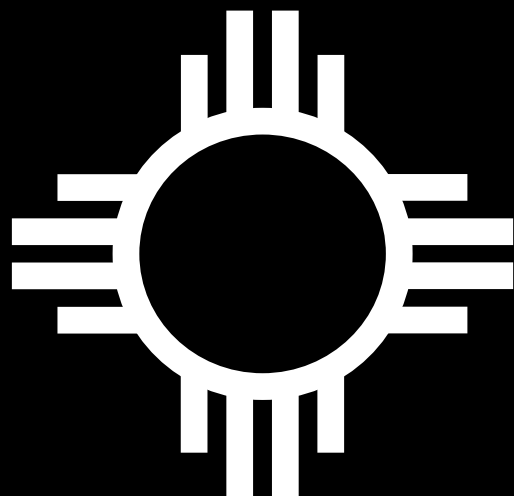


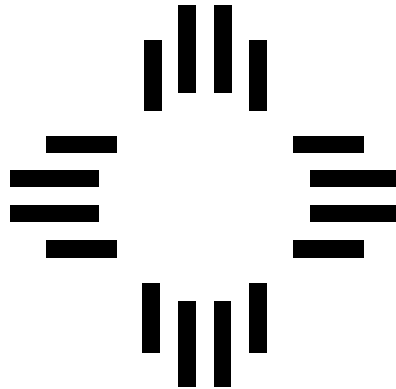
**NEW
MEXICO
REGISTER**



Volume XV
Issue Number 1
January 15, 2004

New Mexico Register

Volume XV, Issue Number 1
January 15, 2004



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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Administrative Law Division
Santa Fe, New Mexico
2004

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New Mexico Register

Volume XV, Number 1

January 15, 2004

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO GAME COMMISSION

**STATE GAME COMMISSION
PUBLIC MEETING
AND RULE MAKING NOTICE**

On Thursday, January 15, 2004, beginning at 9:00 a.m. at the New Mexico Department of Public Safety, 4491 Cerrillos Road/Training Academy Auditorium, Santa Fe, New Mexico 87507, the State Game Commission will meet in Public Session to consider action as appropriate on the following: Election of Chair and Co-Chair; approval of Notice requirements in accordance with the Open Meetings Act; Approval of FY 2003 Audit Report; Correction of 2004-2005 Big Game Rule; Issues Related to Commission-Owned Properties including establishing rate schedule for various commercial activities and approval of lease agreements for two (2) cases for oil and gas development projects on Navajo properties and two (2) transmission tower lease agreements on the Colin Neblett Wildlife Area; Status and Potential of Reintroduction of River Otters; Department/Commission Discussions on: Playa Lakes Joint Venture; New Mexico Wildlife Foundation; and Internet-Based Special Hunts Application Process Demonstration. There will also be a closed Executive Session to discuss personnel, litigation and land acquisitions as per 10-15-1 NMAC.

The Commission will open the following rules for amendment or adoption:

* Sections 19.31.8 NMAC will be open for amendment to correct minor discrepancies in antelope, deer, and elk season dates and license availability relative to intended past Commission action.

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's web site at www.gmfsh.state.nm.us for updated information.

NEW MEXICO GAMING CONTROL BOARD

NEW MEXICO GAMING CONTROL BOARD

NOTICE OF HEARING ON AMENDMENTS TO RULES

The New Mexico Gaming Control Board ("Board") will hold a public hearing at 9:00 a.m. on February 17, 2004, at the New Mexico Gaming Control Board, 6400 Uptown Blvd., N.E., Suite 100-E, Albuquerque, New Mexico 87110 to consider amendments for the following rules:

15.1.2 NMAC, Confidential Treatment of Certain Information, 15.1.5 NMAC, Application for Licensure Under the Gaming Control Act, 15.1.7 NMAC, Gaming Machines, New Games and Associated Equipment, 15.1.8 NMAC, Accounting Requirements under the Gaming Control Act, 15.1.9 NMAC, Internal Control Minimum Standards for Gaming Devices under the Gaming Control Act, 15.1.10 NMAC, Conduct of Gaming under the Gaming Control Act, 15.1.13 NMAC, License and Certification Renewal Requirements under the Gaming Control Act, 15.1.14 NMAC, Enforcement Proceedings under the Gaming Control Act, 15.1.15 NMAC, Administrative Appeal of Gaming Control Board Action, 15.1.17 NMAC, Schedule of Penalties under the Gaming Control Act, 15.1.18 NMAC, Compulsive Gambling Assistance Plan Standards, 15.1.19 NMAC, Payment of Winnings Over \$1,200 under the Gaming Control Act, 15.1.20 NMAC, Emergency Orders of the Gaming Control Board, 15.1.24 NMAC, Progressive Games and Gaming Devices.

Copies of the proposed amendments are available on request to the New Mexico Gaming Control Board, 6400 Uptown Blvd., N.E., Suite 100-E, Albuquerque, New Mexico 87110, or by calling (505) 841-9733. The proposed changes are also available on our website at www.gcb.state.nm.us. The Board can provide public documents in various accessible formats.

The hearing will be held before a hearing officer appointed by the Board. All interested parties may attend the hearing and present their views orally or submit written comments prior to the hearing. Written comments should be directed to the Gaming Control Board, 6400 Uptown

Blvd., N.E., Suite 100-E, Albuquerque, New Mexico 87110.

If you are an individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, please contact Barbara Palmier, Gaming Control Board, at least one week prior to the hearing at (505) 841-9756.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER)	
OF THE ADOPTION)	
OF PROPOSED)	
AMENDMENTS)	
TO THE)	
COMMISSION'S)	Docket No.
MOTOR)	03-00360-TR-P
TRANSPORTATION)	
RULES,)	
TRANSPORTATION)	
DIVISION STAFF)	
OF THE PUBLIC)	
REGULATION)	
COMMISSION,)	
Petitioner.)	
_____)	

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission ("Commission") proposes to adopt various amendments to the Commission's Motor Transportation Rules. This matter comes before the Commission on the Motion to Initiate Rulemaking ("Motion") filed by the Commission's Transportation Division Staff ("Staff") on September 11, 2003. Staff asks the Commission to commence a proceeding to adopt proposed amendments to the Commission's Motor Transportation Rules. Staff attached a draft of their recommended proposed rules to its Motion. Having considered Staff's Motion and Staff's subsequent pleadings, and the draft rules attached to those pleadings, and being fully advised,

THE COMMISSION FINDS AND CONCLUDES:

1. The Public Regulation Commission Act authorizes the Commission to "adopt such reasonable regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties." NMSA 1978, Section 8-8-4(B)(10). The Motor Carrier Act ("Act") vests with the Commission the duty to adopt rules necessary to implement and enforce the Motor Carrier Act. NMSA 1978, Section 65-2A-4(A)(9). See also, Section 65-2A-4(B)(4).

2. Staff's Motion generally recommends changes throughout the proposed rules to: eliminate duplicative material existing in statutory law; delete definitions and other provisions that are now contained in the extensively revised Motor Carrier Act (see N.M. Laws 2003, Chapter 10); and update citations to the Act throughout the rules so that the rules now reference the revised Act.

