website: <https://www.env.nm.gov/wqcc/index.html> prior to the hearing. The purpose of the hearing is to consider proposed amendments to the New Mexico Utility Operator Certification Regulations (20.7.4 NMAC). The New Mexico Utility Operator Certification Advisory Board is the proponent of these regulations.

The proposed amendments to 20.7.4 NMAC would add a new section, 20.7.4.16 NMAC, and are necessary to conform to the requirements in the Utility Operators Certification Act and the Utility Operator Certification Regulations for providing general criteria for the level of professional conduct expected of certified operators in the state of New Mexico.

Please note formatting and minor technical changes in the regulations may occur. In addition, the Commission may make other amendments as necessary to accomplish the purpose of providing public health and safety in response to public comments submitted to the Commission and evidence presented at the hearing.

All proposed amendments and other documents related to the hearing may be

reviewed during regular business hours in the office of the Commission:

Pam Castaneda, WQCC Administrator
New Mexico Environment Department
1190 S. St. Francis Drive, S-2102
Santa Fe, New Mexico, 87502
(505) 827-2425, Fax (505) 827-2818

The proposed amendments have been posted to the New Mexico Environment Department/Utility Operator Certification webpage at <https://www.env.nm.gov/swqb/UOCP>. Parties interested in receiving a hardcopy should contact Anne Keller by email at: anne.keller@state.nm.us or by phone at (505) 827-0149. Written comments regarding the new regulations may be addressed to Ms. Castaneda at the above address, and should reference docket number WQCC 15-09 (R).

The hearing will be conducted in accordance with NMSA 1978, Section 74-6-6 of the Water Quality Act; the Guidelines for Water Quality Control Commission Regulation Hearings; and other applicable procedures. A copy of the Guidelines for Water Quality Control Commission Regulation Hearings and the Hearing Guidelines may be obtained from Ms. Castaneda; they are also available on the Commission's website at <https://www.env.nm.gov/wqcc/index.html>.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file such statement prior to the close of the hearing.

Persons wishing to present technical testimony during the hearing must file with the Commission a written Notice of Intent to do so. Notices must be filed with Pam Castaneda at the address above by 5:00 p.m. on February 23, 2016, and should reference the date of the hearing and docket number WQCC 15-09 (R).

The Notice shall include:

- identify the person for whom the witness(es) will testify;
- identify each technical witness the person intends to present and state the qualifications of that witness including a

description of their educational and work background;

- if the hearing will be conducted at multiple locations, indicate the location or locations at which the witness(es) will be present;

- summarize, or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;

- include the text of any recommended modifications to the proposed regulatory change; and

- list and describe, or attach, all exhibits anticipated to be offered by the person at the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Juan Carlos Borrego by February 23, 2016. Mr. Borrego's telephone number is 505-827-0424. He is the Chief of the Personnel Services Bureau, New Mexico Environment, Department, P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico 87502, (505) 827-2844. (TDD or TDY users, please access his number via the New Mexico Relay Network at 1-800-659-8331.)

The Commission may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Commission may convene a meeting after the hearing to consider action on the proposal.

**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.

GAMING CONTROL BOARD

The Gaming Control Board approved, at its 5/1/2014 hearing, to repeal its rule 15.1.10 NMAC, Conduct of Gaming Activity Under The Gaming Control Act, (filed 12/2/2010), effective 1/29/2016.

GAMING CONTROL BOARD

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 1 GAMES AND GAMING GENERAL PROVISIONS
PART 10 CONDUCT OF GAMING ACTIVITY UNDER THE GAMING CONTROL ACT

15.1.10.1 ISSUING AGENCY:
 New Mexico Gaming Control Board.
 [15.1.10.1 NMAC - Rp, 15.1.10.1 NMAC, 1/29/2016]

15.1.10.2 SCOPE: This rule applies to all gaming operator licensees, applicants for licensure as gaming operators, and other persons involved in gaming activity under the New Mexico Gaming Control Act.
 [15.1.10.2 NMAC - Rp, 15.1.10.2 NMAC, 1/29/2016]

15.1.10.3 STATUTORY AUTHORITY: Section 60-2E-7(B)(3) of the Gaming Control Act authorizes the board to develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act. Section 60-2E-8(C) (6) directs the board to adopt regulations defining the area, games and gaming devices allowed and the methods of operation of such games.
 [15.1.10.3 NMAC - Rp, 15.1.10.3 NMAC, 1/29/2016]

15.1.10.4 DURATION:
 Permanent.
 [15.1.10.4 NMAC - Rp, 15.1.10.4 NMAC, 1/29/2016]

15.1.10.5 EFFECTIVE DATE:
 January 29, 2016, unless a later date is cited at the end of a section.
 [15.1.10.5 NMAC - Rp, 15.1.10.5 NMAC, 1/29/2016]

15.1.10.6 OBJECTIVE: This rule establishes standards for the conduct of gaming activities authorized by the Gaming Control Act.
 [15.1.10.6 NMAC - Rp, 15.1.10.6 NMAC, 1/29/2016]

15.1.10.7 DEFINITIONS:
 Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

A. “act” means the Gaming Control Act;
B. “additional payout” means a supplemental cash payout, based on a jackpot, that is not reflected in the gaming machine pay table (e.g., double jackpot);

C. “affiliate” means a corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation;

D. “allocate” means the transfer of an allocating racetrack’s right to operate a number of its authorized gaming machines to the receiving racetrack;

E. “allocation agreement” means a written contract between an allocating racetrack and a receiving racetrack;

F. “allocating racetrack” means a racetrack gaming operator licensee that has allocated or is proposing to allocate a number of its authorized gaming machines to a receiving racetrack pursuant to a valid allocation agreement;

G. “allowable gaming expenses” means the following bona fide expenses in reasonable and customary amounts:

- (1) purchase prices of non-cash prizes;
- (2) security and surveillance expenses;
- (3) independent accountant’s fees;

(4) license fees, including renewals and gaming machine license fees;

(5) utilities attributable to the licensed premises;

(6) installment payments to an independent administrator or lease payments for licensed gaming machines;

(7) gaming device repair and maintenance;

(8) gaming employee salaries and employment taxes;

(9) gaming supplies;

(10) approved management fees; and

(11) licensed premises repair and maintenance;

H. “balance of net take” means the amount of net take remaining after the gaming operator licensee pays the gaming tax, income and other applicable taxes, and allowable gaming expenses as set forth in this rule;

I. “charitable purposes” means activities that promote, directly or indirectly, the well-being of the public at large or the benefit of an indefinite number of persons in the state; the term “charitable purposes” does not include operating expenses of the organization or any affiliated organization;

J. “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the licensee or to exercise significant influence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the licensee;

K. “credit slip” means a cash-out ticket for winnings earned on a gaming machine that provides for credit play;

L. “disciplinary action” means an action by the board that limits, conditions, suspends or revokes a license, registration, finding of suitability or prior approval issued by the board, or an assessment of a fine by the board, or any combination of the foregoing;

M. “educational purposes” means activities or uses that

develop the capabilities of individuals by formal instruction; the term “educational purposes” does not include the operating expenses of the organization or any affiliated organization;

N. “gaming credit” means an accumulation of awards on a gaming machine display screen rather than from the dispensing of winnings from a hopper; one gaming credit equals the denomination of the game being played;

O. “independent administrator” means:

(1) a bank licensed by the state or a national bank with an office in the state; or

(2) an insurance company admitted to transact business in the state with a best insurance rating of “A,” “A+” or “A-”; and

(3) one that is not an affiliate of the gaming operator licensee;

P. “receiving racetrack” means a racetrack gaming operator licensee that is proposing to receive, or has received pursuant to a valid allocation agreement, allocated gaming machines from an allocating racetrack;

Q. “management contractor” means any person that has entered into a management contract with a gaming operator licensee; a management contractor may not be an affiliate of the licensee;

R. “nonprofit operator licensee” means a qualified nonprofit organization that has obtained a gaming operator’s license pursuant to the provisions of the act and board regulations;

S. “periodic payments” means a series of payments that are paid at least annually and includes annuities;

T. “person” means a legal entity or individual;

U. “personal property award” means an award of personal property based on gaming machine play;

V. “promotion” means a short-term program designed to stimulate participation in gaming activities by patrons through advertising and the award of cash and non-cash prizes, not based on a jackpot; “promotion” includes the gift of nominal value items, such as T-shirts and mugs; and includes player’s clubs or similar programs in which gaming patrons accumulate points, which can be exchanged for cash, machine credits, merchandise or any other thing of value;

W. “state” means the state of New Mexico;

X. “this title”

means Title 15, Chapter 1 of the state administrative code;

Y. “trust” means an irrevocable fiduciary relationship in which one person is the holder of the title to property subject to an equitable obligation to keep or use the property for the benefit of another.

[15.1.10.7 NMAC - Rp, 15.1.10.7 NMAC, 1/29/2016]

15.1.10.8 METHODS OF OPERATION:

A. All gaming establishments shall be operated in a manner suitable to protect the health, safety, morals, and general welfare of the public.

B. It is the responsibility of the licensee to employ and maintain suitable methods of operation consistent with state policy.

[15.1.10.8 NMAC - Rp, 15.1.10.8 NMAC, 1/29/2016]

15.1.10.9 UNSUITABLE METHODS OF OPERATION:

Any activity by any licensee or its agents or employees that is contrary to the health, safety, morals, or welfare of the public, shall be deemed an unsuitable method of operation. Without limitation, the following shall be determined to be unsuitable methods of operation:

A. failing to exercise discretion and sound judgment in the operation of the activity authorized under the license;

B. permitting persons who are obviously intoxicated to participate in gaming;

C. serving or allowing possession of alcoholic beverages by any person on the licensed premises of a racetrack gaming operator licensee;

D. directly or indirectly assisting, employing, or associating with persons or businesses of disreputable character that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

E. employing as a key executive any person who has been denied a gaming license, work permit, finding of suitability in any jurisdiction, or who has failed or refused to apply for such permit or finding, or who has failed or refused to apply for renewal or recertification;

F. failing to comply with all federal, state and local laws and regulations governing the operations of a gaming establishment, including without limitation the payment of all fees and taxes;

G. possessing or permitting the operation of any unlicensed gaming machine, gaming device, or other unauthorized device on the gaming establishment;

H. conducting, operating, or dealing with any cheating game or device on the gaming establishment, knowingly or unknowingly, that alters or tends to alter the normal random selection of criteria that determine the results of the game;

I. except as otherwise provided in this rule, selling, transferring or otherwise assigning interest in the license or revenues from the license;

J. denying the board or its agents or other authorized persons access to a gaming establishment or records, wherever located, as authorized by the act and rules adopted by the board;

K. a nonprofit operator licensee knowingly or unknowingly permitting persons other than members or auxiliary members to participate in gaming on the licensed premises;

L. employment of, association with, or participation in any enterprise or business with a documented or identifiable organized crime group or recognized organized crime figure;

M. misrepresentation of any material fact or information to the board;

N. engaging in, furthering, or profiting from any illegal activity or practice or any violation of the act or this title;

O. obstructing or impeding the activities of the board or its employees or agents;

P. facilitating, participating in, or allowing the issuance of any loans or extending credit to a patron for gaming purposes;

Q. conducting or permitting the conduct, knowingly or unknowingly, of any gaming activity other than that allowed pursuant to the license;

R. cashing or permitting the cashing of governmental assistance checks, including welfare checks, social security checks, and child support payments;

S. failing to follow, or to ensure that employees follow, the minimum internal controls established by regulation or failure to notify the board of any changes to the minimum internal controls;

T. failing to require employees to wear work permits or key executive identification as required in this title;

U. employment of, contracting with, associating with, or participating in any enterprise or business that has failed to obtain a license as required by the act;

V. failing to adhere to the compulsive gambling guidelines or plan;

W. failing to comply with any subpoena or other order of the board;

X. except on the basis of a properly invoked privilege against self-incrimination, failing or refusing to testify in any proceeding before the board or before an administrative hearing officer appointed by the board;

Y. permitting a person under the age of twenty one years to enter onto the gaming premises;

Z. otherwise failing to conduct gaming operations in accordance with the act or this title.
[15.1.10.9 NMAC - Rp, 15.1.10.9 NMAC, 1/29/2016]

15.1.10.10 CRIMINAL CONVICTION AS GROUNDS FOR REVOCATION OR SUSPENSION:

The board may revoke or suspend the license, work permit, or finding of suitability of a person convicted of a felony, regardless of whether that person has exhausted his or her post-conviction rights and remedies.
[15.1.10.10 NMAC - Rp, 15.1.10.10 NMAC, 1/29/2016]

15.1.10.11 VIOLATION OF LAW OR REGULATIONS AS GROUNDS FOR REVOCATION OR SUSPENSION:

A. Violation of any provision of the act or of this title by a licensee, its agent, or employee is deemed contrary to the public health, safety, morals, and welfare and constitutes grounds for suspension or revocation of the license, or imposition of a fine, or both.

B. It is the responsibility of every licensee to keep informed of the content of the act, rules promulgated under the act, and all amendments to either. Ignorance of the act, rules, or amendments thereto shall not be an excuse or defense for such violations.
[15.1.10.11 NMAC - Rp, 15.1.10.11 NMAC, 1/29/2016]

15.1.10.12 INVESTIGATION OF LICENSEE'S CONDUCT:

The board is charged by law with the duty of observing the conduct of all licensees for the purpose of ensuring that licenses shall not be held by unqualified or disqualified

persons, unsuitable persons, or persons who conduct gaming operations in an unsuitable manner. Such investigations shall be conducted in the manner and to the extent deemed necessary by the board.
[15.1.10.12 NMAC - Rp, 15.1.10.12 NMAC, 1/29/2016]

15.1.10.13 REPORTS OF VIOLATIONS:

A. Each licensee shall immediately notify the board's enforcement division by telephone and in writing of the discovery of any violation or suspected violation of the act, rules promulgated under the act, or of any other state or federal law on the licensed premises or related to the gaming operation.

