

This rule was filed as 16 NMAC 1.2

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 1 OCCUPATIONAL AND PROFESSIONAL LICENSING GENERAL PROVISIONS
PART 2 SUNRISE PROGRAM ADMINISTRATIVE

16.1.2.1 ISSUING AGENCY: [Regulation and Licensing Department].
[2/1/94; Recompiled 12/31/01]

16.1.2.2 SCOPE: Any unregulated profession or occupation that is not under the authority of an existing agency and that seeks to create a new board or commission for the public health, safety or welfare must comply with the provisions of the Act and must submit an application for regulation in accordance with these rules and regulations.
[2/1/94; Recompiled 12/31/01]

16.1.2.3 STATUTORY AUTHORITY: These rules and regulations are adopted pursuant to Section 12-9A-6, NMSA 1978, 1993 supplement.

[2/1/94; Recompiled 12/31/01]

16.1.2.4 DURATION: [Permanent].
[2/1/94; Recompiled 12/31/01]

16.1.2.5 EFFECTIVE DATE: February 1, 1994 [unless a later date is cited at the end of a section].
[2/1/94; Recompiled 12/31/01]

16.1.2.6 OBJECTIVE: PURPOSE OF SUNRISE REVIEW:

A. The sunrise review establishes a system for investigation of the necessity of State regulation of an occupation or profession prior to the legislature enacting any law for such regulation.

B. The sunrise review enables the Committee and legislature to evaluate the need for regulation of an occupation or profession and to determine the level of regulation needed to safeguard the public health, safety or welfare.
[2/1/94; Recompiled 12/31/01]

16.1.2.7 DEFINITIONS: Each of the following terms shall have the meaning indicated when used in these rules and regulations:

A. "Act" is the Sunrise Act (Sections 12-9A-1 through 12-9A-6, NMSA 1978, 1993 Supplement).

B. "Applicant Group" is any business or professional group or organization, any individual, or any other interested party who submits a completed application for sunrise review to the Manager.

C. "Committee" is the Legislative Finance Committee of the State of New Mexico.

D. "Department" is the Regulation and Licensing Department of the State of New Mexico.

E. "Manager" is the Sunrise Program Manager of the Regulation and Licensing Department of the State of New Mexico.

F. "Sunrise Review" is the process by which a determination is made regarding the necessity for State regulation of an occupation or profession.
[2/1/94; Recompiled 12/31/01]

16.1.2.8 FUNDING OF SUNRISE PROGRAM:

A. To implement the provisions of the Act, the Department was granted authority to assess costs of the sunrise program among boards covered by the Uniform Licensing Act (Sections 61-1-1 through 61-1-31, NMSA 1978).

B. The Department shall submit an annual budget request for the costs of the sunrise program. Funding shall be approved by the legislature as part of the General Appropriations Act. The Department shall assess annually each board covered by the Uniform Licensing Act a proportionate share, based upon its budget, for the costs of the sunrise program.

C. The Department shall return proportionately to the contributing boards any of their contributed funds that are unexpended by the sunrise program at the end of the fiscal year.

D. The Department shall deposit to the funds of the sunrise program all application fees paid by Applicant Groups. Such application fees shall be used to pay part of the costs of the sunrise program, thereby reducing proportionately the contribution of each of the boards for the costs of the sunrise program.
[2/1/94; Recompiled 12/31/01]

16.1.2.9 APPLICATION FOR REGULATION - GENERAL INFORMATION:

A. An Applicant Group seeking state licensure or regulation of a profession or occupation not under the authority of an existing agency shall submit an application for regulation to the sunrise program.

B. The burden of proving the need for regulation of an occupation or profession is on the Applicant Group. The Applicant Group can demonstrate a need for regulation by meeting the criteria for licensure and regulation set forth in the Act. The more thoroughly the need for regulation is substantiated by the Applicant Group, the more easily and quickly the application can be reviewed.

C. A complete application consists of submittal to the Manager of the completed Applicant Group Questionnaire and the required fee. The Questionnaire must be complete in all details and all items must be addressed.

D. The Applicant Group shall submit sufficient information to enable the Manager, Department and Committee to fairly, adequately and completely evaluate its application.

E. The Applicant Group shall cooperate with the Manager, Department and Committee as necessary to interpret and clarify the application and supporting materials. The Applicant Group shall provide, to the extent possible, all information requested by the Manager, Department or Committee.

F. Ordinarily, an Applicant Group's approved request for regulation will be considered by the legislature only during one of its "long" sessions; i.e., during odd-numbered years. Therefore, it is recommended that the Applicant Group have its completed application in the Manager's office by January 1st, but in no case later than April 1st, of the even-numbered year preceding the legislature's "long" session. The earlier an Applicant Group submits its application, the better its chances of receiving a complete sunrise review prior to the start of a particular legislative session. Although the Manager, Department and Committee shall make every effort to promptly complete their sunrise review of each application, it is possible, upon occasion, that a complete review of a particular application cannot be completed prior to the start of a particular legislative session. In such case, if the application for licensure or regulation is approved at a later date by the Committee, the Committee shall consider action on the proposed licensure or regulation at the next legislative opportunity.

G. Ordinarily, an application from an Applicant Group will be reviewed in the order in which it is received; i.e., the first application received shall be the first one reviewed. If it is necessary for the Manager, Department or Committee to establish priorities, the priority of one applicant group over another will be based on information in the applications, particularly that relating to the potential harm to the public that may be caused by the continued practice of the unregulated group. In such case, the Manager, Department or Committee shall decide on the order in which each application shall be reviewed.