3. Staff filed a Supplemental Motion to Initiate Rulemaking ("Supplemental Motion") on November 14, 2003. In its Supplemental Motion, Staff requested the Commission to merge its ambulance rule into the other motor carrier rules. Among the attachments to the Supplemental Motion was a disposition draft indicating how the substantive portions of the proposed inclusion of the ambulance rules would be distributed in the revised Motor Transportation rules.

4. On November 25, 2003, Staff filed a Notice of Filing of Staff's Recommended Ambulance and Motor Transportation Rules ("Staff's Notice"). Attached to Staff's Notice were Staff's final recommended changes to the Motor Transportation Rules and proposed new ambulance rule that would merge rules applicable to ambulance services and other motor carriers. Such a merger would result in a set of rules applicable to both motor carriers and ambulances, and a separate ambulance rule contained within the same title and chapter assigned to motor carriers.

5. Staff states that it has formatted the proposed rules consistent with the requirements for compilation into the New Mexico Administrative Code and, if the proposed rules are adopted, they would be contained in Title 18 of the New Mexico Administrative Code.

6. Staff's Motion, as amended by its Supplemental Motion and Notice, is well taken and should be granted as provided by this Notice of Proposed Rulemaking ("NOPR"). The Commission finds that it should consider adopting amendments to the Commission's Motor Transportation Rules as Staff proposes.

7. The proposed rules attached to this NOPR contain substantive changes regarding financial responsibility

requirements; treating a contested case like an uncontested case in the event intervenors withdraw; pre-filing review of applications; the distinction between charter services and limousine services; implementation of new sections of the Act; immediate automatic suspension of operating authority for lapse in insurance coverage or for violation of safety requirements that endanger the public health or safety; standards for approving cancellation of a certificate or permit; and fees for warrants and single trip tickets.

8. In addition, the proposed rules contain a number of miscellaneous changes including: specifying contents of a motion to intervene; authorizing the Director to approve changes in the form of ownership; changing the seating capacity from 7 or more to 9 or more in the definition of "shared ride service" to be consistent with definition of "taxicab service" in the new Act; adding provisions on filing fees and docket numbers to reflect actual procedure for warrants and single trip tickets; revising time limits for reviews for completion; changing Docket Filing Unit of the Administrative Services Division to Applications Bureau of the Transportation Division as the place to file applications for motor carrier authority; adding provisions requiring Commission approval of transfers of control of a motor carrier; adding language to make explicit that a determination by the Director that an application is complete does not constitute approval of an application; and clarifying that suspension or revocation of an operating authority for failure to render reasonably continuous service requires both notice and a public hearing.

9. The Commission will take written comments on the rules proposed in this NOPR from any interested person. Interested persons shall file their written comments no later than February 6, 2004. Any person wishing to respond to comments may do so by submitting written response comments no later than February 20, 2004. Comments suggesting changes to the proposed rules shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rules shall be in legislative format. A copy of the proposed rules in electronic format may be obtained from the Commission to facilitate this requirement. Any proposed changes to Exhibit 1 shall be submitted in hard copy, and the Commission strongly encourages all persons proposing such changes to file an additional copy in electronic format (3.5-inch floppy disk in Microsoft Word 95 or Microsoft Office 97 formats). The label on the floppy disk shall

clearly designate the name of the person submitting the proposed changes and the docket number of this proceeding. All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and docket number contained at the top of this NOPR.

10. Comments on the proposed amendments to the Motor Transportation Rules shall be sent to, and additional copies of the proposed rules can be obtained from:

Bettie Cordova
ATTN: Proposed Motor
Transportation Rules
New Mexico Public Regulation
Commission
P.O. Box 1269
Santa Fe, NM 87504-1269
Telephone: (505) 827-4526

Copies of the proposed rules may also be downloaded from the Commission's Web Site, www.nmprc.state.nm.us, under "Transportation Division," then "Motor Transportation Rules."

11. The Commission will review all timely submitted written comments and will hold public hearings to take oral comment regarding the proposed rules. The schedule and locations for these public hearings are as follows:

(a) Monday,
January 5, 2004 at 1:00 p.m., at the Chaves
County Administrative Center, 1 St. Mary's
Place, Roswell, New Mexico;

(b) Friday,
January 9, 2004, at 1:00 p.m., at the
Albuquerque City Council/Committee
Chambers, 1 Civic Plaza, Albuquerque,
New Mexico;

(c) Thursday,
January 29, 2004, at 6:00 p.m., at the
Mimbres Valley Learning Center, 2300 E.
Pine, Rm. 144, Deming, New Mexico; and

(d) Wednesday,
February 25, 2004, at 10:00 a.m., at Marian
Hall, 1st floor hearing room, 224 East
Palace Avenue, Santa Fe, New Mexico.

12. Interested persons should contact the Commission to confirm the date, time and place of any public hearing, since hearings are occasionally rescheduled.

13. Any person with a disability requiring special assistance in order to participate in a hearing should contact Bettie Cordova at (505) 827-4526 at least 48 hours prior to the commencement of the hearing.

14. Copies of this NOPR

should be sent to all persons on the Transportation Service List, to all motor carriers and ambulance services holding warrants, permits, or certificates issued by this Commission or its predecessor, and to any other person requesting service, and should be published in four newspapers of general circulation in the state and in the *New Mexico Register*.

IT IS THEREFORE ORDERED:

A. The amended Motor Transportation Rules, including ambulance rules, attached to this NOPR as Exhibit 1 are proposed for adoption as permanent rules as provided by this NOPR.

B. Interested persons shall file their written comments on the proposed rules as provided in this NOPR.

C. Public hearings shall be held as provided in this NOPR.

D. Staff of the Transportation Division shall mail a copy of this NOPR, excluding Exhibit 1, to all persons on the Transportation Service List, to all motor carriers and ambulance services holding warrants, permits, or certificates issued by this Commission or its predecessor, and to any other person requesting service. Staff shall cause this NOPR to be published in four newspapers of general circulation in the state and in the *New Mexico Register*, shall provide the NOPR by e-mail or facsimile transmission to those persons who have so requested, and shall post a copy of this NOPR and the proposed rules on the Commission's Web Site.

E. This NOPR is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 23rd day of December, 2003.

NEW MEXICO PUBLIC REGULATION COMMISSION

**LYNDA M. LOVEJOY,
 CHAIRWOMAN**

DAVID W. KING, VICE CHAIRMAN

**HERB H. HUGHES,
 COMMISSIONER**

**JEROME D. BLOCK,
 COMMISSIONER**

**E. SHIRLEY BACA,
 COMMISSIONER**

**End of Notices and
 Proposed Rules Section**

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Adopted Rules

Correction

The amendment to 13.10.19 NMAC published in Volume XIV, Issue 24 of the New Mexico Register, page 1000, incorrectly lists the agency heading as "Commission of Public Records".

The correct agency heading is "Public Regulation Commission – Insurance Division".

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.1.10 NMAC, effective 01-15-2004.

16.60.1.10 FEES AND OBLIGATIONS: Fees charged by the board shall be as follows.

~~[(4)]~~ **A.** Fees set by the board for CPA examination applicants shall not unreasonably exceed the amount required for the board to operate CPA examination administration on a break even basis, but in no case shall the fee be less than the state's cost of procuring and administering the exam.

~~[(2)]~~ **B.** Initial examination qualification review under Section 27F of the Act shall be \$75.