B. The board shall provide a toll-free number to aid in the reporting of administrative or criminal violations. The board shall prepare and a gaming operator shall post a written notice of the toll-free number, at least 8.5 by 14 inches in size, in the employee lounge or adjacent to a time reporting system.

C. A gaming operator shall include the information on the written notice in any employee training materials or handbook.

D. A gaming operator shall not retaliate against an employee for reporting an administrative or criminal violation.
[15.1.10.13 NMAC - Rp, 15.1.10.13 NMAC, 1/29/2016]

15.1.10.14 UNLICENSED AND SUSPENDED GAMES OR GAMING DEVICES:

A. No unlicensed or unauthorized games shall be operated at the gaming establishment, nor shall a licensee offer for sale, distribution, or play any gaming device that shall be used in gaming without first having obtained all necessary licenses and having paid all current fees and taxes applicable to such devices.

B. A licensee who desires to temporarily remove or suspend a game from play shall give the board advance written notice of the type and number of games sought to be suspended and the beginning date and duration of the proposed suspension. In addition, the licensee shall physically remove the gaming device from any area accessible by members, in the case of a nonprofit operator licensee, or the public, in the case of a racetrack gaming operator licensee, and place it in a secured area approved by the board. Thereafter, the board shall un-

enroll the gaming device from the central monitoring system and periodically inspect the gaming device and allow it to remain on the licensed premises during the suspension period not to exceed 30 days. Temporary removal of a gaming device under this subsection shall not exceed 60 days.

C. Before any suspended game or gaming device shall be reactivated and placed into play, the licensee shall:

(1) advise the board in writing of the licensee's intention and date to reactivate such game or gaming device;

(2) pay all applicable fees and taxes; and

(3) offer the game or gaming device for play following the board's reinspection and central monitoring system enrollment of the gaming device.

D. If a gaming operator licensee shall remove a gaming machine from the gaming area due to suspected cheating, tampering, or malfunction, the gaming operator:

(1) shall immediately notify the board's enforcement and information systems on-call personnel by telephone of the temporary removal and file a written report within five days; remove the gaming machine to a secure location as directed by the board; and ensure that the gaming machine is secured during any investigation deemed necessary by the board or its agent;

(2) may temporarily replace the removed gaming machine with a pre-approved gaming machine obtained from a licensed distributor or manufacturer, provided the gaming operator licensee and licensed distributor or manufacturer fully disclose the terms of the temporary replacement and provided the terms are satisfactory to the board; and

(3) shall notify the board of the date on which the removed gaming machine will be returned to play and provide proof satisfactory to the board that the replacement gaming machine has been removed from the licensed premises and returned to the distributor.
[15.1.10.14 NMAC - Rp, 15.1.10.14 NMAC, 1/29/2016]

15.1.10.15 PLAY BY PERSONS UNDER THE AGE OF 21 PROHIBITED:

A. Persons under 21

years of age are prohibited from entering the gaming premises.

B. Licensees shall display posters in full public view at both the entrance to and inside the licensed premises stating, at a minimum, "THESE PREMISES ARE RESTRICTED BY LAW TO PERSONS 21 YEARS OF AGE OR OLDER."

C. A gaming operator licensee shall be responsible for taking all reasonable measures to ensure that persons under 21 years of age do not enter the gaming premises.

D. In the event a person under 21 years of age attempts to claim cash or non-cash winnings, the gaming operator licensee shall treat the play of the game as void. The underage player shall not be entitled to any prize won or to a refund of any amounts bet.

[15.1.10.15 NMAC - Rp, 15.1.10.15 NMAC, 1/29/2016]

15.1.10.16 ADVERTISING:

A. No racetrack gaming operator licensee shall allow, conduct, or participate in any false or misleading advertising concerning gaming on its licensed premises. Any advertising by the nonprofits shall advertise that gaming is for members only.

B. All advertising by any gaming operator licensee shall include a compulsive gambling awareness component that includes, at a minimum, the statement "play responsibly" or similar language and a toll-free telephone number for problem gambling assistance.

[15.1.10.16 NMAC - Rp, 15.1.10.16 NMAC, 1/29/2016]

15.1.10.17 GAMING BY OWNERS, DIRECTORS, OFFICERS, KEY EXECUTIVES, WORK PERMITEES OR TECHNICIANS:

A. None of the following members of a nonprofit operator licensee, or of any affiliate of the licensee, shall play any gaming device made available to members and auxiliary members by that licensee or on a gaming establishment that is owned or operated in whole or in part by that licensee:

- (1) officers, members or auxiliary members who have
- (a) check-writing authority or other access to any account in which gaming receipts may be deposited; or
- (b) other financial or decision-making responsibility over any gaming activity;
- (2) key

executives, such as the gaming manager; and

(3) any person who has access to software or an area within the internal structure of any gaming machine or associated equipment in which the functioning of the gaming machine may be altered or manipulated.

B. No officer, director, owner, or key executive of a racetrack gaming operator licensee, or of any affiliate of the licensee, shall play any gaming device made available to the public by that licensee or on a gaming establishment that is owned or operated in whole or in part by that licensee.

C. Except for the purpose of servicing the gaming device, no technician shall play any gaming device located at a gaming establishment that is operated by the technician's employer or by any licensee for which the technician or the technician's employer provides services.

[15.1.10.17 NMAC - Rp, 15.1.10.17 NMAC, 1/29/2016]

15.1.10.18 GAMING MACHINE OWNERSHIP IDENTIFICATION:

A. In addition to any other requirements for identification set forth in this title, a gaming operator licensee shall affix the following items in a prominent place to each gaming machine offered for play or display the information on signs approved by the board and placed in at least two conspicuous areas on the licensed premises:

(1) a sign or label that identifies the person or persons responsible for repairs or malfunctions of the machine, payments of winnings, and disputes regarding payments; and

(2) the board's address and telephone number to report malfunctions and complaints.

B. A licensee shall not offer for play a gaming machine that fails to display the information required by this title.

[15.1.10.18 NMAC - Rp, 15.1.10.18 NMAC, 1/29/2016]

15.1.10.19 PUBLICATION OF

PAYOFFS: Payoff schedules applicable to every licensed gaming machine shall be displayed at all times on the machine or in a conspicuous place immediately adjacent to it. Payoff schedules shall accurately state actual payoffs applicable to the particular machine and shall not be worded in a manner that misleads or

deceives the public.

[15.1.10.19 NMAC - Rp, 15.1.10.19 NMAC, 1/29/2016]

15.1.10.20 ADDITIONAL PAYOUTS; PROMOTIONS; PERSONAL PROPERTY AWARDS;

A. Additional payouts and personal property awards shall be conducted in a manner that promotes responsible gaming. All advertising (any printed, television, newspapers, posters, direct mail, etc., excluding radio) shall include an appropriate responsible gaming message and toll free telephone number for compulsive gambling assistance.

B. The gaming operator licensee shall notify the board in writing at least 10 business days before the beginning date of the proposed additional payouts or personal property award. The written notice shall include a description of the proposed additional payouts (e.g., double jackpots for all dollar gaming machines), the proposed effective dates for the additional payouts the times and conditions necessary for additional payouts to occur, the license numbers of the gaming machines offering the additional payouts, and the dollar value of the additional payouts. The rules or any special conditions of how the additional payout or personal property award shall be conducted shall be clearly described in the notification. The same information shall be clearly posted on the gaming premises in a clearly visible location during the effective dates of the additional payout program.

C. Advertising media for additional payouts and personal property awards shall not offer free or discounted food or beverages as an enticement to game. The use of the casino logo in display advertising shall not constitute an enticement to game when the advertising depicts the casino restaurant(s) or bar(s) or grill(s) or vendor(s).

D. The value of additional payouts of any amount and personal property awards with a value of five hundred dollars (\$500.00) or more shall be deductible from gaming machine revenue provided the gaming operator licensee complies with all applicable requirements of this part and all other board rules. The cost of advertising, promotional materials, reimbursements to patrons, and promotions shall not be deductible from gaming machine revenue. The gaming licensee shall prepare and remit deduction information no later than the 3rd day of the following month to the NMGCB in a manner specified by the board.

E. A licensee shall take reasonable steps to remove advertising media for expired additional payouts and personal property awards within 24 hours of the expiration of the additional payout or personal property award.

F. The board's receipt of notice of a proposed additional payout or personal property award does not constitute endorsement of the proposed additional payout or personal property award or a guarantee by the board that any additional payouts will be made or that the personal property will be awarded.

G. The licensee shall notify the board immediately in writing if there is any change in the beginning and ending dates of the additional payout or personal property award or if there are any changes or modifications as to how the additional payout or personal property award shall be conducted.

H. Nothing in this rule permits the award of an additional payout, cash, or non-cash prize the value of which exceeds jackpot limits established by the act or these rules.

I. Promotions shall be conducted in a manner that promotes responsible gaming. All advertising media shall include an appropriate responsible gaming message and toll free telephone number for compulsive gambling assistance.

J. Rules of the promotion shall be made available to any person requesting them. Any flyer, poster or other advertisement for the promotion shall identify the location where the rules of the promotion are available.

K. Advertising media for promotions shall not offer free or discounted food or beverages as an enticement to game. The use of the casino logo in display advertising shall not constitute an enticement to game when the advertising depicts the casino restaurant(s) or bar(s) or grill(s) or vendor(s).

L. A licensee shall take reasonable steps to remove advertising media for expired promotions within twenty 24 hours of the expiration of the promotion.

M. The cost of advertising, promotional materials, reimbursements to patrons, and promotions may not be deducted from gaming machine revenue.

N. The board may direct the gaming operator licensee to cancel, modify or discontinue the promotion if the board determines the promotion is contrary to law or otherwise contrary to the public health, safety, morals, or

general welfare.

[15.1.10.20 NMAC - Rp, 15.1.10.20 NMAC, 1/29/2016]

15.1.10.21 [RESERVED]

15.1.10.22 SECURITY:

A. Gaming operator licensees shall implement and maintain security measures that shall ensure safe and honest operation of the gaming establishment.

B. Security personnel shall possess and maintain valid work permit cards at all times while on duty.

C. A sufficient number of security personnel shall be on duty and in appropriate areas to ensure that gaming activities are conducted safely, honestly, and in compliance with the law. If the board determines at any time that security measures are inadequate, the board may require that the licensee provide additional security measures to the board's satisfaction.

[15.1.10.22 NMAC - Rp, 15.1.10.22 NMAC, 1/29/2016]

15.1.10.23 SURVEILLANCE SYSTEMS:

A. Each gaming operator licensee shall install, maintain and continuously operate a surveillance system at its licensed gaming establishment. The purpose of the surveillance system is to assist the gaming operator licensee and the state in safeguarding the licensee's assets, in deterring, detecting and prosecuting criminal acts, and in maintaining public confidence and trust that licensed gaming activity is conducted honestly and free of criminal elements and activity.

B. The board, in its sole discretion, may exempt a gaming operator licensee from the requirements of this section.

C. Within 60 days after filing its application, each applicant for a gaming operator's license shall submit a written surveillance system plan to the board. The plan shall be in a form approved or required by the board and shall include descriptions of all equipment utilized by the surveillance system, a blueprint or diagram that shows all of the areas to be monitored and the placement of surveillance equipment in relation to the activities being observed, a description of the procedures used in the operation of the surveillance system, and any other information required by the board. The plan shall be approved before a gaming operator license is issued.

D. A licensee shall

not make any changes to its approved surveillance plan without prior written approval by the board or its designee. Before implementing any changes to a surveillance system plan, the licensee shall submit the proposed changes on forms approved by the board to the board or its designee for approval. If, after reviewing the gaming operator licensee's proposed changes, the board or its designee determines that the proposed plan is not adequate, it shall notify the gaming operator licensee in writing. The gaming operator licensee shall revise the proposed plan and submit it to the board for approval or request a hearing within 30 days after receipt of the board's written notice.

E. A licensee shall notify the board immediately of any failure of the surveillance system to continuously monitor the gaming premises or to otherwise operate properly. The board may require temporary suspension of gaming activities until the surveillance system is restored.

F. A racetrack gaming premise constructed after September 1, 2003, shall provide at least one entrance to the surveillance room that is not located on the game room floor. Any racetrack gaming operator licensee who substantially remodels the gaming premises shall provide at least one entrance to the surveillance room that is not on the gaming room floor.

G. A gaming premise initially licensed or constructed after September 1, 2005 shall be required to use digital video recording equipment for its surveillance system.

H. The board may require a licensee to update its surveillance plan if the board, in its discretion, determines that the surveillance plan is not adequate.

[15.1.10.23 NMAC - Rp, 15.1.10.23 NMAC, 1/29/2016]

15.1.10.24 AUTHORIZED GAMES; GAME REQUIREMENTS:

A. Limited gaming permitted pursuant to Section 60-2E-2(A) of the act shall include only the play of approved games on licensed gaming machines. Table games, side bets, unapproved games, and all other forms of unauthorized gaming are expressly prohibited.

B. No game shall be played on a licensed premises until the board has authorized the game in conformity with the gaming operator applicant's or licensee's approved business plan and the gaming machine has been

connected and transmitting satisfactorily to the board's central monitoring system.