[2/1/94; Recompiled 12/31/01]

16.1.2.10 PROCEDURE FOR SUNRISE REVIEW:

A. The Applicant Group first shall submit a letter of intent to the Manager, declaring its interest in becoming regulated by the State of New Mexico and its desire to begin the sunrise review process. The letter of intent shall be delivered to: Sunrise Program Manager, Regulation and Licensing Department, State of New Mexico, Post Office Box 25101, 725 St. Michaels Drive, Santa Fe, New Mexico 87504

B. Upon receipt of the letter of intent, the Manager shall contact the Applicant Group to arrange for a meeting to discuss the application requirements set forth in these rules and regulations and in the Applicant Group Questionnaire; if, for any reason, the Applicant Group's representative(s) cannot attend such a meeting, the Manager shall send to the Applicant Group a copy of these rules and regulations and an Applicant Group Questionnaire.

C. Upon request by the Applicant Group, the Manager will review a draft of the application and recommend changes as necessary. The Applicant Group, however, is the final authority on the contents of the application.

D. The Applicant Group shall submit its completed application to the Manager at the address set forth in paragraph "A" above.

E. An application fee of one thousand dollars (\$1,000.00) must accompany the completed Questionnaire. The check or money order in payment of such fee shall be made payable to "Regulation and Licensing Department".

F. Within ten (10) working days of the Manager's receipt of the application from an Applicant Group:

(1) If the application is complete, the Manager shall send a letter of acceptance to the Applicant Group stating its proposal has been accepted for sunrise review; or

(2) If the application is not complete, the Manager shall send a letter to the Applicant Group stating specifically what additional information is necessary.

G. When the Applicant Group's application has been accepted for sunrise review, the Manager shall notify in writing the Department, Committee, boards covered by the Uniform Licensing Act, and Governor's Office, and shall begin the sunrise review process. If necessary, the Manager shall contact the Applicant Group to clarify documentation or to request additional information.

H. During the process of sunrise review, the Manager shall solicit comments from the public relative to the necessity or desirability of regulation of the Applicant Group. The Manager may contact directly boards covered by the Uniform Licensing Act, professional associations, interested parties and groups and/or schedule public hearings to be held in one or more cities in the State.

I. The Manager shall submit to the Department a written review and evaluation of the Applicant Group's proposal and a recommendation regarding regulation.

J. The Manager, with the Department's approval, shall submit to the Committee and to the Governor's Office a written review and evaluation of the Applicant Group's proposal and a recommendation regarding regulation.

K. The Committee shall review the Applicant Group's proposal and the Department's written comments and recommendation. The Committee may conduct a hearing on the pro the proposal or may request additional information from the Applicant Group. It shall be the responsibility of the Applicant Group to furnish promptly any additional information requested by the Committee.

L. If the Committee finds that all criteria for licensure or regulation of an occupation or profession have been met pursuant to Section 12-9A-3, NMSA 1978, 1993 Supplement, it may recommend creation of a new board or commission to regulate or license the occupation or profession. Such recommendation shall be made to the legislature in accordance with the requirements of Section 12-9A-5, NMSA 1978, 1993 Supplement.

M. If the Committee does not find that all criteria for licensure or regulation of an occupation or profession have been met, it may recommend denial of the application for regulation.

N. If the Committee finds that the criteria for licensure or regulation of an occupation or profession would be met if amendment were made to the application for regulation, it may recommend such amendment to the Applicant Group and it may allow such amendment to be made to the application before making its final recommendation.

O. Whether the Committee recommends approval or denial of the application of an Applicant Group, it may make additional recommendations regarding solutions to problems identified during the sunrise review.
[2/1/94; Recompiled 12/31/01]

16.1.2.11 REAPPLICATION FOR SUNRISE REVIEW:

A. If the Committee does not recommend creation of a new board or commission to license or regulate a profession or occupation, the Applicant Group may reapply for a sunrise review after the expiration of one (1) year from the date of the Committee's decision.

B. Notwithstanding the time limitation of paragraph "A" above, in the event of extreme or compelling circumstances or clear evidence of harm or endangerment to the health, safety or welfare of the public, the Applicant Group may reapply for sunrise review at any time.

C. When reapplying for sunrise review, the Applicant Group shall follow the procedure for sunrise review as set out in Section 201.00 of these rules and regulations.

[2/1/94; Recompiled 12/31/01]

16.1.2.12 APPLICATION FEE: The application fee shall be one thousand dollars (\$1,000.00) for any Applicant Group seeking State regulation of a profession or occupation through creation of a new board or commission.

[2/1/94; Recompiled 12/31/01]

16.1.2.13 MISCELLANEOUS FEES:

- A.** The fee for photocopies of documents shall be twenty-five cents (\$0.25) per page.
 - B.** The fee for certified copies of documents shall be fifty cents (\$0.50) per page.
 - C.** The fee for any check which fails to clear the bank or is returned unpaid for any reason shall be twenty dollars (\$20.00).
- [2/1/94; Recompiled 12/31/01]

16.1.2.14 SEVERABILITY: If any part of the application of these rules and regulations is held invalid, the remainder of its application to other situations, groups or persons shall not be affected.

[2/1/94; Recompiled 12/31/01]

HISTORY OF 16.1.2 NMAC: [RESERVED]