~~[(3)]~~ **C.** Delinquency fee for incomplete or delinquent continuing education reports, certificate/license or firm permit renewals under Section 27D of the Act shall be \$50.

~~[(4)]~~ **D.** Certificate application under Section 27B of the Act shall be: initial certificate, \$150; certificate renewal, \$100.

~~[(5)]~~ **E.** Firm permit application or renewal fee under Section 27C of the Act shall be \$45 for each firm, regardless of form of entity.

~~[(6)]~~ **F.** Firm permit renewal delinquency fee under Section 27C of the Act shall be \$50 and includes all practitioners whose renewal applications are delinquent.

~~[(7)]~~ **G.** Certificate/license reinstatement fee under Section 27G of the Act shall be \$175 plus the current year's renewal fee. No delinquency fee shall be assessed.

H. No fee shall be charged for firm permit reinstatement, and no delinquency fee shall be assessed; only the current year's renewal fee shall be assessed.

~~[(8)]~~ **L.** Continuing professional education waiver and reentry into active certificate status and to comply with continuing professional education under Sections

27H and 27I of the Act shall not exceed \$75 each occurrence.

~~[(9)]~~ **J.** Administrative fees for services under Section 27F shall be:

~~[(a)]~~ (1) list of certificate or permit holders, \$.25 per name or line item;

~~[(b)]~~ (2) duplicate or replacement certificate card or permit card, \$10 each;

~~[(c)]~~ (3) duplicate or replacement wall certificate, \$25 each;

~~[(d)]~~ (4) board evaluation of coursework for continuing professional education credit, \$50 per hour of board staff research and study;

~~[(e)]~~ (5) certificate application package for reciprocity and grade transfer candidates and replacement packages for by-examination candidates, \$20 each;

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

~~[(g)]~~ (7) copies of records and documents, \$.25 per page;

~~[(h)]~~ (8) the board may, at its discretion, charge for other administrative costs as it deems appropriate;

~~[(i) the board may waive charges as it deems appropriate.]~~

~~[(10)]~~ **K.** Fee for the transfer of licensure or examination information to a third party under Section 27E of the Act shall be \$20.

~~[(11)]~~ **L.** Fee for notification of intent to practice in New Mexico under Section 26 of the Act shall be \$90.

M. The board may waive charges as it deems appropriate.

[16.60.1.10 NMAC - Rp 16 NMAC 60.2.8, 02-14-2002; A, 1-15-2004]

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

These are amendments to 16.60.2.8 NMAC, 16.60.2.10 NMAC, and 16.60.2.12 NMAC; and the addition of 16.60.2.13 NMAC as a new section.

16.60.2.8 APPLICATION PROCEDURES:

A. The board may contract as its agent CPA Examination Services (CPAES), the National Association of State Boards of Accountancy (NASBA), or the American Institute of Certified Public Accountants (AICPA) or other entities it deems appropriate to undertake any aspects of examination development, delivery, administration, qualification, or application that the board considers necessary and appropriate in its oversight and administration of the Uniform CPA Examination.

B. Applicants for the CPA examination shall meet the following

requirements:

(1) Section 61-28B7 of the Act;

(2) Section 61-28B8 of the Act (Effective July 1, 2004); and provisions set forth in this rule.

C. For the current pencil and paper CPA examination, applications to take the certified public accountant examination must be made on board forms and filed with the board at least 60 days prior to scheduled and available examination dates. For the current pencil and paper examination, the application must be postmarked or hand-delivered on or before March 1 for the May examination, and on or before September 1 for the November examination or the next business day if the specified dates fall on a weekend or holiday. For computer based CPA examination applications, application deadlines shall be specified on the board prescribed application forms.

D. An application will not be considered filed until all application/qualification fees and examination fees required by these rules and all required supporting documents have been received, including photographs, official transcripts, and proof that the applicant has completed the education requirement.

E. An applicant who fails to appear for the examination shall forfeit all fees charged for both the application and the examination.

F. Prospective applicants for the CPA examination shall demonstrate to the board's satisfaction that all education requirements are met.

G. For the computer-based examination, the board or its designee shall forward notification of eligibility to NASBA's national candidate database.

[16.60.2.8 NMAC - Rp 16 NMAC 60.3.9.1, 16 NMAC 60.3.9.2, & 16 NMAC 60.3.9.3, 02-14-2002; A, 01-15-2004]

16.60.2.10 EXAMINATION ADMINISTRATION:

A. Time and place of examination: For the current pencil and paper examination, notice of the time and place of the examination will be mailed at least 10 days prior to the date set for the examination to each candidate whose application to sit for the examination has been approved by the board. ~~[For the computer based CPA examination, notification will be mailed to the applicant and the exam deliverer within 10 days from approval and qualification of the applicant to sit for the exam.]~~ For the computer-based CPA examination, eligible applicants shall be notified of the time and place of the examination or shall independently contact the board or a

test center operator identified by the board to schedule the time and place for the examination at an approved test site.

B. Examination subjects: The examination required by the Act shall test the knowledge and skills required for performance as an entry-level certified public accountant and shall include the subject areas of accounting and auditing and such related subjects as the board may require. [16.60.2.10 NMAC - Rp 16 NMAC 60.3.9.3, 02-14-2002; A, 01-15-2004]

16.60.2.12 CPA EXAMINATION

CHEATING: Cheating by an applicant in applying for or taking the examination will be deemed to invalidate any grade otherwise earned by a candidate on any part of the examination and may warrant summary expulsion from the examination and disqualification from taking the examination for a specified number of subsequent sittings.

A. For purposes of this rule, the following actions, among others, may be considered cheating:

(1) falsifying or misrepresenting educational credentials or other information required for admission to the examination;

(2) communication between candidates inside or outside the examination room while the examination is in progress;

(3) communication with others outside the examination room while the examination is in progress;

(4) substitution of another person to sit in the examination room in the stead of a candidate and write one or more of the examination papers;

(5) possession of or reference to crib sheets, textbooks, electronic devices or other material inside or outside the examination room while the examination is in progress;

(6) copying or attempting to copy another candidate's answers;

(7) failure to cooperate with testing officials;

(8) any conduct that violates the standards of test administration or violates the verbal or written instructions given by examination administrators; or

(9) bringing prohibited items into the examination site.

B. In any case where it appears to a member of the board or its representative, while the examination is in progress, that cheating has or is occurring, the board may either summarily expel the candidate involved from the examination or move the candidate to a position in the room away from other candidates where the candidate can be watched more closely.

C. In any case where the board believes that it has evidence that a candidate has cheated on the examination,

and in every case where a candidate has been expelled from the examination, the board shall conduct a hearing expeditiously following the examination session for the purpose of determining whether or not there was cheating, and, if so, what remedy should be applied. In such hearings, the board shall decide:

(1) whether the candidate shall be given credit for any portion of the examination completed in that session;

(2) whether the candidate shall be allowed to continue taking the examination in any additional sessions that remain; and

(3) whether the candidate shall be barred from taking the examination in future sittings, and if so, for how many sittings.

D. In any case where the board permits a candidate to continue taking the examination, it may, depending on the circumstances:

(1) admonish the candidate;

(2) seat the candidate in a segregated location for the rest of the examination;

(3) keep a record of the candidate's seat location and identification number and the names and identification numbers of the candidates on either side of the candidate; and

(4) for the current paper and pencil examination, notify the American Institute of Certified Public Accountants (AICPA) of the circumstances, furnishing the candidate's identification number, so that after the initial grading is completed the candidate's papers can be compared for unusual similarities with the papers of others who may have been involved.