C. The following games, one or more of which may be simulated on a single gaming machine, are approved for play on a licensed premises:

- (1) draw poker;
- (2) keno;
- (3) blackjack;
- (4) line-up

symbols and numbers;

(5) any other game authorized by the board.

D. A racetrack gaming operator licensee may operate licensed multi-station games provided it meets the following conditions:

(1) the racetrack gaming operator licensee shall notify the board of its intent to place multi-station games on the gaming premises, and obtain approval of the board or its designee prior to placing the games on the gaming premises;

(2) the racetrack gaming operator licensee shall apply for and obtain licensure for each multi-station game; for purposes of this subsection, each multi-station game shall count as one gaming machine;

(3) no multi-station game shall have more than 15 player terminals;

(4) multi-station games shall not comprise more than three percent of the total possible allowed gaming machines on the gaming floor; for purposes of this subsection, each multi-station game having up to five player terminals shall count as one gaming machine, each multi-station game having between six and 10 player terminals shall count as two gaming machines and each multi-station game having between 11 and 15 gaming machines shall count as three gaming machines.

E. Each multi-station game operated by a racetrack gaming operator licensee shall comply with 15.1.7 NMAC, where applicable, and the following additional technical specifications:

(1) each individual player terminal shall be capable of being independently monitored by the central monitoring system;

(2) each multi-station game shall have one random number generator;

(3) each multi-station game shall have one master terminal which houses the logic area and game display, and which is shared among all player terminals;

(4) the player terminals of the multi-station game shall have no means to independently determine game outcomes;

(5) each multi-station game shall be configured so that it cannot be disconnected from the gaming device central processing unit that determines the game outcomes for all player stations without rendering that terminal inoperable;

(6) multi-station games shall only permit players to play against the house.

[15.1.10.24 NMAC - Rp, 15.1.10.24 NMAC, 1/29/2016]

15.1.10.25 PAYMENT OF WINNINGS:

A. No gaming machine offered for play by a nonprofit operator licensee shall award a prize that exceeds four thousand dollars (\$4,000). Nonprofit operator licensees shall not offer periodic payments of cash or non-cash winnings and shall remit the total winnings and non-cash prizes awarded to a patron as the result of any licensed game upon validation of the win.

B. Except as otherwise provided in this title, a racetrack gaming operator licensee shall remit the total winnings and non-cash prizes awarded to a patron as the result of any licensed game upon validation of the win.

C. If a gaming operator licensee uses ticket-in/ticket out technology, a patron shall be required to personally present the ticket for redemption at the licensee's premises. A licensee shall not redeem tickets by mail or by any common carrier.

[15.1.10.25 NMAC - Rp, 15.1.10.25 NMAC, 1/29/2016]

15.1.10.26 PERIODIC PAYMENTS:

A. Periodic payments of winnings and non-cash prizes awarded to a patron as the result of any licensed game offered by a racetrack gaming operator licensee shall be made if one of the following is established as the method of funding the periodic payments:

(1) an irrevocable surety bond or an irrevocable letter of credit with an independent administrator that provides periodic payments to a winner if the licensee defaults for any reason; the written agreement establishing an irrevocable surety bond or irrevocable letter of credit must be submitted to the board for approval;

(2) an irrevocable trust with an independent administrator in accordance with a written trust agreement approved by the board that provides periodic payments from an unallocated pool of assets to a group of winners; the trust shall expressly prohibit the winner from encumbering, assigning, or otherwise transferring in any way the winner's right to receive the deferred portion of the winnings except to his or her estate; the assets of the trust shall consist of federal government securities including but not limited to treasury bills, treasury bonds, savings bonds or other federally guaranteed securities in an amount sufficient to meet the periodic payments required; or

(3) another irrevocable method of providing the periodic payments to a winning patron that is approved by the board and consistent with the purpose of this rule.

B. The funding of periodic payments shall be completed within 30 days of the date the patron wins or is awarded a prize.

C. Periodic payments shall not be used for winnings of, or non-cash prizes worth, fifty thousand dollars (\$50,000) or less. Periodic payments for total amounts won greater than fifty thousand (\$50,000) shall be paid as follows:

(1) for winnings greater than fifty thousand (\$50,000) but less than one hundred thousand (\$100,000), payments shall be at least ten thousand (\$10,000) annually;

(2) for winnings of one hundred thousand (\$100,000) or more, payments shall be no less than 1/10 of the total amount annually;

(3) for winnings of five hundred thousand (\$500,000) or more, payments shall be made in the manner set forth in paragraph 15.1.10.26(C)(2) above or in such other manner approved by the board upon application by the licensee; and

(4) the first payment shall be made upon validation of the win.

D. Periodic payments of non-cash prizes awarded shall be offered if the patron has the right to decide whether to receive the non-cash prize or cash equivalent of the non-cash prize each time a periodic payment is due.

The cash equivalent shall be the actual cost to the licensee of the non-cash prize on the day such prize was won. The amount of the periodic payments to be funded shall be determined by the present

value of the cash equivalent of the non-cash prize based on the prime rate.

E. For any licensed game for which periodic payments are or may be used, the racetrack gaming operator licensee shall display signs on each gaming device setting forth either the amount or the terms of the payment to be made.

F. If the licensee fails to fund the periodic payments as required by this rule, the licensee shall immediately notify the board in writing and shall immediately cease offering any licensed game for which periodic payments are used.

G. The present value of all winnings and non-cash prizes offered payable by a periodic payment shall be used in calculating the minimum bankroll of the location.

H. The board may waive one or more of the requirements of this section if the racetrack gaming operator licensee submits a written request for waiver to the board and the board makes a written finding that such waiver is not contrary to the public interest and the purposes of the act.

[15.1.10.26 NMAC - Rp, 15.1.10.26 NMAC, 1/29/2016]

15.1.10.27 PAYMENT OF GAMING CREDITS:

A. Gaming operator licensees shall redeem credit slips or tokens presented by a player in accordance with procedures proposed by the licensee and approved by the board before opening the licensed premises for gaming activity. Such procedures shall be modified at the direction of the board, in its sole discretion.

B. A player shall redeem credit slips at the designated place in the licensed premises where the gaming credit was issued. A credit slip shall be redeemed within 180 days of the date of issuance. Funds reserved for the payment of a credit slip shall be treated as net take if unredeemed within 180 days from the date of issuance. The 180 day redemption policy shall be prominently displayed on the licensed premises.

C. No payment for gaming credits awarded on a gaming machine shall be made unless the credit slip:

(1) is presented on a fully legible, valid, printed credit slip, with a bar code that can be validated, containing the information required;

(2) is not mutilated, altered, or tampered with in any

way, or previously paid;

(3) is not counterfeit in whole or in part; and

(4) is presented by a person authorized to engage in licensed gaming at the licensed premises.

D. The gaming operator licensee shall designate employees authorized to redeem credit slips during hours of operation. Gaming credits shall be immediately paid in cash or by check when a player presents a credit slip for payment that meets the requirements of this section. No gaming credits shall be paid in tokens, chips or merchandise.

E. All credit slips redeemed by a gaming operator licensee shall be marked or defaced in a manner that prevents any subsequent presentment and payment.

F. The state, the board, and the agents and employees of either are not liable for the payment of any gaming credits on any credit slips.

[15.1.10.27 NMAC - Rp, 15.1.10.27 NMAC, 1/29/2016]

15.1.10.28 PATRON DISPUTES (NON-PROFITS/ RACETRACKS ONLY):

In the event a dispute arises with a patron concerning payment of alleged winnings or promotional prizes including any jackpot or credits, the gaming operator licensee ("licensee") and the patron shall abide by the following procedures:

A. the licensee shall provide the patron with a patron dispute form at the time of the dispute. The patron dispute form and contact information for the enforcement division can be located on the board's website.

B. the patron and licensee shall complete the patron dispute form immediately, except for good cause shown.

C. within 24 hours of a dispute valued at five hundred dollars (\$500) or more, the licensee shall notify the enforcement division, by contacting the agent assigned to the licensee, via telephone and electronic mail.

D. whereas, if the dispute is valued at less than five hundred dollars (\$500), then the initial burden shall be on the patron to notify the enforcement division within 24 hours of the dispute, by contacting the enforcement division at the telephone number or electronic mail address as located on the patron dispute form. The enforcement division shall then contact the licensee so that both parties can comply with the remaining procedures as set forth herein.

E. within 72 hours of the dispute, the licensee and patron shall separately submit a copy of the patron dispute form to the enforcement division, via facsimile, electronic mail, or U.S. mail.

F. in the event of any unresolved patron dispute concerning payment of alleged winnings or promotional prizes including any jackpot or credits valued at five hundred dollars (\$500) or more on a gaming machine, the licensee shall immediately remove the game from play, and secure it until such time as an agent of the board has inspected the machine and released it for further play.

G. the licensee shall maintain relevant information, including the retention of video surveillance, history reports, slot accounting reports, machine meters, photographs of screen shots, and any other documentation that would prove relevant in resolving the dispute.

H. if a critical memory clear is needed, it shall not be performed until the patron dispute is resolved and the reset is authorized by an agent of the board.

I. an agent of the board shall conduct whatever investigation it deems necessary and shall determine whether payment should be made to the patron. An agent of the board may conduct a reasonable investigation and report to the board for a final decision.

J. an agent of the board shall complete its investigation within 30 days of having received the patron dispute form from both the licensee and patron.

K. an agent of the board shall notify the licensee and patron in writing of the board's decision regarding the dispute within 60 days of receipt of the patron dispute form from both the licensee and patron.

L. it is a violation of this rule for a licensee to fail to notify the board of an unresolved patron dispute valued at five hundred dollars (\$500) or more within 24 hours; for a licensee to fail to provide the patron with the patron dispute form; for a licensee to fail to comply with all other provisions contained herein; or for the licensee to fail to pay the patron within 15 days after an adverse decision by the board unless the licensee appeals the decision.

M. failure to follow the above procedures may adversely affect that party's claim.

[15.1.10.28 NMAC - Rp, 15.1.10.28 NMAC, 1/29/2016]

**15.1.10.29 COMPLIANCE
REVIEW AND REPORTING:**

A. Whenever the board determines that special circumstances exist that require additional management review by a licensee, the board may impose a condition upon any licensee to require implementation of a compliance review and reporting system by the licensee.

B. The terms of the condition may include, but are not limited to, the requirement that:

(1) the condition will expire on a certain date or after a designated period of time without board action;

(2) the condition may be administratively removed by the board if a specified activity ceases or a specified event occurs; or

(3) a periodic review shall be conducted by the board and upon such review the board may remove or continue to require the condition.

C. Notwithstanding the provisions of subsection 15.1.10.29(B) NMAC above, a licensee may request, upon application to the board, modification or removal of the condition imposed.

D. The purpose of the compliance review and reporting system is to monitor activities relating to the licensee's continuing qualifications under the act and this title. The system shall be in the form of a written plan and shall be submitted to the board for approval.

E. The written plan shall implement the compliance review and reporting system and shall designate the person responsible for the system. The plan shall require periodic reports to senior management of the licensee. Such reports shall be advisory, and the licensee shall maintain responsibility for compliance with the act and this title. The licensee shall provide copies of the reports to the board.

F. The activities to be monitored shall be set forth in the written plan. Without limitation, the board may require the following activities to be monitored:

(1) associations with persons denied licensing or other related approvals by the board or who may be deemed unsuitable to be associated with a licensee;

(2) business practices or procedures that may constitute grounds for denial of a gaming license;

(3) compliance with other special conditions that may be imposed by the board upon the licensee;

(4) review of reports submitted pursuant to the act and rules adopted by the board;

(5) compliance with all laws and rules and orders of the board or other governmental agencies having jurisdiction over gaming activities or the licensee's or affiliate's business activities; and

(6) review of such other activities determined by the board as being relevant to the licensee's continuing qualifications under the provisions of the act and board regulations.

[15.1.10.29 NMAC - Rp, 15.1.10.29 NMAC, 1/29/2016]

**15.1.10.30 INFORMATION TO
BE PROVIDED BY LICENSEES:**

A. Every licensee shall report to the board, on a quarterly basis, the full name and address of every person, including lending agencies, who has any right, direct or indirect, to share in the profits of such licensed gaming activities, or to whom any interest or share in the profits of a licensed gaming activity has been pledged as security for a debt or deposited as a security for the performance of any act or to secure the performance of a contract or sale. Such report shall be submitted concurrently with an application for renewal of the license.

B. Every gaming operator licensee shall report to the board, within 10 days of the date of the event, the name, date of birth, and social security number of any person who acquires the right or ability to control the licensee.

C. Every licensee shall report to the board in writing any change in key executive personnel. The report shall be made no later than 30 days after the change.

D. A company licensee, other than a publicly traded corporation, shall obtain the board's prior approval before issuing or transferring five percent or more of its securities to any person. Any company licensee seeking approval shall file a report of the proposed action and request the board's approval. The licensee shall supplement the report with any additional information the board determines is reasonably necessary to its decision to approve or disapprove the proposed action. The request shall be deemed filed upon receipt of such information for purposes of the 90 day

period set forth in Section 60-2E-25(A) of the act.

E. Any person licensed by the board, including employees with work permits, and any affiliate, shall notify the board in writing of any criminal conviction and criminal charge pending against such person within 10 days of such person's arrest, summons, or conviction. Notice is not required for any non-felony traffic violation unless the violation results in suspension or revocation of a driver's license or is based on allegations of driving under the influence of intoxicating liquor or drugs.