(5) upon introduction of the computer-based examination, notify the national candidate database, the AICPA, and the test center of the circumstances so that the candidate may be more closely monitored in future examinations.

E. In any case where a candidate is refused credit for parts of the examination taken or is expelled from the examination or disqualified from taking other parts, the board shall give the candidate a statement containing its findings, the evidence upon which the findings are based, and a notice of the right of the candidate to a formal rehearing by the board, with right of appeal, pursuant to the procedures provided in the Uniform Licensing Act, Sections 61-1-1 to 61-1-31 NMSA 1978, and in Section 7B of the Act, and after July 1, 2004, Section 8B of the Act.

F. In any case where a candidate is refused credit for any part of an examination taken, disqualified from taking any part of the examination, or barred from taking the examination in future sittings, the board will provide information as to its

findings and actions taken to the board of accountancy of any other state to which the candidate may apply for the examination.

[16.60.2.12 NMAC - Rp 16 NMAC 60.3.9, 02-14-2002; A, 09-16-2002; A, 01-15-2004]

16.60.2.13 TRANSITIONING POLICY FOR CONDITIONAL CREDIT

A. Applicants who have earned conditional credit on the paper and pencil examination, as of the launch date of the computer-based examination, will retain conditional credits for the corresponding test sections of the computer-based examination as follows:

(1) auditing and attestation on the computer-based examination will replace auditing on the paper and pencil examination;

(2) financial accounting and reporting on the computer-based examination will replace financial accounting and reporting on the paper and pencil examination;

(3) regulation on the computer-based examination will replace accounting and reporting on the paper and pencil examination; and

(4) business environment and concepts on the computer-based examination will replace business law and professional responsibilities on the paper and pencil examination.

B. Applicants who have attained conditional status as of the launch date of the computer-based examination will be allowed a transition period to complete any remaining test sections of the examination. The transition is whichever of the following is first exhausted:

(1) the maximum number of opportunities that an applicant who has received conditional credit under the paper and pencil examination has remaining, at the launch of the computer-based examination, to complete all remaining test sections; or

(2) the number of remaining opportunities under the paper and pencil examination, multiplied by six months.

C. Transition candidates will be allowed the same number of opportunities to pass the computer-based examination within the same amount of time that they would have been allowed under the paper-and-pencil examination.

D. Credit earned under the computer-based examination will be extended to the expiration of the credit earned under the paper-and-pencil examination, even if the latter credit extends beyond 18 months.

E. If an applicant who received conditional credit under the paper

and pencil examination does not pass all remaining test sections during the transition period, conditional credits earned under the paper and pencil examination will expire, and the applicant will lose credit for the test sections earned under the paper and pencil examination.

F. Any test section(s) passed during the transition period is subject to the conditioning provision of the computer-based examination as indicated in the Act, except that an applicant who received conditional credit under the paper and pencil examination will not lose conditional credit for a test section of the computer-based examination that is passed during the transition period, even though more than eighteen months may have elapsed from the date the test section is passed, until the end of the transition period.

G. During the first two testing windows in 2004, credit from the paper-and-pencil examination due to expire in May will not expire until May 31, and credit from the paper-and-pencil examination due to expire in November will not expire until November 30. This will ensure that transition candidates have a minimum of two full testing windows in which to pass sections.

H. The board will accept examination results for grade transfer or reciprocity candidates from other jurisdictions regardless of whether the transition rules of the other jurisdiction may have differed from those of New Mexico. These candidates must meet all other requirements for licensure pursuant to 16.60.3.10 NMAC or 16.60.3.13 NMAC, respectively.

[16.60.2.13 NMAC - N, 01-15-2004]

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.3.9 NMAC and 16.60.3.13 NMAC:

16.60.3.9 INITIAL CERTIFICATE/LICENSE REQUIREMENTS:

A. An applicant for initial certification/licensure shall demonstrate to the board's satisfaction that he:

(1) is of good moral character and lacks a history of dishonest or felonious acts;

(2) meets the education, experience and examination requirements of the board; and

(3) provides evidence of successful completion of an ethics examination prescribed by the board.

B. Moral character requirements: The board may assess moral character requirements based upon applicant-provided character references and background checks to determine an appli-

cant's history of dishonest or felonious acts.

C. Education and examination requirements: Education and examination requirements are specified in the Act, Section 61-28B7 and Section 61-28B8 (After July 1, 2004) and are further delineated in Part 3 of board rules.

D. Experience required: Applicants documenting their required experience for issuance of an initial certificate pursuant to Section 7H of the Act, and after July 1, 2004 Section 8H of the Act shall.

(1) Provide documentation of experience in providing any type of services or advice using accounting, attest, management advisory, financial advisory, tax or consulting skills. Acceptable experience shall include experience gained through employment in industry, government, academia or public practice.

(2) Have their experience verified and demonstrate that all experience was obtained under the direct supervision of an active, licensed CPA as defined in the Act or under the direct supervision of an active, licensed CPA from another state. The board shall consider and evaluate factors such as complexity and diversity of the work in determining acceptability of experience submitted.

(a) One year of experience shall consist of full or part-time employment that extends over a period of no less than 1 year and no more than 3 years and includes no fewer than 2,000 hours of performance of services described above.

(b) Experience documented in support of an initial application must be obtained within the 7 years immediately preceding passing of the examination or within 7 years of having passed the examination upon which the application is based.

(c) Any licensee requested by an applicant to submit evidence of the applicant's experience and who has refused to do so shall, upon request of the board, explain in writing or in person the basis for such refusal. The board may require any licensee who has furnished evidence of an applicant's experience to substantiate the information.

(d) The board may inspect documentation relating to an applicant's claimed experience. Any applicant may be required to appear before the board or its representative to supplement or verify evidence of experience.

~~E. Replacement certificates: Replacement certificates may be issued by the board in appropriate cases and upon payment by the CPA or RPA of the fee as set by the board. A certificate/license holder is specifically prohibited from possessing more than 1 New Mexico certificate as a CPA or RPA. When a replacement cer-~~

~~tificate is requested, the certificate/license holder must return the original certificate or submit a sworn affidavit describing the occurrence that necessitated the replacement certificate.]~~

E. Replacement wall certificates and licenses to practice: Replacement wall certificates and licenses to practice may be issued by the board in appropriate cases and upon payment by the CPA or RPA of the fee as set by the board. A certificate/license holder is specifically prohibited from possessing more than one wall certificate and more than one license to practice as a CPA or RPA. When a replacement wall certificate or license to practice is requested, the certificate/license holder must return the original certificate/license or submit a notarized affidavit describing the occurrence that necessitated the replacement certificate or license.

F. Renewal requirements: Certificates/licenses for individuals will have staggered expiration dates based on the individual's birth month. Deadline for receipt of certificate/license renewal applications and supporting continuing professional education affidavits or reports is no later than the last day of the month prior to the CPA or RPA certificate/license holder's birth month or the next business day if the deadline date falls on a weekend or holiday.

(1) The board may accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications.

(2) Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

(3) Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the continuing professional education requirements of Sections 9E and 12A of the Act and of these rules.