F. Each licensee shall report any discovered or suspected plan, scheme, device or other methods of cheating that may compromise the integrity of any gaming device sold or offered for sale, offered for play, or used for any other gaming purpose within the state by such licensee. The report shall be in writing and shall be submitted not later than seven days after discovery of the plan, scheme, device or other method of cheating. The subject matter and reports of the investigation conducted under this subsection shall be considered confidential except that the board may, in its sole discretion, take whatever steps it deems necessary or appropriate to address or mitigate the cheating problem, including distributing a warning about the cheating problem to other state licensees or other licensing jurisdictions.

G. An individual who is the holder of a work permit or certification of finding of suitability shall notify the board in writing of any change in address or gaming employment within 15 days of the change. Refusal or failure to notify the board of any change in address shall be grounds for disciplinary action.

H. A licensee that is a manufacturer, distributor or racetrack gaming operator licensee shall report to the board in writing within 60 days if it becomes a party to any civil, administrative or regulatory action or cause of action in any jurisdiction where the licensee reasonably believes the amount in controversy is five thousand (\$5,000) or more. A licensee that is a nonprofit gaming operator shall report to the board in writing within 60 days if it becomes a party to any civil cause of action where the licensee reasonably believes the amount in controversy is one thousand (\$1,000) or more. A licensee that is a nonprofit gaming operator shall report to the board in writing within 60 days if it becomes a party to any regulatory or administrative

action. Following such written report, a licensee shall provide any additional documentation requested by the board within the time frame specified in the request for additional documentation.

I. A licensee that is a nonprofit gaming operator licensee shall notify the board in writing within 30 days of any change in membership of the licensee's governing board or officers, including the names, telephone numbers and addresses of new board members or officers.

J. A licensee that is a racetrack gaming operator shall notify the board within 30 days of any change to its organizational structure or management responsibilities.

K. Each licensee shall notify the board within 30 days if it becomes subject to any tax liens.
[15.1.10.30 NMAC - Rp, 15.1.10.30 NMAC, 1/29/2016]

15.1.10.31 ACCESS TO GAMING ESTABLISHMENT AND RECORDS:

A. No applicant or licensee shall fail or refuse to produce records or evidence or to give information upon demand by the board or its agent. No applicant or licensee shall interfere or attempt to interfere with any effort by the board or its agent to obtain such records or evidence.

B. Each licensee shall immediately make available for inspection by the board or its agent all papers, books, and records produced by any gaming operation and all areas of the gaming establishment or the premises of any other licensee. The board or any of its agents shall be given immediate access to the gaming establishment or the premises of any other licensee for the purpose of examining or inspecting any gaming device and any records or documents required to be kept under the act or this title. The authority to examine and inspect includes the authority to make copies of any such documents and records.
[15.1.10.31 NMAC - Rp, 15.1.10.31 NMAC, 1/29/2016]

15.1.10.32 USE OF GAMING RECEIPTS BY NONPROFIT OPERATOR LICENSEE:

A. A nonprofit operator licensee may utilize up to sixty five percent of net take, after payment of the gaming tax, to pay allowable expenses in reasonable amounts for conducting gaming activities on its licensed premises. If the nonprofit operator licensee has

entered into a valid lease or other arrangement for furnishing gaming machines, the sixty five percent maximum shall be distributed as follows:

(1) the maximum of forty percent of net take after gaming taxes or no greater than the contract amount if less than forty percent for payment to licensed distributors pursuant to a lease or other arrangement for furnishing a gaming machine;

(2) for payment of other allowable gaming expenses, an amount equal to the difference between sixty five percent of net take less the amount paid to the distributor as described above.

B. The percentage set forth in this section constitutes the maximum amount that may be paid annually for allowable gaming expenses from net take. No other expenses related to or arising out of gaming activities shall be paid from net take or gaming revenues, including but not limited to supplies, fees for management and other services, and repairs to and maintenance of licensed premises and gaming devices. These funds shall be transferred each month to the licensed organization's operating account.

C. A nonprofit operator licensee shall not under any circumstances pay to any distributor licensee the percentage payment allowed in this section, until the required charitable and educational deposits have been made, gaming tax and other applicable taxes have been paid and all taxes and fees are current.

D. The nonprofit operator licensee shall distribute at least sixty percent of the balance of net take to charitable or educational purposes, which purposes do not include gaming expenses. All funds required to be spent for charitable or educational purposes must be expended each year within 120 days after close of the nonprofit operator licensee's fiscal year end. The maximum forty percent of net take, after gaming taxes, remaining after such distribution may be used for other expenses at the discretion of the nonprofit operator licensee, provided none of those expenses shall be incurred to compensate a licensed distributor for the furnishing of gaming machines.

E. Distributions for charitable purposes shall be made solely for benevolent, social welfare, philanthropic, humane, public health, civic or other objectives or activities to benefit the welfare of the public at large or an indefinite number of persons.

(1) Charitable distributions shall not be used to fund operating or capital expenses of any nonprofit gaming operator or any affiliated organization of a nonprofit gaming operator.

(2) A charitable distribution shall be made to an organization outside the state of New Mexico only if the organization is either a charitable organization under Section 501(c)(3) of the Internal Revenue Code or the organization is the nonprofit gaming operator's national organization and the distribution is used for charitable purposes.

F. Educational distributions shall be expended solely to benefit an educational institution or organization or to provide financial assistance to individuals in their pursuit of educational goals.

G. The board shall maintain and publish guidelines that establish the allowed and disallowed uses for charitable and educational funds. The nonprofit operator licensee shall comply with these guidelines in making distributions from its charitable and educational account.

H. The executive director of the board shall disallow any distribution for charitable and educational purposes not in compliance with this rule. If a charitable or educational distribution is disallowed by the executive director, the nonprofit gaming operator may appeal that decision to the board pursuant to Section 60-2E-59 of the act.
[15.1.10.32 NMAC - Rp, 15.1.10.32 NMAC, 1/29/2016]

15.1.10.33 GAMING OPERATIONS MANAGEMENT CONTRACTS:

A. If a gaming operator licensee enters into a management contract with any person, the management contract shall:

(1) provide that only gaming activity allowed pursuant to the act will be conducted on the licensed premises;

(2) list the responsibilities of each of the parties, including but not limited to maintaining and improving the licensed premises; hiring, firing, training and promoting employees and establishing employment practices; maintaining the books and records of the gaming operation; preparing financial statements and reports; hiring and supervising security personnel; obtaining and maintaining insurance

coverage, including coverage of public liability and property loss or damage; and ensuring compliance with all applicable laws, including state and federal laws;

(3) provide for the establishment and maintenance of satisfactory accounting systems and procedures, including a system of internal controls that meets the minimum standards established by the board;

(4) provide for the timely deposit of all gaming receipts required to be deposited into the gaming tax transfer account as set forth in this rule;

(5) if applicable, provide for the establishment and maintenance of a separate operating account as required by this chapter of this title, and limit access to the account to the nonprofit operator licensee;

(6) retain for the gaming operator licensee the right to timely receive, on at least a monthly basis, financial reports and information used or necessary to prepare the reports;

(7) retain for the gaming operator licensee the right to full and immediate access to all books and records for the purpose of verification of any information produced in connection with, or relating to, gaming activities;

(8) provide for a term not to exceed five years;

(9) detail the method of compensating the contract manager and the amounts paid and provide for verification by the gaming operator licensee prior to payment;

(10) provide the grounds for modifying or terminating the agreement;

(11) provide the means for dispute resolution;

(12) prohibit subcontracting of all or part of the agreement;

(13) retain ownership of the gaming operator license with the licensee;

(14) verify that the management contractor is not an affiliate of the licensee;

(15) require that any personnel of the management contractor shall obtain a certification of finding of suitability or work permit if deemed necessary by the board; and

(16) specify that the agreement will not go into effect until approved by the board.

B. The gaming operator licensee may not enter into any management contract if the board

determines that:

(1) the management contract fails to meet the minimum requirements described in this section; or

(2) the management contractor or any principal, management official, or key executive of the management contractor is not licensed or is unsuitable for licensure.

[15.1.10.33 NMAC - Rp, 15.1.10.33 NMAC, 1/29/2016]

15.1.10.34 DAMAGE TO OR THEFT FROM DEVICES:

A. Upon discovery of theft from or damage to a gaming device that affects operation of the device, the licensee or owner of the gaming device shall request an investigation by the board's agents, the department of public safety, or local law enforcement and shall immediately notify the board.

B. After investigation by the board's agents or other law enforcement agency, the licensee or owner of the gaming device shall obtain and submit the following reports to the board:

(1) service or repair report with hard and soft meter readings from the gaming device with an audit ticket attached; the meter readings shall be taken as soon as possible after discovery of the theft or damage; and

(2) when possible, an offense report or complaint report from the board's agents or other law enforcement agency.

[15.1.10.34 NMAC - Rp, 15.1.10.34 NMAC, 1/29/2016]

15.1.10.35 LICENSE TRANSFER PROHIBITED:

A. Any license granted or renewed by the board may not be transferred. For purposes of this section, "transfer" includes assigning the license.

B. A transfer of license ownership that occurs after the board has issued the license shall automatically terminate the license as of the date of the transfer. For purposes of this section, a transfer of ownership of a twenty percent interest or more of the licensee constitutes a transfer of the license unless the board determines otherwise following the former licensee's written request for a determination pursuant to board rule 15.1.5.28 NMAC.

C. A change in the ownership structure of the licensee, in which one or more owners previously certified as suitable by the board retain ownership of the licensee, and no new

persons obtain an ownership interest of twenty percent or more in the licensee or license, does not constitute a transfer of license ownership. The board, however, may require that any or all of the owners submit applications to obtain findings of suitability. Failure of the licensee to request a determination, or to submit applications for findings of suitability as required shall automatically terminate the license.

D. If there is a change in ownership structure of the licensee in which there is a transfer of ownership of twenty percent or more of the licensee, the licensee shall comply with board rule 15.1.5.28 NMAC.

[15.1.10.35 NMAC - Rp, 15.1.10.35 NMAC, 1/29/2016]

15.1.10.36 POSSESSION AND VERIFICATION OF WORK PERMITS AND KEY EXECUTIVE IDENTIFICATION:

A. Every gaming employee and key executive must wear his or her valid work permit or key executive identification where easily visible at all times when engaged in the conduct of gaming activities.

B. A work permit or key executive identification is not valid if it does not include the board-issued license number under which the work permit or identification was issued.

C. If a gaming identification badge is lost or damaged, the gaming employee holding the badge shall notify the board's licensing division within 24 hours and apply for a replacement badge on forms approved by the board within three business days.

[15.1.10.36 NMAC - Rp, 15.1.10.36 NMAC, 1/29/2016]

15.1.10.37 HOUSE RULES:

A. A licensee may establish house rules applicable to the operation of gaming machines or other gaming activities as long as the rules do not conflict with the act or this title. Before any licensee enacts or adopts any house rules, the rules shall be submitted to the board for approval.

B. A copy of the house rules shall be in the licensee's possession at all times and made available to any person on request.

[15.1.10.37 NMAC - Rp, 15.1.10.37 NMAC, 1/29/2016]

15.1.10.38 LICENSE POSTING REQUIREMENT: All licenses issued

under the act shall be posted by the licensee and kept posted at all times in a conspicuous place on the licensed premises.
 [15.1.10.38 NMAC - Rp, 15.1.10.38 NMAC, 1/29/2016]

15.1.10.39 DETENTION AND QUESTIONING: The gaming operator license shall post in a conspicuous place on the licensed premises a notice in boldface type, clearly legible and in substantially the following form: "Any gaming operator licensee or any of his officers, employees or agent who have reasonable cause for believing that any person has violated any provision of the Gaming Control Act prohibiting cheating in gaming may detain that person in the establishment."
 [15.1.10.39 NMAC - Rp, 15.1.10.39 NMAC, 1/29/2016]

15.1.10.40 FORMS: The board may prescribe all forms called for or required by the act or this title, and all filings with the board must be accompanied by such affidavits, documents, and other supporting data as the board requires.
 [15.1.10.40 NMAC - Rp, 15.1.10.40 NMAC, 1/29/2016]

15.1.10.41 FOOD OR ALCOHOL AS ENTICEMENT TO GAME:

A. Providing, allowing, contracting for or arranging to provide alcohol or food for no charge or at reduced prices as an incentive or enticement for patrons to game is prohibited.

B. Activities that constitute incentives or enticements to game include, but are not limited to, any action, promotion, advertisement, coupon, or special offer in which:

(1) tokens, cash, or other gaming incentives are offered or given in conjunction with free or reduced price alcohol or food;

(2) only persons whose names are on the gaming operator's player tracking system are eligible for free or reduced price alcohol or food, unless listing on the player tracking system is open to anyone by request;

(3) free or reduced price alcohol or food is offered or given to any person while playing a gaming machine;

(4) eligibility to receive free or reduced price alcohol or food requires gaming machine play or is otherwise directly tied to gaming machine

play; or

(5) in the board's determination, a reasonable person would be enticed to engage in gaming activity as a result of the free or reduced price alcohol or food.
 [15.1.10.41 NMAC - Rp, 15.1.10.41 NMAC, 1/29/2016]

15.1.10.42 MINIMUM LIVE RACE DAYS AND RACES:

A. A racetrack gaming operator's license shall become automatically void if the racetrack fails to maintain a minimum of four live race days a week with at least nine live races on each race day during its licensed race meet.