(4) The board shall mail renewal application notices no less than 30 days prior to the renewal deadline.

[16.60.3.9 NMAC - Rp 16 NMAC 60.4.8.2 & 16 NMAC 60.4.8.3, 02-14-2002; A, 01-15-2004]

16.60.3.13 RECIPROCITY REQUIREMENTS:

A. Interstate Reciprocity: The board may issue a certificate/license to the holder of a certificate issued by a state other than New Mexico as defined under Sections 3Q, 11B and D, and 26A of the Act provided that the license from the other state is valid and in good standing and that the applicant:

(1) provides proof from a board-approved national qualifications service that their CPA qualifications are substantial-

ly equivalent to the CPA requirements of the Act; or

(2) successfully completed the CPA examination in accordance with the rules of the other state at the time it granted the applicant's initial certificate; and

(3) has satisfied the education requirements set out in Sections 7C and 8C of the Act; and

(4) meets the experience requirements under the Act and these rules for issuance of the initial certificate; and

(5) has met the CPE requirement pursuant to the Act and board rules; and

(6) has met the ethics examination requirements of the board.

B. The board may rely on the National Association of State Boards of Accountancy (NASBA), the American Institute of Certified Public Accountants (AICPA), or other professional bodies deemed acceptable to the board for evaluation of other state's CPA qualification requirements in making substantial equivalency determinations.

C. International reciprocity: The board may designate a professional accounting credential issued in a foreign country as substantially equivalent to a New Mexico CPA certificate and may issue a certificate/license to the holder of a professional accounting credential issued in a foreign country.

(1) The board may rely on NASBA, AICPA, or other professional bodies deemed acceptable to the board for evaluation of foreign credentials in making equivalency determinations.

(2) The board may satisfy itself through qualifying examination(s) that the holder of a foreign country credential deemed by the board to be substantially equivalent to a CPA certificate possesses adequate knowledge of U.S. practice standards and the board's rules. The board will specify the qualifying examination(s) and may rely on NASBA, AICPA, or other professional bodies to develop, administer, and grade such qualifying examination(s).

(3) The board recognizes the existence of the International Qualifications Appraisal Board (IQAB), a joint body of NASBA and AICPA, which is charged with:

(a) evaluating the professional credentialing process of certified public accountants, or their equivalents, from countries other than the United States; and

(b) negotiating principles of reciprocity agreements with the appropriate professional and governmental bodies of other countries seeking recognition as having requirements substantially equivalent to the requirements for the certificate of a certified public accountant in the United States.

(4) The board shall honor the

terms of all principles of reciprocity agreements issued by IQAB.

(5) The board recognizes the International Uniform CPA Qualification Examination (IQEX), written and graded by AICPA, as a measure of professional competency satisfactory to obtain a New Mexico certificate by reciprocity.

(6) The board may accept a foreign country accounting credential in partial satisfaction of its certificate/license requirements if:

(a) the holder of the foreign country accounting credential meets the issuing body's education requirement and has passed the issuing body's examination used to qualify its own domestic candidates; and

(b) the foreign country credential is valid and in good standing at the time of application for a certificate/license.

D. An applicant for renewal of a CPA certificate/license originally issued in reliance on a foreign country accounting credential shall:

(1) meet all board prescribed certificate/license renewal requirements; and

(2) present documentation from the foreign country accounting credential issuing body that the applicant's foreign country credential has not been suspended or revoked and is not the subject of a current investigation; and

(3) report any investigations undertaken or sanctions imposed by a foreign country credential body against the CPA's foreign country credential.

E. If the foreign country credential has lapsed, expired, or been cancelled, the applicant must present proof from the foreign country credentialing body that the certificate holder/licensee was not the subject of any disciplinary proceedings or investigations at the time the foreign country credential lapsed.

F. Suspension or revocation of, or refusal to renew, the CPA's foreign accounting credential by the foreign credentialing body shall be considered evidence of conduct reflecting adversely upon the CPA's fitness to retain the certificate and may be a basis for board action.

G. Conviction of a felony or any crime involving dishonesty or fraud under the laws of a foreign country is evidence of conduct reflecting adversely on the CPA's fitness to retain a certificate/license and is a basis for board action.

H. The board shall notify the appropriate foreign country credentialing authorities of any sanctions imposed against a CPA. The board may participate in joint investigations with foreign country credentialing bodies and may rely on evidence supplied by such bodies in disciplinary hearings.

[16.60.3.13 NMAC - Rp 16 NMAC 60.4.9,

02-14-2002; A, 09-16-2002; A, 01-15-2004]

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.4.11 NMAC, effective 01-15-2004.

16.60.4.11 FIRM MERGERS, COMBINATIONS, DISSOLUTIONS, SEPARATIONS, OR PERMIT EXPIRATION/REQUEST FOR REINSTATEMENT:

A. In the event of a firm merger, combination, dissolution or separation, the firms must notify the board of changes in quality review cycles.

(1) In the event that 2 or more firms are merged or sold and combined, the surviving firm shall retain the peer review year of the largest (based on accounting and auditing hours) firm.

(2) In the event that a firm is divided, the firm(s) shall retain the review year of the former practice unit. In the event that such review is due in less than 12 months, a review year shall be assigned so that the review occurs within 18 months of the commencement of the new firm(s).

(3) In the event that a firm's permit expires/lapses due to non-renewal, the firm shall retain the year of the previously established firm peer review reporting completion dates. Peer review completion with a supporting acceptance letter shall be required to support any reinstatement application request.

(4) The firm must notify the board within 20 days of an extension, approved by the administering entity, as a result of a merger, combination, dissolution, or separation. Extension may not exceed 180 days.

B. Hardship Exceptions: The board may make exceptions to the requirements set out in this section for hardships. All hardship requests must be in writing, setting forth detailed reasons for the request, and must be submitted no later than 6 months prior to expected completion date of the peer review.

C. Exemptions: A firm which does not perform accounting and/or auditing engagements, including but not limited to audits, reviews, compilations, attestations, forecasts, or projections is exempt from the peer review program and shall re-certify annually to the board as to this exempt status as part of the firm permit renewal process. A previously exempt firm which begins providing the above described services must initiate and complete a review within 18 months of the date the services were first provided.

D. Procedures for an

administering entity.

(1) To qualify as an administering entity, an organization must submit a peer review administration plan to the board for review and approval. The plan of administration must:

(a) establish a peer review committee (PRC) and subcommittees as needed, and provide professional staff as needed for the operation of the peer review programs;

(b) establish a program to communicate to firms participating in the peer review program the latest developments in peer review standards and the most common findings in the peer reviews conducted by the administering entity;

(c) establish procedures for resolving any disagreement which may arise out of the performance of a peer review;

(d) establish procedures to evaluate and document the performance of each reviewer and conduct hearings which may lead to the disqualification of a reviewer who does not meet the AICPA standards; and

(e) require the maintenance of records of peer reviews conducted under the program in accordance with the records retention rules of the AICPA.

(2) A peer review committee (PRC) is comprised exclusively of CPAs practicing public accountancy and formed by an administering entity for the purpose of accepting peer review reports submitted by firms on peer review engagements.

(3) Each member of a PRC must be active in the practice of public accountancy at a supervisory level in the accounting or auditing function while serving on the committee. The member's firm must be enrolled in an approved practice-monitoring program and have received an unmodified report on its most recent peer review. A majority of the committee members must satisfy the qualifications required of on-site peer review team captains as established and reported in the AICPA Standards for Performing and Reporting on Peer Reviews.