B. Maintaining fewer than four live race days or nine live races on each race day during a licensed race meet does not constitute a failure to maintain the minimum number of live race days or races required by Section 60-2E-27(B), NMSA 1978 of the act or these rules if the licensee submits to the board written approval by the racing commission for the licensee to vary the minimum number of live race days or races, and the variance is due to any of the following:

(1) inability of a racetrack gaming operator licensee to fill races as published in the licensee's condition book;

(2) severe weather or other act, event or occurrence resulting from natural forces;

(3) strikes or work stoppages by jockeys or other persons necessary to conduct a race or meet;

(4) power outages, electrical failures, or failure or unavailability of any equipment or supplies necessary to conduct a race or meet;

(5) hazardous conditions or other threats to the public health or safety; or

(6) any other act, event or occurrence that is not within the control of the licensee even with the exercise of reasonable diligence or care.

C. Failure of a racetrack gaming operator licensee to submit to the board written approval by the racing commission of a variance in the licensee's live race days or races constitutes a failure to maintain the minimum number of live races required by the act and these rules regardless of the cause for the variance.

D. Upon determination by the board that a racetrack gaming

operator licensee has failed to maintain the minimum number of live race days or races as required by the act and these rules:

(1) the gaming operator's license shall become automatically void and of no legal effect;

(2) the gaming operator licensee shall immediately cease the conduct of all gaming activity;

(3) the board will immediately disable all gaming devices on the gaming operator licensee's premises or under the gaming operator licensee's control and shall take the gaming devices into the board's custody in a manner to be determined by the board.

E. A racetrack gaming operator licensee whose license has been voided may apply for a new license from the board at any time. The application for licensure shall be processed in the same manner as a new application. The applicant shall submit all required forms, including but not limited to license and key person applications, and shall pay all applicable fees and costs.

F. Voiding of a license by the board pursuant to Section 60-2E-27(B), NMSA 1978 of the act and these rules does not constitute a denial, permanent suspension or revocation of the license for cause by the board or a limiting action by the board on the gaming operator licensee.

[15.1.10.42 NMAC - Rp, 15.1.10.42 NMAC, 1/29/2016]

15.1.10.43 CESSATION OF GAMING ACTIVITIES; SURRENDER AND CANCELLATION OF LICENSE:

A. Any gaming operator licensee that ceases gaming activities for more than seven consecutive days and has not requested and received authorization from the board under Subsection B of 15.1.10.43 NMAC, shall surrender its gaming operator's license to the board within 10 days of ceasing those activities. The board shall cancel the gaming operator's license as of the date gaming activities ceased, and no further gaming activities by the gaming operator's licensee shall be permitted. Cancellation of a gaming operator's license does not constitute revocation, permanent suspension, or other limiting action of the gaming operator's license by the board. The gaming operator's licensee shall submit a new application and obtain a new gaming operator's license before resuming gaming activities.

B. Upon written request,

the board may authorize a gaming operator licensee to temporarily cease gaming activities. A gaming operator licensee who is authorized by the board to temporarily cease gaming activities shall notify the board of its intent to resume gaming activities but shall not resume such activities until approved by the board.

C. If a gaming operator licensee wishes to cease gaming activities indefinitely, with no intent to resume gaming activities, the gaming operator licensee:

(1) shall notify the board of its intentions to cease gaming activities indefinitely;

(2) shall submit to a final audit by the board to insure that all taxes, charitable payments and outstanding obligations of the gaming operation have been paid;

(3) shall ensure that all gaming machines are removed from the premises in a manner that complies with the Gaming Control Act and board rules;

(4) shall comply with any other requirements imposed by the board;

(5) shall physically surrender the gaming operator's license and all gaming badges.

D. If a gaming operator licensee complies with the requirements of Subsection C of 15.1.10.43 NMAC, the board shall cancel the gaming operator's license. Cancellation of the gaming operator's license shall not constitute a revocation, permanent suspension, or other limiting action of the gaming operator's license by the board. Failure to comply with the provisions of Subsection C of 15.1.10.43 NMAC shall be grounds for revocation of the gaming operator's license. The board may take action to revoke the gaming operator's license notwithstanding the fact that the gaming operator licensee has ceased gaming activities.

E. The ceasing of gaming activities does not relieve the gaming operator licensee or former gaming operator licensee of its obligations to pay any tax, fee or cost due or to submit any report or information required as a result of engaging in gaming activities.

[15.1.10.43 NMAC - Rp, 15.1.10.43 NMAC, 1/29/2016]

15.1.10.44 ALLOCATION OF GAMING MACHINES:

A. Only racetrack gaming operator licensees are eligible

to allocate gaming machines or receive allocated gaming machines.

B. Gaming machines shall be allocated only pursuant to a valid allocation agreement. The allocation agreement must:

(1) specify the number of gaming machines to be allocated;

(2) specify the terms of the allocation agreement;

(3) provide that the allocation agreement confers to the receiving racetrack only the right to operate the gaming machines;

(4) establish terms of payment for use of the allocated gaming machines;

(5) specify that the receiving racetrack will be responsible for payment of the gaming tax and all fees associated with the licensing of the allocated gaming machines;

(6) specify that the receiving racetrack be responsible for statutorily required payments based on net take, including payment of twenty percent of the net take from the allocated gaming machines to horsemen's purses and one quarter of one percent of the net take to fund or support programs for the treatment and assistance of compulsive gamblers;

(7) provide that the receiving racetrack may not allocate the gaming machines;

(8) specify the party responsible for repairs and maintenance of the allocated gaming machines;

(9) provide that the allocation agreement cannot be modified without approval of the board and the New Mexico racing commission; and

(10) provide that the allocation agreement shall not become effective until approved in writing by the board and the New Mexico racing commission.

C. No allocation agreement shall cause the number of gaming machines on the licensed premises to exceed the number authorized by the act.

D. The board shall take action on a proposed allocation agreement at a public meeting of the board. The board may disapprove any allocation agreement if the board determines that:

(1) the allocation agreement fails to meet the minimum requirements described in this section;

(2) the

allocating racetrack or receiving racetrack is not in compliance with minimum internal controls or other statutory requirements or board rules;

(3) the proposed allocation would otherwise be contrary to the public health, safety and welfare.

E. Movement of any allocated machine is subject to notice requirements established by board rules and procedures.

[15.1.10.44 NMAC - Rp, 15.1.10.44 NMAC, 1/29/2016]

15.1.10.45 NONPROFIT CONTRACTS:

A. A nonprofit gaming operator and distributor licensee jointly shall submit any contract or lease agreement between the nonprofit gaming operator licensee or distributor licensee and any other licensee to the board for review not less than 30 calendar days before the contract or lease agreement goes into effect. The term "contract or lease agreement" shall include any amendment of an existing contract or lease agreement.

B. Any contract or lease agreement submitted for review shall include copies of any ancillary agreement, shall state with specificity the beginning and expiration date of the contract and shall include meeting minutes or other evidence that the contract has been approved by the nonprofit gaming operator's governing body.

C. The contract or lease agreement shall be deemed approved unless the board disapproves the contract or lease agreement in writing prior to the effective date of the contract or lease agreement. The board shall disapprove a contract or lease agreement submitted for review if the contract or lease agreement was not submitted in compliance with this rule or if it directly or indirectly permits another licensee to manage or otherwise control the nonprofit gaming operator licensee.

D. The factors that may be considered by the board to be indicia of direct or indirect management or control include, but are not limited to:

(1) whether the amount and terms of any loans made to the nonprofit gaming operator licensee, including the principal amount, interest rate, monthly payment and re-payment period, are disproportionate to the assets of the nonprofit gaming operator licensee or create an excessive debt to income ratio;

(2) whether the

terms and conditions of any gift, donation or other benefit conferred to the non-profit gaming operator licensee permit another licensee to exercise any direct or indirect management or control over the day-to-day operations of the nonprofit gaming operator licensee;

(3) whether the contract or agreement contains a provision that calls for automatic renewal of the contract or agreement without notice;

(4) whether the term of the contract or agreement is greater than five years;

(5) whether any other term or condition of the lease agreement or contract permits any licensee to effectively exercise direct or indirect management or control over any of the day-to-day operations of the nonprofit gaming operator licensee.

[15.1.10.45 NMAC - Rp, 15.1.10.45 NMAC, 1/29/2016]

**15.1.10.46 DISTRIBUTOR/
MANUFACTURER PARTICIPATION
IN SLOT REVENUE; RACETRACK
OPERATORS:**

A. A distributor licensee may receive a percentage of net take from a particular gaming machine as a payment pursuant to a lease or other arrangement for furnishing the gaming machine to a racetrack gaming operator in an amount as agreed to by the parties, but in no event more than forty percent of net take.

B. A manufacturer licensee may receive a percentage of net take from a particular gaming machine as a payment pursuant to a lease or other arrangement for furnishing the gaming machine to a racetrack gaming operator in an amount as agreed to by the parties, but in no event more than forty percent of net take.

[15.1.10.46 NMAC - Rp, 15.1.10.46 NMAC, 1/29/2016]

**15.1.10.47 PLAYER
TRACKING SYSTEMS:**

A. Player tracking systems shall be approved by the board or its designee in accordance with rules governing approval of associated equipment.

B. A gaming operator licensee shall delete a player's name from the system immediately upon the player's request.

C. Names deleted from the player tracking system at the player's request shall not be reprogrammed into the system except upon express authorization by the player.

[15.1.10.47 NMAC - Rp, 15.1.10.47 NMAC, 1/29/2016]

15.1.10.48 VARIANCE

REQUEST:

A. Any licensee may seek a variance of any provision of the board rules or minimum internal control standards. The licensee shall submit the request in writing to the board's legal division on a form provided by the Board.

B. The variance request shall include:

(1) the licensee's name;

(2) the licensee's license number;

(3) the licensee's address;

(4) the specific section of the rules or minimum internal control standards for which the variance is being sought; and

(5) a specific basis for the request, including an explanation of any business justification for the request and a showing of how the variance request is in the public interest.

C. If the board determines that the variance request is in the public interest, it shall grant the variance in writing within 60 days. If the board or its designee determines that the variance request is not in the public interest, it shall deny the request in writing within 60 days. Failure of the board to respond in writing to the request shall be deemed a denial of the request.

D. The board shall not grant a variance for any provision of the act or any provision of the rules or minimum internal controls that is mandated by the act.

E. Any variance granted shall be for a specific period of time. A variance that is granted without specifying a time period shall expire upon expiration of the license.

F. Upon expiration of the variance, the licensee may submit a request for renewal of a variance using the variance request form. A renewal request shall be considered on the same basis as a new request, without any presumption that the request should be renewed.

[15.1.10.48 NMAC - N, 1/29/2016]

**HISTORY OF 15.1.10 NMAC:
Pre NMAC History: None.**

History of Repealed Material: 15.1.10 NMAC, Conduct Of Gaming Activity Under The Gaming Control Act, filed 12-14-98 - repealed effective 10-15-15. 15.1.10 NMAC, Conduct Of Gaming

Activity Under The Gaming Control Act, filed 9-30-15, repealed effective 1/29/2016]

Other History:

15 NMAC 1.10, Conduct Of Gaming Activity Under The Gaming Control Act, effective 12-31-98.

15 NMAC 1.10, Conduct Of Gaming Activity Under The Gaming Control Act (filed 12-14-98) renumbered, reformatted and amended to 15.1.10 NMAC, Conduct Of Gaming Activity Under The Gaming Control, effective 03-31-00.

15.11.10 NMAC, Conduct Of Gaming Activity Under The Gaming Control Act (filed 9-30-15) was replaced by 15.1.10 NMAC, Conduct Of Gaming Activity Under The Gaming Control, effective 1-29-16.

**GAMING CONTROL
BOARD**

**This is an amendment to 15.1.2 NMAC,
Section 8, effective 1/29/16.**

**15.1.2.8 CONFIDENTIAL
INFORMATION:**

A. Confidential information includes any information, document, or communication that is:

(1) required by law or rules promulgated by the board to be furnished in connection with an application [~~or preliminary application~~] submitted to the board or that may otherwise be obtained by the board in connection with the application;

(2) provided to the members or agents [~~or employees~~] of the board by a licensee when such information is required to be submitted or disclosed under the law or rules promulgated by the board;

(3) provided to the members or agents [~~or employees~~] of the board by a governmental agency or [~~an informer~~] a confidential informant;

(4) compiled by the members or agents [~~or employees~~] of the board from other confidential information, including lists of persons who have been approved for, or denied, work permits by the board; [~~or~~]

(5) obtained by the board in connection with an application for self-exclusion; or

~~[(5)] (6)~~ obtained or compiled by the board or its agents in the course of an investigation of an applicant or licensee; the information, document or communication remains confidential

unless and until disclosure is permitted under the act.

B. Confidential information does not include:

- (1) names and business addresses of applicants or the fact that an applicant has filed an application with the board;
- (2) names and business addresses of any and all of an applicant's parent companies, affiliates, subsidiaries, partners, limited partners, major shareholders owning more than five percent of an applicant's stock, trustees, successor trustees, trust beneficiaries, or of any person that controls or is in a position to control or exercise other significant involvement in the operations of the applicant or licensee;
- (3) names and business addresses of all officers and key employees of the applicant;
- (4) names and business addresses of parties with whom the applicant or licensee contracts or expects to contract to support the operation of gaming establishments, including the names and addresses of landlords owning the premises where gaming will occur;
- (5) names and business addresses of manufacturers and distributors with whom the applicant or licensee contracts or expects to contract for the sale, lease, or use of gaming devices;
- (6) written order of final board approval or denial of an application ~~and/or~~ and any other final action of the board taken on any other matter involving an applicant or licensee, including but not limited to, enforcement actions, investigations, rulings on motions and requests for legal determinations;
- (7) legal documents submitted by applicants or licensees, including but not limited to, motions, requests for legal determinations, comments, briefs, notices of appeal, etc.; *provided*, however, that information contained or attached to such documents that otherwise meets the confidentiality requirements of this section will be treated accordingly pursuant to Subsection A of 15.1.2.8 NMAC and all its subparts above;
- (8) documents or information that is available from another state agency, federal agency, or other public source; ~~or~~
- (9) an administrative complaint filed by the board; or pleadings filed by any party to such an administrative complaint; or
- ~~(9)~~ (10) any other

information ruled by the board, in its discretion, not to be confidential.

C. The board members ~~or agents [and employees]~~ will receive, process, store and maintain all confidential information in a manner and location sufficient to ensure that the confidential information is secure and that access is strictly limited to authorized persons. Only members of the board ~~or its [employees, and]~~ agents, including persons designated by the board or authorized by law to conduct investigations of applicants and licensees, may have access to the confidential information, except that designated employees of gaming operator licensees shall have access to the names of persons self-excluded from gaming venues, as necessary to implement the state's self-exclusion program and as provided by rules promulgated by the board.

D. Confidential information ~~[with]~~ shall be disclosed upon issuance of a lawful order by a court of competent jurisdiction ordering the board to release such information. Absent such an order, confidential information will be disclosed only with the prior written consent of the subject applicant or licensee, except as required to implement the state's self-exclusion program and as provided by rules promulgated by the board. [11/30/98; 15.1.2.8 NMAC - Rn & A, 15 NMAC 1.2.8, 1/31/02; A, 1/29/16]

GAMING CONTROL BOARD

This is an amendment to 15.1.6 NMAC, Sections 7 and 11, effective 1/29/2016.

15.1.6.7 DEFINITIONS:
Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

A. "Act" means the New Mexico Gaming Control Act.

B. "ATM" means a machine used for banking services, including withdrawals and deposits, balance inquiries, transfers, and other services; "ATM" includes credit card cash advance machines and other devices activated by debit or credit cards.

C. "Licensed premises" means the area that has been approved for gaming on the premises that is under the direct control of a gaming operator licensee and from which the licensee is authorized to operate and permit the play of gaming machines and conduct all

activities associated with the operation of gaming.

D. "Premises" means the land together with all buildings improvements and personal property located on the land.
[N, 11/30/98; 15.1.6.7 NMAC - Rn & A, 15 NMAC 1.6.7, 10/15/00; A, 2/14/02; A, 2/28/05; A, 1/29/2016]

15.1.6.11 MODIFICATION OF LICENSED PREMISES:

A. No gaming operator licensee shall modify its licensed premises in any way without obtaining the prior written approval of the board or its designee, on a form approved by the board. ~~[As used in this section, modification does not include painting walls or installing or removing flooring, as long as the placement of gaming machines on the licensed premises is unchanged.]~~

B. ~~[A gaming operator licensee shall notify the board or its designee in writing prior to modifying the licensed premises. The board or its designee shall approve or disapprove the modification. The licensee shall not modify the licensed premises prior to receiving written approval from the board or its designee. The written notice shall include a detailed diagram showing the proposed modification.]~~ Modification of a licensed premises includes but is not limited to changing the location of gaming machines on the licensed premises. Any licensee seeking to change the location of gaming machines on the licensed premises shall notify the board in accordance with the provisions of this rule.

C. ~~[No modification of a licensed premises]~~ The board or its designee shall [be approved] not approve any modification of a licensed premises unless the licensed premises, as modified, [shall meet] meets all the requirements of the act and this rule.

D. ~~[Modification of a licensed premises includes changing the location of gaming machines on the licensed premises. Any licensee seeking to change the location of gaming machines on the licensed premises shall notify the board in accordance with the provisions of~~

this rule.] A gaming operator licensee shall notify the board or its designee in writing prior to modifying the licensed premises. The board or its designee shall approve or disapprove the modification. The written notice shall include a detailed diagram showing the proposed modification.

[N, 11/30/98; 15.1.6.11 NMAC - Rn, 15 NMAC 1.6.11, 10/15/00; A, 2/28/05; A, 5/15/07; A, 1/29/2016]

PUBLIC REGULATION COMMISSION

The Public Regulation Commission approved, at its 11/4/2015 hearing, to repeal and replace its rule 17.11.10 NMAC, State Rural Universal Service Fund (filed 1/1/2015), effective 1/29/2016.

PUBLIC REGULATION COMMISSION

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES CHAPTER 11 TELECOMMUNICATIONS PART 10 STATE RURAL UNIVERSAL SERVICE FUND

17.11.10.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission.
[17.11.10.1 NMAC - Rp, 17.11.10.1
NMAC, 01/29/16]

17.11.10.2 SCOPE: This
rule applies to all entities that provide
intrastate retail public telecommunication
services and comparable retail alternative
services in New Mexico.
[17.11.10.2 NMAC - Rp, 17.11.10.2
NMAC, 01/29/16]

**17.11.10.3 STATUTORY
AUTHORITY:** Sections 8-8-4 and 63-
9H-6, NMSA 1978.
[17.11.10.3 NMAC - Rp, 17.11.10.3
NMAC, 01/29/16]

17.11.10.4 DURATION:
Permanent.
[17.11.10.4 NMAC - Rp, 17.11.10.4
NMAC, 01/29/16]

17.11.10.5 EFFECTIVE DATE:
January 29, 2016, unless a later date is
cited at the end of a section.
[17.11.10.5 NMAC - Rp, 17.11.10.5
NMAC, 01/29/16]

17.11.10.6 OBJECTIVE:
The purpose of this rule is to provide
procedures for administering and
implementing the New Mexico state
rural universal service fund to maintain
and support at affordable rates those
public telecommunications services and
comparable retail alternative services
provided by telecommunications carriers
that have been designated as eligible
telecommunications carriers, including
commercial mobile radio services carriers,
as are determined by the commission.
[17.11.10.6 NMAC - Rp, 17.11.10.6
NMAC, 01/29/16]

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

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

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

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

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

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

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

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

**H. "Eligible
telecommunications carrier (ETC)"**
means an entity with New Mexico
operations that provides retail

telecommunications services that has been
designated by the commission as eligible
to receive disbursements from the fund or
from the federal universal service fund;

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

J. "FCC" means the
federal communications commission;

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

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

**M. "Imputed
benchmark revenue"** means the
difference between the affordability
benchmark rates established by the
commission pursuant to this rule and the
carrier's basic local exchange residential
and business rates as of July 1, 2014,
multiplied by the number of basic local
exchange residential and business lines
served by the carrier as of December 31
of the year that precedes the year during
which the revenue requirement is being
determined pursuant to Subparagraph E of
17.11.10.19 NMAC; imputed benchmark
revenue shall not be less than zero;

**N. "Interexchange
carrier (IXC)"** means an entity that
provides intrastate toll services in New
Mexico;

**O. "Intrastate retail
telecommunications revenue"** means
the revenue collected from the sale of
intrastate telecommunications services
to end users; for voice over internet
protocol (VOIP) and similar services, the

portion of total retail revenues attributable to intrastate retail telecommunications shall be equal to the proportion of calls originating and terminating in New Mexico to all calls originating in New Mexico;

P. "Intrastate retail telecommunications services" means services including, but not limited to, all types of local exchange service; non-basic, vertical or discretionary services, also known as advanced features, or premium services, such as, but not limited to, call waiting, call forwarding, and caller identification (ID); listing services; directory assistance services; cellular telephone and paging services; commercial mobile radio services; personal communications services (PCS); both optional and non-optional operator services; wide area telecommunications services (WATS) and WATS-like services; toll-free services; 900 services and other informational services; message telephone services (MTS) or toll; CENTREX, centron and centron-like services; video conferencing and teleconferencing services; the resale of intrastate telecommunications services; payphone services; services that provide telecommunications through a New Mexico telephone number using voice over internet protocol (VOIP) or comparable technologies; any services regulated by the commission; and such other services as the commission may by order designate from time to time as equivalent or similar to the services listed above, without regard to the technology used to deliver such services;

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

R. "Local exchange carrier (LEC)" means an entity that provides local exchange service in New Mexico;

S. "New Mexico operations" means intrastate retail public telecommunications services and comparable retail alternative services provided in New Mexico;

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

Mexico physical address;

U. "Rural area" means any unincorporated area or incorporated place of 15,000 inhabitants or less within an ETC's authorized service area;

V. "Service area" means a geographic area established by the commission in accordance with Section 214(e)(5) of the federal act (47 U.S.C. Section 214(e)(5));

W. "Area unserved by broadband" means an area where no wireline facilities-based provider offers access to broadband service at speeds greater than 56Kbps download or upload. An unserved area may include individual census block groups or tracts that on their own would not be considered unserved. A household has access to broadband service if the household can readily subscribe to that service upon request;

X. "Area underserved by broadband" means an area where a wireline facilities-based provider offers access to broadband service at speeds greater than 56Kbps but less than 4.0 Mbps download/1 Mbps upload. An underserved area may include individual census block groups or tracts that on their own would not be considered underserved. A household has access to broadband service if the household can readily subscribe to that service upon request.

[17.11.10.7 NMAC - Rp, 17.11.10.7 NMAC, 01/29/16]

17.11.10.8 REDUCTION OF INTRASTATE SWITCHED ACCESS CHARGES: The commission may, upon motion of a carrier or the administrator, or upon the commission's own motion, authorize further intrastate switched access charge reductions for a carrier to correspond to any changes in that carrier's tariffed interstate switched access service charge rates, elements or structure subsequent to January 1, 2006.

[17.11.10.8 NMAC - Rp, 17.11.10.8 NMAC, 01/29/16]

17.11.10.9 AFFORDABILITY BENCHMARK RATES:

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

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

(2) the business benchmark rate shall be carrier-specific and shall be equal to the business basic exchange rate of each local exchange carrier on July 1, 2014, plus the amounts required to increase the carrier's residential basic local exchange rate on or after July 1, 2015 to match the new residential benchmark rate set forth above, up to a limit of \$35.96;

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

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

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

[17.11.10.9 NMAC - Rp, 17.11.10.9 NMAC, 01/29/16]

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

A. Criteria for selection: the commission will issue a request for proposals to select the administrator; the commission shall consider whether the bidder has demonstrated the competence needed to administer the fund and the rate of compensation proposed; the commission shall also consider at a minimum whether the bidder:

(1) is able to be neutral and impartial;

(2) is a member of a trade association that advocates positions before this commission or other state commissions in administrative

proceedings related to telecommunications issues;

(3) is an affiliate of any contributing company;

(4) has a substantial financial interest in any entity or affiliate that provides telecommunications services or comparable retail alternative services; and

(5) has a board of directors that includes any member with direct financial interests in entities that contribute to or receive support from the fund in this state or any other state.

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

[17.11.10.10 NMAC - Rp, 17.11.10.10 NMAC, 01/29/16]

17.11.10.11 EXPENDITURE

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

[17.11.10.11 NMAC - Rp, 17.11.10.11 NMAC, 01/29/16]

17.11.10.12 RESPONSIBILITIES OF ADMINISTRATOR:

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

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

B. Establish an account or accounts in one or more independent financial institutions and ensuring that the monies deposited in the fund are insured to the maximum extent permitted by law and that they earn a return commensurate with that of state funds held on deposit in banks or other financial institutions.

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

D. Establish procedures, consistent with the commission's procedural rules and law, and with the

commission's approval, for protecting the confidentiality of information submitted pursuant to this rule.

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

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

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

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

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

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

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

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

[17.11.10.12 NMAC - Rp, 17.11.10.12 NMAC, 01/29/16]

17.11.10.13 DISPUTE

RESOLUTION: The commission may refer any disputed case between the administrator and a contributing company or between contributing companies to alternative dispute resolution if it finds that doing so would encourage the settlement of the dispute.

A. Mediation:
(1) if any of

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

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

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

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

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

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

B. Arbitration:

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

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

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

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

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

(6) any employee of the commission designated to

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

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

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

C. Arbitration

Procedures:

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

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

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

(4) whenever the arbitrator deems it necessary to make an inspection or investigation in

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

(5) at the close of or soon after the hearing, the arbitrator will issue a brief written decision; findings of fact and conclusions of law are not necessary; the arbitrator's decision will be binding on the parties and can be implemented by the commission to the extent such implementation is necessary; however, the decision will not be a decision of the commission and shall have no precedential effect;

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

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

[17.11.10.13 NMAC - Rp, 17.11.10.13 NMAC, 01/29/16]

17.11.10.14 VARIANCES AND

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

A. General requirements:

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

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

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

(4) the commission may, at its discretion, require an informal conference or formal

evidentiary hearing prior to making its determination.

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

- (1) identify the section of this rule for which the exemption or variance is requested;
- (2) describe the situation which necessitates the exemption or variance;
- (3) describe the effect of complying with this rule on the contributing company or ETC and its customers, or on its competitive affiliates and their customers, if the exemption or variance is not granted;
- (4) describe the result the request will have if granted;
- (5) state how the exemption or variance will achieve the purposes of this rule and the Rural Telecommunications Act of New Mexico;
- (6) state why the proposed alternative is in the public interest and is a better alternative than that provided by this rule;
- (7) state why the exemption or variance would have no anticompetitive effect; and
- (8) state why the requested exemption or variance would not place an undue burden on the fund.

[17.11.10.14 NMAC - Rp, 17.11.10.14 NMAC, 01/29/16]

17.11.10.15 GENERAL REPORTING REQUIREMENTS:

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

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

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

D. Electronic filing: the administrator shall accept electronic

reporting when practicable.