(4) The PRC members' terms shall be staggered to provide for continuity.

(5) A PRC member may not concurrently serve as a member of his state's board of accountancy.

(6) A PRC member may not participate in any discussion or have any vote with respect to a reviewed firm when the committee member lacks independence of or has a conflict of interest with the firm.

(7) A PRC decision to accept a report must be made by a majority of a quorum of members.

(8) Responsibilities of peer review committee. The PRC shall:

(a) establish and administer the administering entities' peer review program

in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews;

(b) when necessary in reviewing reports on peer reviews, prescribe actions designed to assure correction of the deficiencies in the reviewed firm's system of quality control policies and procedures;

(c) monitor the prescribed remedial and corrective actions to determine compliance by the reviewed firm;

(d) resolve instances in which there is a lack of cooperation and disagreement between the committee and review teams or reviewed firms in accordance with the administering entities adjudication process;

(e) promptly act upon requests from firms for changes in the timetable of their review;

(f) appoint members to subcommittees and task forces as necessary to carry out its functions;

(g) establish and perform procedures for insuring that reviews are performed and reported on in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews;

(h) establish a report acceptance process which facilitates the exchange of viewpoints among committee members; and

(i) provide to the board administrative statistical reports regarding their peer review program as requested.

E. Disciplinary Action.

(1) The board shall take disciplinary action against a firm for failure to comply with peer review requirements. Actions may include, but are not limited to, remedial and corrective procedures, fines, and denial of firm registration.

(2) In the event a firm is unwilling or unable to comply with established standards, or a firm's professional work is so egregious as to warrant disciplinary action, the board shall take appropriate action to protect the public interest.

(3) A copy of the peer review acceptance letter from the administering entity must be submitted to the board office no later than 90 days after the scheduled date for the peer review as determined by the administering entity.

(a) For each day the firm is delinquent in submitting the acceptance letter, the board may assess a fine of \$10 per day not to exceed \$1,000.

(b) If a peer review acceptance letter is submitted more than 100 days late, a notice of contemplated action may be issued against all licensees listed on the most recent firm permit renewal application as owners of the firm.

(4) If an extension for completion of a peer review is granted by the adminis-

tering entity, the board shall also accept this extension, provided that the firm provides the board office with documentation of the extension from the administering entity.

F. Privileged information:

A report, statement, memorandum, transcript, funding record, or working paper prepared for and an opinion formulated in connection with any positive enforcement or peer review is privileged information held by the administering entity and may not be subject to discovery, subpoena, or other means of legal compulsion for release to any person and is not admissible as evidence in any judicial or administrative proceeding except for a board hearing.

G. Peer review continuing

professional education (CPE) credit: The board will allow a firm up to a total of 24 hours of CPE credits for its CPAs. These hours shall be allocated by the firm to participating firm CPAs and must be used in the calendar year of the acceptance letter.

(1) Firms having an engagement or report peer review will be allowed up to 12 hours of CPE credits.

(2) Firms having a system peer review will be allowed up to 24 hours of CPE credits.

(3) Firms having a system peer review at a location other than the firm's office shall be considered a system peer review and will be allowed up to 12 hours of CPE credits.

(4) The firm will report to the board the peer review CPE credit allocation listing individual firm CPAs and the number of credits allotted to each CPA. Individual CPAs receiving credit based upon a firm's report to the board may submit firm-reported hours in their annual CPA report forms to the board. If CPE credits will not be used, no firm report will be necessary.

[16.60.4.11 NMAC - Rp 16 NMAC 60.4.10 through 60.4.16, 02-14-2002; A, 01-15-2004]

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.5.9 NMAC, effective 01-15-2004.

16.60.5.9 BOARD DISCIPLINARY ACTION:

A. Any licensee whose certificate or firm permit issued by the board is subsequently suspended or revoked shall promptly return such certificate/license to be board.

B. Decisions by the board following hearings under the Uniform Licensing Act and the Public Accountancy Act will, if a charge is sustained, be made public.

(1) Decisions that do not sustain a

charge or are subject to agreement in lieu of a hearing may be made public at the board's discretion.

(2) A list of all individuals whose licenses have been suspended or revoked will be published on quarterly basis in a newspaper of general circulation as well as in the newspaper of circulation closest to the individual's place of business.

[16.60.5.9 NMAC - N, 02-14-2002; A, 01-15-2004]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

This is an amendment to 3.13.19 NMAC, sections 7,8,10 and 12 to be effective 1-15-04.

3.13.19.7 DEFINITIONS:

A. "Applicant" means a corporate entity that is planning to develop a qualified energy generator and that desires to receive the renewable energy production tax credit pursuant to this part.

B. "Biomass" means agricultural or animal waste; thinnings from trees less than fifteen inches in diameter; slash and brush; lumbermill or sawmill residues; and salt cedar and other phreatophytes removed from watersheds or river basins;

~~[B-]~~ C. "Certified Taxpayer" means the owner of a qualified energy generator who is certified pursuant to this part to be eligible to receive the renewable energy production tax credit.

~~[C-]~~ D. "Confidential Information" means information included in the renewable energy production tax credit application package or required to be submitted as part of the approval process that the applicant requests in writing to be held confidential.

~~[D-]~~ E. "Department" means the energy, minerals and natural resources department.

~~[E-]~~ F. "Director" means the director or head of the energy conservation and management division of the department.

~~[F-]~~ G. "Division" means the energy conservation and management division of the department.

~~[G-]~~ H. "Generating Capacity" means the nominal rated electrical power output (nameplate capacity) in megawatts of a qualified energy generator during optimum resource conditions, as specified by the generator's manufacturer. Generating capacity shall be at least ~~[20]~~ 10 megawatts. If the prevailing resource conditions at a project site are insufficient for a facility to

attain full nameplate capacity output at the time of certification, the power output shall be that which corresponds to at least ~~[20]~~ 10 megawatts nominal rating according to the equipment manufacturer's published performance ratings for those prevailing conditions.

~~[H-]~~ I. "Interconnection Agreement" means an agreement allowing the applicant to interconnect the qualified energy generator, of a specified type and size, to a suitable electric transmission or distribution line.

~~[I-]~~ J. "Land Rights Agreement" means an agreement providing to the applicant the control of land and the rights necessary to construct and operate a qualified energy generator.

~~[J-]~~ K. "Owner" means a taxpayer that owns at least five percent of the qualified energy generator. The owner may be a different entity than the applicant.

~~[K-]~~ L. "Power Purchase Agreement" means an agreement that binds an applicant to provide power at a specified price and a buyer to purchase power from the qualified energy generator.

~~[L-]~~ M. "Project Finance Agreement" means an agreement that binds a capable entity to provide the financing necessary for construction of a qualified energy generator.

~~[M-]~~ N. "Qualified Energy Generator" means a facility with at least ~~[20]~~ 10 megawatts generating capacity located in New Mexico that produces electricity using a qualified energy resource and that sells electricity to an unrelated person.

~~[N-]~~ O. "Qualified Energy Resource" means a resource that generates electrical energy by means of a fluidized bed technology or similar low-emissions technology or a zero-emissions generation technology that has substantial long-term production potential and that uses only the following energy sources: solar light, solar heat, ~~[or]~~ wind or biomass.