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

F. The commission may require the administrator to modify any of its report formats to solicit additional information necessary for the administration of the state universal service program, or to delete information that is not necessary.

[17.11.10.15 NMAC - Rp, 17.11.10.15 NMAC, 01/29/16]

17.11.10.16 REVENUE

REPORTS: Each ETC and contributing company shall submit on or before May 1 of each year a revenue report on the form prescribed by the administrator detailing its intrastate retail public telecommunications revenues for the prior calendar year.

[17.11.10.16 NMAC - Rp, 17.11.10.16 NMAC, 01/29/16]

17.11.10.17 OTHER REPORTS:

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

A. Contributing companies, including ETCs, shall report the number and type of New Mexico

access lines and New Mexico telephone numbers subscribed to in total and within rural areas and the number of such access lines and telephone numbers that are exempt from paying the SRUSF surcharge in total and within rural areas.

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

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

D. ETCs shall report:

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

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

E. Concurrently with the annual federal ETC reporting deadline, ETCs (other than those receiving only support pursuant to 17.11.11 NMAC) shall file with the commission a report, in a form approved by commission staff, that includes information supplied by Form 481 plus New Mexico-specific Form 481 information, modified to demonstrate that the ETC's payments from the fund were used for the purpose stated in Subsection A of 17.11.10.27 NMAC. The report shall also include maintenance and build-out plans showing how the payments were used for the purpose stated in Subsection A of 17.11.10.27 NMAC and how they were used in conjunction with federal high cost support. If any ETC required to file information with the commission under this Subsection E fails to comply on or before the annual federal ETC reporting deadline, the administrator shall withhold any disbursements otherwise due to the noncompliant ETC until the ETC has complied.

[17.11.10.17 NMAC - Rp, 17.11.10.17 NMAC, 01/29/16]

17.11.10.18 CONTACT

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

[17.11.10.18 NMAC - Rp, 17.11.10.18 NMAC, 01/29/16]

17.11.10.19 ANNUAL DETERMINATION OF FUND:

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

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

C. The amount of the fund shall be equal to the sum of each ETC's revenue requirement, calculated pursuant to this section, plus any other fund requirements determined by the commission, including pursuant to 17.11.10.25, 17.11.10.31 or 17.11.11 NMAC, plus projected administrative expenses and a prudent fund balance.

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

E. Except where the commission has established support based on need pursuant to 17.11.10.25 NMAC, the revenue requirement for 2016 for each ETC that was eligible as of July 1, 2005 and is a local exchange carrier shall be equal to the carrier's state rural universal service fund (SRUSF) revenue requirement determined by the commission for 2015, without consideration for any prorations ordered by the commission pursuant to Subsection E of 17.11.10.20 NMAC, and then reduced by the carrier's imputed benchmark revenue. To set the baseline for future annual SRUSF revenue requirement determinations pursuant to this section, the 2015 SRUSF revenue requirement shall be assigned an access line factor by dividing the 2015 SRUSF revenue requirement by the total number of access lines served by the carrier in New Mexico as of December 31, 2014. The revenue requirement for each ETC for 2017, and each year thereafter, shall be equal to that carrier's access line factor times the number of total access lines served by the carrier in rural areas of New Mexico as of December 31, 2015

and each December 31 thereafter, and then reduced by the carrier's imputed benchmark revenue. The SRUSF revenue requirement formula under this section may be stated arithmetically as follows: (revenue requirement minus imputed benchmark revenue).

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

[17.11.10.19 NMAC - Rp, 17.11.10.19 NMAC, 01/29/16]

17.11.10.20 SRUSF SURCHARGE CAP AND DETERMINATION OF RATE AND CONTRIBUTION:

A. Effective as of January 29, 2016 the SRUSF surcharge rate is capped at 3.5 percent. The administrator shall recommend the amount of the SRUSF surcharge rate annually, on or before September 1 to enable commission approval on or before October 1, based upon monthly and annual reports filed by ETCs and contributing companies and any other pertinent and reliable information available to the administrator or the commission, and applying the cap.

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

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

D. Each contributing company's monthly contribution shall equal the state rural universal service fund (SRUSF) surcharge rate multiplied by its intrastate retail telecommunications revenues in New Mexico for the month.

E. If, for any month the administrator finds that the fund balance is insufficient to meet the sum of all ETCs' revenue requirements (including support pursuant to 17.11.10.25 NMAC, 17.11.10.31 NMAC, and 17.11.11 NMAC) plus administrative expenses

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

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

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

[17.11.10.20 NMAC - Rp, 17.11.10.20 NMAC, 01/29/16]

17.11.10.21 RECOVERY OF CONTRIBUTIONS:

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

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

C. The commission may, after notice and hearing, order modifications to a contributor's method of recovering contributions from its end-user

customers.

[17.11.10.21 NMAC - Rp, 17.11.10.21 NMAC, 01/29/16]

17.11.10.22 FUND DISBURSEMENTS:

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

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

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

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

[17.11.10.22 NMAC - Rp, 17.11.10.22 NMAC, 01/29/16]

17.11.10.23 DESIGNATION OF ETCS:

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

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

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

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

(1) consider the cost of efficiently providing services to the proposed service area, including a rate of return determined by the commission to be reasonable, using the most cost-

effective technologies, but also taking into consideration existing infrastructure;

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

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

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

[17.11.10.23 NMAC - Rp, 17.11.10.23 NMAC, 01/29/16]

17.11.10.24 PETITIONS FOR ETC DESIGNATION AND SUPPORT RATES:

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

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

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

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

(4) include the information required by 17.11.10.25 NMAC;

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

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

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

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

(9) acknowledge that the petitioner may

be required to provide equal access if all other ETCs in the designated area relinquish their designations;

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

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

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

(13) demonstrate the petitioner's willingness and ability to offer service throughout the designated service area within a reasonable time frame; and

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

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

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

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

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

F. The commission shall require annual verification from each ETC that it continues to meet the requirements herein for designation as an ETC and for provision of support from the fund.

[17.11.10.24 NMAC - Rp, 17.11.10.24 NMAC, 01/29/16]

17.11.10.25 PETITION FOR SUPPORT BASED ON NEED:

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

service in the high-cost area of the state served by the ETC.

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

C. In support of the petition, the ETC must make available to the commission all information supplied by Form 481 (or a similar abbreviated form) for the four quarters prior to the petition filing date, plus New Mexico-specific Form 481 information if the Form 481 information is consolidated. The commission may also require additional information from the ETC that it deems necessary, including but not limited to information relating to the ETC's revenues, expenses, and investments, to determine whether support is needed to ensure the widespread availability and affordability of residential local exchange service in the ETC's high cost area in the state.

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

E. Companies reporting the use of funds granted by the Commission under this section shall provide:

(1) Specific details of projects for which fund support is used; itemized by the categories of capital expenditures (CapEx) and the related operations expenditures (OpEx).

(a) Project Descriptions will explain the objectives or intended goal of the project. Such as increased capacity or efficiency, redundancy, expansion of network or services.

(b) Project Prioritizations of buildout plans in technical terms that include locations, maps as applicable, milestones and benchmarks to measure performance and assure compliance. The description shall also provide project status, spending plans and metrics.

(c) Narrative of the projects explain the current and ongoing status of completion or ready for service dates (RFS), and other

pertinent facts (i.e., project delays, permit status, surveys, right of ways issues) for reporting purposes. The term ready for service ("RFS") means a description of projects where construction is complete and the project is operational.

(2) The period for the reporting of project details shall be semi-annual, at a minimum, to continue for the period that funds are awarded.

(3) Semi-annual financial reporting on a project specific or company-wide basis, depending if the award is specific to network improvements and projects, or for the financial stability of the ETC receiving the award.

[17.11.10.25 NMAC - Rp, 17.11.10.25 NMAC, 01/29/16]

17.11.10.26 COMPLIANCE WITH CONTRIBUTION REQUIREMENTS:

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

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

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

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

E. The commission may take the same types of action set forth in

Subsection D of 17.11.10.26 NMAC in the event that it finds, after a proceeding of the type specified in Subsection D of 17.11.10.26 NMAC, that a contributing company or an ETC has, in any other way, violated any provision of this rule or of the rural telecommunications act of New Mexico, Sections 63-9H-1, et seq. NMSA 1978.

[17.11.10.26 NMAC - Rp, 17.11.10.26 NMAC, 01/29/16]

17.11.10.27 USE OF FUND SUPPORT:

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

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

[17.11.10.27 NMAC - Rp, 17.11.10.27 NMAC, 01/29/16]

17.11.10.28 ACCESS TO BOOKS, RECORDS AND PROPERTY:

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

B. In the normal course of business, the administrator

will give at least three days' notice of its plans to inspect records in the offices of a contributing company or ETC. The administrator may apply to the commission to procure a subpoena in order to inspect records without notice. [17.11.10.28 NMAC - Rp, 17.11.10.28 NMAC, 01/29/16]

17.11.10.29 REVIEW AND AUDIT OF ADMINISTRATOR AND FUND: The administrator shall provide the commission with a financial statement of the fund and the administration of the fund on an annual basis by May 1. The commission shall engage a qualified independent auditor to audit each such financial statement and to submit a written opinion to the commission. [17.11.10.29 NMAC - Rp, 17.11.10.29 NMAC, 01/29/16]

17.11.10.30 ADVISORY BOARD:

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

Expenses incurred by a member in connection with participation on the advisory board shall not be reimbursed from the fund.

B. The advisory board shall meet periodically with the administrator and shall provide advice and consultation to the administrator as provided under this rule. Where deemed necessary by the advisory board, it shall make recommendations to the commission or the administrator, or both, relating to potential matters related to administration of the fund. Should the members of the advisory board not agree on a recommendation to the commission or administrator on any particular matter, the advisory board may provide a majority recommendation as well as a minority recommendation as to the resolution of any such identified issue. In addition, any member of the advisory board may, with advance written notice to the other members of the advisory board, provide individual recommendations or other information to the commission and the administrator that it deems appropriate. The advisory board is intended to be a forum within which to build consensus on matters relating to the administration of the fund, while not deterring any interested party from communicating its concerns relating to the administration of the fund to the advisory board, or, subject to advance written notice to the other members of the advisory board, directly to the commission.

C. The advisory board members shall elect a chair, vice-chair, and secretary to serve on the board for one year, subject to additional terms as elected from within the board. For the purpose of conducting business, a majority of the board members present at any meeting shall constitute a quorum. [17.11.10.30 NMAC - Rp, 17.11.10.30 NMAC, 01/29/16]

17.11.10.31 BROADBAND PROGRAM

A. ETCs may separately apply to the commission for grants to fund the construction of facilities that are capable of providing public telecommunications services as that term is defined in Section 63-9H-3(N), NMSA 1978 including broadband internet access service, to areas unserved or underserved by broadband in the state. Each grant that is awarded will provide up to seventy five percent of the budgeted project cost with the ETC applying the remaining twenty five percent. Projects receiving any other source of third-party funding other than

potential FCC high-cost fund or Connect America Fund support will not be eligible.

B. Funding of the broadband program. Beginning in 2017, the broadband program will be funded as follows: the amount of the reduction in the total SRUSF revenue requirement due to the application of the rural area limitation (i.e., the limitation of access line counts to lines in rural areas), pursuant to Subsection E of 17.11.10.19 NMAC, will be the amount of funding allocated to the broadband program, subject to proration under Subsection E of 17.11.10.20 NMAC. To the extent a year's broadband program funding is not exhausted by grants awarded during that year, the funds will rollover to the following year.

C. Minimum requirements for eligible projects. The commission will consider projects on a technology-neutral basis. Projects that apply technologies including, without limitation, wireline, mobile wireless, and fixed wireless technologies are all eligible for broadband fund grants. A project must meet the following requirements to be eligible for a grant award:

(1) Support broadband service at speeds of at least four Mbps download/one Mbps upload to all households and businesses in the proposed project area.

(2) Support voice grade telephony service to all households and businesses in the proposed project area. For this purpose, a voice over internet protocol (VOIP) based service is acceptable, as well as traditional voice telephony services.

(3) Support access to emergency 911 services.

D. Contents of grant applications. An application for support from the broadband program shall include:

(1) A proposal to build telecommunications network facilities to service an area where the applicant is designated as a state ETC.

(2) A detailed build plan setting forth a description of the facilities to be deployed, including all costs of constructing facilities.

(3) A map showing where service and coverage will be provided; this requirement can be met by providing:

(a) for a wireline network, a map showing all homes, businesses, and other end user locations passed;

(b) for a wireless network, a coverage

map generated using a radio frequency propagation tool generally used in the wireless industry;

(4) An estimate of the number of road miles and square miles to be covered.

(5) The amount of support requested from the broadband program and the amount of the applicant's financial match.

(6) A description of the technology to be deployed, including data throughput speeds to be delivered to customers;

(7) A demonstration that the area to be served is an area unserved by broadband or an area underserved by broadband as defined in 17.11.10.7 NMAC.

(8) A demonstration that the estimated revenues from the services to be offered as a result of the proposed construction would be insufficient to justify the project without support from the broadband program.

(9) A commitment to provide a minimum twenty five percent match of funds drawn from the broadband program.

(10) If the project is a wireless network deployment, a commitment to allow collocation on reasonable terms by other providers of commercial mobile wireless service or any public safety network and to abide by the FCC's collocation requirements for awardees under the federal universal service program.

(11) Sample terms and conditions for the service and proposed prices.

(12) A certification by an authorized representative stating whether the applicant is receiving or applying funds from any government support for the project and affirming that all other information set forth in the application is true and correct and

(13) Any other requirements to ensure accountability as the Commission may develop and approve in a proceeding to determine the form and contents of grant applications.

E. The ETC must make the following commitments and include them in its proposed application:

(1) The voice and broadband service must be offered at reasonably comparable rates for comparable services in urban areas.

(2) The voice and broadband service must be provided for at least five years following project

completion.

(3) Projects must be completed within two years from the date of commission approval;

(4) The ETC must abide by commission reporting requirements sufficient to monitor the progress of the project deployment and to ensure that all grant funds are being used efficiently and for the purpose intended.

(5) The ETC must commit to respond to commission inquiries regarding service-related complaints and commit to attempt to resolve service-related complaints in a reasonable manner.

F. Procedure for awarding support from the broadband fund:

(1) Except as provided under Subsection H of 17.11.10.31 NMAC, on or before May 1 of each year, the commission shall open a 30 day window for filing applications for broadband program support for the following calendar year.

(2) The commission staff, or a third-party contractor, shall review and score all qualified applications giving priority to unserved and underserved areas and may communicate with applicants to request additional information or clarify information presented in the application. The priority scoring of applications will be done based on the following methodology: Applications to build telecommunications network facilities will have the portion of the unserved areas in the proposal scored as priority 1, the portion of the underserved areas in the proposal scored as priority two, and the portion of the proposal that serves areas already offering broadband speeds of four mbps download and one mbps upload or greater scored as priority three. Priority one proposals will receive first priority for funding from the lowest cost priority one proposal to the highest cost priority one proposal, subject to the per year cap on funding support amounts. Priority two proposals will receive second priority for funding from the lowest cost priority two proposal to the highest cost priority two proposal, subject to the per year cap on funding support amounts. Priority three proposals will receive third priority for funding from the lowest cost priority three proposal to the highest cost priority three proposal, subject to the per year cap on funding support amounts.

(3) On or before September 1, the commission's staff, or a third-party contractor, shall present to the

commission recommendations for support awards.

(4) On or before October 1, any applicant may file with the commission a request for reconsideration of a denial of its application.

(5) On or before December 1, the commission shall approve or deny support awards by a final order.

G. Conditions for disbursement of awarded funds:

(1) The awardee commits to complete construction of its project within two years from the award date.

(2) Within 30 days after project completion, the awardee shall submit a report demonstrating that the project as completed meets the coverage requirements set forth in the application, including a certification from an officer or director that all program requirements have been met.

(3) The administrator shall disburse fifty percent of the award when made, and fifty percent of an acceptable project completion report under Paragraph 2 above. The commission may, within 30 days after submission, suspend payment by the administrator and order additional information to be provided.

(4) Any applicant found to have willfully misrepresented information in an application, is found to have used support unlawfully, or fails to meet the commitments set forth in the application, shall refund all award funds immediately and shall be subject to having its federal and state ETC designations revoked.

H. Renewal or sunset of broadband program. On or before January 1, 2021, the commission will initiate a proceeding to review the performance of the broadband program in light of the statutory goals for universal service. Unless the commission makes an affirmative finding that the program should be continued, the program will sunset before December 31, 2021. If the program is sunset, then funds that had not been paid out or designated to a grantee by that time will be treated as a surplus to the SRUSF when the next surcharge rate is calculated pursuant to 17.11.10.19 NMAC. If the commission determines to extend the broadband program beyond 2021, the commission shall, by no later than July 1, 2021, determine the amount to be collected and disbursed from the broadband program for the years beyond

2021, and open a 30 day window for filing applications for broadband program support for 2022.
[17.11.10.31 NMAC - N, 01/29/16]

HISTORY OF 17.11.10 NMAC:
[RESERVED]

Pre-NMAC History: None.

History of Repealed Material:

17 NMAC 13.10, State Rural Universal Service Fund (filed 11/15/2005) repealed effective 01/01/2015.

17 NMAC 11.10, State Rural Universal Service Fund (filed 01/01/2015) repealed effective 01/29/2016.

Other History:

17 NMAC 13.10, State Rural Universal Service Fund (filed 12/15/1999) was replaced by 17.11.10 NMAC, State Rural Universal Service Fund, effective 01/01/2015.

17.13.10 NMAC, State Rural Universal Service Fund (filed 1/1/2015) was replaced by 17.11.10 NMAC State Rural Universal service Fund, effective 1/29/2016.

REGULATION AND LICENSING DEPARTMENT
OSTEOPATHIC MEDICAL EXAMINERS BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 17 OSTEOPATHIC MEDICINE AND SURGERY PRACTITIONERS
PART 9 PHYSICIANS SUPERVISING PHARMACIST CLINICIANS

16.17.9.1 ISSUING AGENCY:
Regulation and Licensing Department - NM Board of Osteopathic Medical Examiners.
[16.17.9.1 NMAC - N, 02-07-2016]

16.17.9.2 SCOPE: The provisions in Part 9 of Chapter 17 apply to all osteopathic physicians who supervise pharmacist clinicians.
[16.17.9.2 NMAC - N, 02-07-2016]

16.17.9.3 STATUTORY AUTHORITY: These rules of practice and procedure govern the practice of medicine in New Mexico and are promulgated pursuant to and in accordance with the Osteopathic Medicine and Surgery Act, Section 61-10-14 NMSA 1978 and the Pharmacist Prescriptive Authority Act 61-11B-1 to 61-11B-3

NMSA 1978.
[16.17.9.3 NMAC - N, 02-07-2016]

16.17.9.4 DURATION:
Permanent.
[16.17.9.4 NMAC - N, 02-07-2016]

16.17.9.5 EFFECTIVE DATE:
February 7, 2016, unless a later date is cited at the end of a section.
[16.17.9.5 NMAC - N, 02-07-2016]

16.17.9.6 OBJECTIVE: The objective of Part 9 of Chapter 17 is to establish and adopt rules to carry out the board's responsibilities set forth in Sections 61-11B to 61-11B-3, NMSA 1978, the "Pharmacist Authority Act."
[16.17.9.6 NMAC - N, 02-07-2016]

16.17.9.7 DEFINITIONS:
A. "Consultation"
means in person, telephonically, by two-way radio, by e-mail or by other electronic means.

B. "Alternate supervising physician" means a physician who holds a current unrestricted license to practice medicine or osteopathic medicine, is a cosignatory on the notification of supervision, and agrees to act as the supervising physician in the supervising physician's absence with no change to the scope of practice or protocol of the pharmacist clinician. The alternate supervising physician must be approved by the board.

C. "Scope of practice"
means duties and limitations of duties placed upon a pharmacist clinician by their supervising physician or the alternate supervising physician(s) and the board; includes the limitations implied by the field of practice of the supervising physician or the alternate supervising physician(s) and the board.
[16.17.9.7 NMAC - N, 02-07-2016]

16.17.9.8 APPROVAL OF SUPERVISING PHYSICIANS: A physician shall only be approved as a pharmacist clinician supervisor after the pharmacist clinician registers with the board by submitting an application for authority to practice under the supervision of a licensed physician. The application shall include:

A. The name, address, phone number of the applicant, and proof of current certification as a pharmacist clinician by the board of pharmacy;

B. the name, address, and phone number of the supervising physician;

C. a written protocol agreed to and signed by the pharmacist clinician and the supervising physician that shall include:

(1) a statement identifying the physician authorized to prescribe dangerous drugs and the pharmacist clinician who is a party to the guidelines or protocol;

(2) a statement of the types of prescriptive authority that the pharmacist clinician is authorized to make within his scope of practice which may include:

(a) a statement of the types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case; and

(b) a general statement of the procedures, decision criteria or plan the pharmacist clinician is to follow when exercising prescriptive authority;

(c) a statement of the activities the pharmacist clinician is to follow in the course of exercising prescriptive authority, including documentation of decisions made and a plan for communication to and consultation with the supervising physician concerning specific decisions made; documentation may occur on the prescriptive record, patient profile, patient medical chart or in a separate log book; and

(d) a statement that describes appropriate mechanisms for reporting to the physician the pharmacist clinician's activities in monitoring the patients; and

(e) a statement that describes provisions for immediate communication or consultation between the pharmacist clinician and the supervising physician or alternate supervising physician.

D. The pharmacist clinician may be authorized in the protocol to monitor dangerous drug therapy as follows:

(1) collecting and reviewing patient dangerous drug histories;

(2) measuring and reviewing routine patient vital signs including pulse, temperature, blood pressure and respiration; and

(3) ordering and evaluating the results of laboratory tests relating to dangerous drug therapy, including blood chemistries and cell counts, controlled substance therapy

levels, blood, urine, tissue or other body fluids, culture and sensitivity tests when performed in accordance with guidelines or protocols applicable to the practice setting.

E. A pharmacist clinician may only prescribe controlled substances if she:

(1) has obtained a New Mexico controlled substances registration and a drug enforcement agency registration, and

(2) prescribes controlled substances within the parameters of written guidelines or protocols established under these regulations and Section 3.A of 62-11B NMSA 1978, the Pharmacist Prescriptive Authority Act.

F. The protocol for each pharmacist clinician shall be reviewed by the board as least every two years.

G. A pharmacist clinician shall perform only those services that are set forth in the protocol.

H. Pharmacist clinicians may prescribe only those drugs described in a board approved protocol.

I. A physician may supervise as many pharmacist clinicians as the physician can effectively supervise and communicate with in the circumstances of their particular practice setting.

J. Within thirty days after an employer terminates the employment of a pharmacist clinician, the supervising physician or the pharmacist clinician shall submit a written notice to the board providing the date of termination and reason for termination. The pharmacist clinician shall not work as a pharmacist clinician until the board approves another supervising physician. [16.17.9.8 NMAC - N, 02-07-2016]

16.17.9.9 THE PHYSICIAN'S REQUIREMENTS OF SUPERVISION:

A. Supervising physicians must provide direction to pharmacist clinicians to specify the pharmacotherapeutic services to be provided under the circumstances in each case. This may be done by written protocol or by oral consultation. It is the responsibility of the supervising physician to assure that the appropriate directions are given and understood.

B. Supervising physicians must establish a quality assurance program for review of medical services provided by the pharmacist clinician.

C. If the supervising physician is of the opinion that circumstances warrant exceptions to the requirements set forth in Subsections A or B above, the supervising physician must specify the circumstances in writing and deliver the same to the board. The board will review, grant or deny requests for exceptions or waivers, at the board's discretion.

D. Documentation of the supervising physician reviews must be retained by the pharmacist clinician and be available for board inspection for a period of not less than five (5) years from the date of such reviews.

E. The pharmacist clinician must have prompt access to the physician by telephone or other electronic means for advice and direction.

F. If the supervising physician plans to be or is absent from his or her practice for any reason, the supervising physician cannot designate a pharmacist clinician to take over those duties or cover the practice during such absence. The supervising physician may designate an alternate supervising physician, approved by the board, to cover the practice and perform the duties of supervising physician. The alternate supervising physician will then supervise the pharmacist clinician and will be responsible for the pharmacist clinician's actions or omissions in exercising prescriptive authority or other duties as a pharmacist clinician.

G. In order to change a supervising physician between biennial renewals of registration, without a change to the pharmacist clinician's scope of practice or protocol, a pharmacist clinician shall submit to the board a change of supervising physician form and the required fee, as specified in 16.10.9.11 NMAC. The new supervising physician may only act after the application is approved by the board. [16.17.9.9 NMAC - N, 02-07-2016]

16.17.9.10 REPORT AND COMMITTEE: The chair of the board shall appoint two (2) members of the board, or a member and an agent of the board to an oversight committee that shall also include two members appointed by the board of pharmacy. The oversight committee will make a report that may include non-binding recommendations to both the board of pharmacy and the board of osteopathic medical examiners regarding disciplinary action. Each board can accept or reject the recommendations. [16.17.9.10 NMAC - N, 02-07-2016]

16.17.9.11 PHYSICIANS SUPERVISING PHARMACIST CLINICIANS:

A. Registration application fee of \$100.

B. Biennial renewal fee of \$100.

C. Change of supervising physician fee of \$25, with no change in scope of practice or protocol.

D. Late fee of \$25 for failure to renew registration or provide required documentation on or before July 1.

[16.17.9.11 NMAC - N, 02-07-2016]

HISTORY of 16.17.9 NMAC: [RESERVED]

End of Adopted Rules

This Page Intentionally Left Blank

2016 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXVII, Issues 1-24

| Volume XXVII | Submittal Deadline | Publication Date |
|---------------------|---------------------------|-------------------------|
| Issue 1 | January 4 | January 15 |
| Issue 2 | January 19 | January 29 |
| Issue 3 | February 1 | February 12 |
| Issue 4 | February 15 | February 29 |
| Issue 5 | March 1 | March 15 |
| Issue 6 | March 16 | March 31 |
| Issue 7 | April 1 | April 15 |
| Issue 8 | April 18 | April 30 |
| Issue 9 | May 2 | May 13 |
| Issue 10 | May 16 | May 31 |
| Issue 11 | June 1 | June 15 |
| Issue 12 | June 16 | June 30 |
| Issue 13 | July 1 | July 15 |
| Issue 14 | July 18 | July 29 |
| Issue 15 | August 1 | August 15 |
| Issue 16 | August 16 | August 31 |
| Issue 17 | September 1 | September 15 |
| Issue 18 | September 16 | September 30 |
| Issue 19 | October 3 | October 14 |
| Issue 20 | October 17 | October 31 |
| Issue 21 | November 1 | November 15 |
| Issue 22 | November 16 | November 30 |
| Issue 24 | December 16 | December 30 |

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at <http://www.nmcpr.state.nm.us/nmregister>.
For further information, call 505-476-7942