~~[O-]~~ P. "Related Person" means a partner, joint venture participant, shareholder, subsidiary, affiliate or parent company.

~~[P-]~~ Q. "Renewable Energy Production Tax Credit Application Package" or "Application Package" means the application documents submitted by an applicant to the division for certification to receive the renewable energy production tax credit.

~~[Q-]~~ R. "Secretary" means the head of the department.

~~[R-]~~ S. "Unrelated Person" means a person who is not a related person, including a customer to whom a utility sells electricity.

[3.13.19.7 NMAC - N, 3-15-03; A, 1-15-04]

3.13.19.8 GENERAL PROVISIONS:

A. Only a qualified energy generator located within New Mexico is eligible for a renewable energy production tax credit.

B. The proposed project shall meet these required milestones. If a project fails to meet a milestone, the division shall reject the application.

(1) Applicant submits a complete renewable energy production tax credit application package to the division.

(2) Construction of a qualified energy generator shall commence within 12 months of approval of the application. This requirement shall be met by entering into a construction contract and by the placement of a permanent, physical part of the facility, such as a poured concrete foundation. Applicant shall submit to the division a copy of the contract accompanied by a letter certifying that such construction has occurred.

(3) A qualified energy generator shall generate electrical power and achieve commercial operation, demonstrating at least ~~[20]~~ 10 megawatts generating capacity, within 24 months of approval of the application.

(4) Within 24 months of approval of the application, the owner shall submit to the division:

(a) the name of the qualified energy generator;

(b) electric output meter readings documenting commercial operation and indicating at least ~~[20]~~ 10 megawatts output;

(c) a copy of the bill of sale or other documentation sufficient to evidence a sale of the power indicating the amount of electrical energy produced, precise time period of production and the name of the buyer of the electricity;

(d) records to verify that the owner is selling to unrelated persons; and

(e) evidence of ownership (whole or partial) of the facility.

C. NMSA 1978, Section 7-2A-19 limits the power production of a qualified energy generator eligible for a tax credit to 400,000 megawatt-hours per year. It also limits the eligible power production of all qualified energy generators to ~~[800,000]~~ 2,000,000 megawatt-hours per year. When the ~~[800,000]~~ 2,000,000 megawatt-hours limit is reached based on the total of applications approved, the division will no longer approve applications, but will accept them for future consideration in the event that approved facilities are not completed on schedule and tax credit becomes available. The division shall keep a record of the order of receipt of all applications.

[3.13.19.8 NMAC - N, 3-15-03; A, 1-15-04]

3.13.19.10 APPLICATION REVIEW PROCESS

A. Applications shall be considered in the order received, according to the day they are received, but not the time of day. Applications received on the same day will receive equal consideration. If applications received on the same day are approved and would exceed the overall limit of credit availability, then the available credit will be divided among those applications on a prorated, per megawatt-hour basis.

B. The division shall approve or reject an application within 30 days following receipt of the package, or if more time is required the division shall notify the applicant of the reason and shall approve or reject the application as soon as possible.

C. The division shall review the application package to determine if the proposed generator will be a qualified energy generator and if the requisite documentation specified in Subsection C of 3.13.19.9, above, is valid.

D. The division shall check the accuracy of the applicant's estimate of annual production and make any necessary adjustments to ensure the estimate is reasonably achievable in an average year. The limit of the qualified energy generator's energy production eligible for the tax credit for the taxable year shall be the lesser of: the estimate approved by the division, or 400,000 megawatt-hours, or the eligible electricity remaining of the 2,000,000 megawatt-hours total for the state.

E. If the division finds that the application package meets the required criteria and production tax credit is available, the division shall approve the application. The division's approval is given by the issuance of a letter to the applicant. This letter shall include the limit of the qualified energy generator's annual production eligible for the tax credit.

F. The division shall reject an application that is not complete or correct, does not meet the criteria for approval or fails to meet a required milestone. The division's rejection letter shall state the reasons why the application was rejected. The applicant may resubmit the application package for the rejected project. The division shall place the resubmitted application in the review schedule as if it were a new project.

[3.13.19.10 NMAC - N, 3-15-03; A, 1-15-04]

3.13.19.12 CERTIFICATION:

A. When a qualified energy generator, for which the division has

approved a renewable energy production tax credit application package, produces power and it is sold to an unrelated person, then the owner is eligible to receive certification from the division. If the owner of the generator is different from the original applicant then a revised application form shall be submitted to the division indicating the name of the owner who is eligible for the credit. The qualified energy generator must demonstrate at least ~~20~~ 10 megawatts generating capacity. The owner shall submit:

(1) the name of the qualified energy generator;

(2) electric power output meter readings indicating at least ~~20~~ 10 megawatts generating capacity;

(3) a copy of the bill of sale or equivalent documentation indicating the amount of electrical energy produced, precise time period of production and the name and relationship, if any, of the buyer of the electricity; and

(4) evidence of ownership (whole or partial) of a qualified energy generator.

B. For purposes of monitoring compliance with this part, the division or its authorized representative shall have the right to visit a qualified energy generator upon five days notice being given to the owner.

C. If the division finds that a qualified energy generator, for which an application package has been approved, meets the criteria of this part, the division shall issue a certificate to the taxpayer stating that the facility is an eligible qualified energy generator, ~~[and the estimated annual production potential of the facility, which shall be the limit of that facility]~~ the estimated annual production potential of the facility and the limit of that facility's energy production eligible for the tax credit.

[3.13.19.12 NMAC - N, 3-15-03; A, 1-15-04]

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

This is an amendment to 2.42.2 NMAC, Sections 8 and 9, effective January 15, 2004.

2.42.2.8 PER DIEM RATES PRORATION:

A. **Applicability:** Per diem rates shall be paid to public officers and employees only in accordance with the provisions of this section. Per diem rates shall be paid without regard to whether expenses are actually incurred. Where lodging and/or meals are provided or paid

for by the agency, the governing body, or another entity, the public officer or employee is entitled to reimbursement only for actual expenses under 2.42.2.9 NMAC.

B. **Per diem rate computation:** Except as provided in Subsections C through I of this Section, per diem rates for travel by public officers and employees shall be computed as follows:

(1) **Partial day per diem rate:** Public officers or employees who occasionally and irregularly travel shall be reimbursed for travel which does not require overnight lodging, but extends beyond a normal work day as follows:

(a) for less than 2 hours of travel beyond normal work day, none;

(b) for 2 hours, but less than 6 hours beyond the normal work day, ~~[\$8.00]~~ \$12.00;

(c) for 6 six hours, but less than 12 hours beyond the normal work day, ~~[\$16.00]~~ \$20.00;

(d) for 12 hours or more beyond the normal work day, ~~[\$22.50]~~ \$30.00;

(e) "Occasionally and irregularly" means not on a regular basis and infrequently as determined by the agency. For example, an employee is not entitled to per diem rates under this subparagraph if the employee either travels once a week or travels every fourth Thursday of the month. However, the employee is entitled to per diem rates under this subparagraph if the employee either travels once a month with irregular destinations and at irregular times or travels four times in one month and then does not travel again in the next two months, so long as this is not a regular pattern.

(f) "Normal work day" means 8 hours within a nine-hour period for all public officers and employees both salaried and nonsalaried, regardless of the officers' or employees' regular work schedule.

(2) **Overnight travel:** Regardless of the number of hours traveled, travel for public officers and employees where overnight lodging is required shall be reimbursed as follows:

(a) in state areas ~~[\$65.00]~~ \$85.00

(b) in state special areas ~~[\$75.00]~~ \$135.00

(c) out of state areas ~~[\$75.00]~~ \$115.00

~~[(d) out of state special areas \$95.00;~~

~~(e)]~~ (d) or actual lodging and meal expenses under 2.42.2.9 NMAC.

(3) **Return from overnight travel:** On the last day of travel when overnight lodging is no longer required, partial day reimbursement shall be made. To calculate the number of hours in the partial day, begin with the time the traveler initially departed.

Divide the number of hours traveled by 24. The hours remaining constitute the partial day which shall be reimbursed as follows:

- (a) for less than 2 hours, none;
- (b) for 2 hours, but less than 6 hours, ~~[\$8.00]~~ \$12.00;
- (c) for 6 hours or more, but less than 12 hours, ~~[\$16.00]~~ \$20.00;
- (d) for 12 hours or more, ~~[\$22.50]~~ \$30.00.

(4) **Special area designations:** For all officers and employees, the in state special area shall be Santa Fe. ~~[The out of state special areas shall be the areas of New York City, Washington, D.C., Chicago, Los Angeles, San Francisco, Palm Springs, San Diego, Atlanta, Boston, Las Vegas, Atlantic City, Philadelphia and Dallas/Fort Worth designated as metropolitan by the most recent edition of the Rand McNally road atlas, and areas outside of the continental United States including Alaska and Hawaii.]~~

C. **Board, commission and committee members:** Nonsalaried public officers may receive per diem as follows:

(1) **Official board, commission and committee meetings:**

(a) **State nonsalaried public officers:** Nonsalaried public officers of the state may elect to receive either:

- (i) ~~[\$75.00]~~ \$95.00 per meeting day for attending each board or committee meeting; or
- (ii) per diem rates in accordance with Subsection B of this Section.

(b) **Local nonsalaried public officers:** Nonsalaried public officers of local public bodies may elect to receive either:

- (i) ~~[\$75.00]~~ \$95.00 per meeting day for attending each board or committee meeting day; or
- (ii) per diem rates in accordance with subsection B of this Section provided that the local governing body has not established a lesser rate.

(c) **Municipal nonsalaried public officers:** Nonsalaried public officers of municipalities may elect to receive either:

- (i) ~~[\$75.00]~~ \$95.00 per meeting day for attending each board or committee meeting; or
- (ii) per diem rates in accordance with Subsection B of this Section, provided that the board or commission meeting is held outside of the municipal boundaries.

(2) **Other official meetings:** Nonsalaried public officers may receive per diem rates for travel on official business that does not constitute a board, advisory board, committee or commission meeting only in accordance with Subsection B of

this Section.

(3) **Members serving in dual capacities:** Nonsalaried public officers who also serve as public officers or employees of state agencies or local public bodies may receive mileage or per diem rates from only one public entity for any travel or meeting attended. Furthermore, nonsalaried public officers who are also public officers or employees may not receive per diem rates for attending meetings held in the place of their home or at their designated posts of duty unless they are on leave from their positions as public officers or employees. Local public bodies may adopt regulations with respect to the receipt of per diem rates by employees or officers of local public bodies who also serve on boards or commissions subject to this rule.

D. **Temporary assignment:** Public officers and employees may be reassigned temporarily to another duty station.

(1) **Routine reassignment:** Public officers and employees subject to periodic reassignment of duty stations or districts as a normal requirement of their employment will not be eligible for per diem rates after the time of arrival at the new duty station or district.

(2) **Nonroutine reassignment:** Public officers or employees not normally subject to periodic reassignments who are temporarily assigned to another office of a state agency away from home will receive per diem for the first 30 calendar days of their assignment only, unless approval of the secretary is given to extend per diem payments upon showing that the assignment is necessary and temporary. Except in such extraordinary circumstances, after 30 calendar days, the place where the employee or officer is assigned will be regarded as the designated post of duty.

E. ~~[State highway and transportation department: The state highway and transportation department]~~ **New Mexico department of transportation:** The New Mexico department of transportation may adopt special policies pertaining to payment of per diem rates for temporary assignments. Such policies shall be subject to the annual approval of the secretary.

F. **Department of public safety:** The department of public safety may adopt special policies pertaining to payment of per diem rates, mileage and subsistence allowances authorized by law for commissioned officers. Such policies shall be subject to the annual approval of the secretary.

G. **Travel for educational purposes:** A public officer or employee shall not be reimbursed for more than 30 calendar days of per diem in any fiscal year

for attending educational or training programs unless approval has been obtained from the secretary.

H. **Per diem in conjunction with other leave:** While traveling, if a public officer or employee takes sick, annual or authorized leave without pay for more than four hours of the normal work day, per diem shall not be allowed for that day unless authorized in writing by the agency head.

I. **Illness or emergency:** Agency heads may grant permission, in writing, to pay per diem rates and travel reimbursement to an employee or public officer who becomes ill or is notified of a family emergency while traveling on official business and must either remain away from home or discontinue the official business to return home.

[2.42.2.8 NMAC - Rn, DFA Rule 95-1, Section 3, 07/01/03; A, 01/15/04]

2.42.2.9 REIMBURSEMENT OF ACTUAL EXPENSES IN LIEU OF PER DIEM RATES:

A. **Applicability:** Upon written request of a public officer or an employee, agency heads may grant written approval for a public officer or employee of that agency or local public body to be reimbursed actual expenses in lieu of the per diem rate where overnight travel is required.

B. **Overnight travel:** For overnight travel for state officers and employees where overnight lodging is required, the public officer or employee will be reimbursed as follows:

(1) **Actual reimbursement for lodging:** A public officer or an employee may elect to be reimbursed actual expenses for lodging not exceeding the single occupancy room charge (including tax) in lieu of the per diem rate set forth in this Section. Whenever possible, public officers and employees should stay in hotels which offer government rates. Agencies, public officers or employees who incur lodging expenses in excess of ~~[\$200]~~ \$215.00 per night must obtain the signature of the agency head or chairperson of the governing board on the travel voucher prior to requesting reimbursement and on the encumbering document at the time of encumbering the expenditure.

(2) **Actual reimbursement for meals:** Actual expenses for meals are limited by Section 10-8-4(K)(2) NMSA 1978 (1995 Repl. Pamp.) to a maximum of ~~[\$22.50]~~ \$30.00 for in-state travel and \$45.00 for out-of state travel for a 24-hour period.

(3) **Receipts required:** The public officer or employee must submit receipts for the actual meal and lodging expenses

incurred. Under circumstances where the loss of receipts would create a hardship, an affidavit from the officer or employee attesting to the expenses may be substituted for actual receipts. The affidavit must accompany the travel voucher and include the signature of the agency head or governing board. See Appendix B for a sample affidavit.

C. **Return from overnight travel:** On the last day of travel when overnight lodging is no longer required, partial day reimbursement shall be made. To calculate the number of hours in the partial day, begin with the time the traveler initially departed on the travel. Divide the total number of hours traveled by 24. The hours remaining constitute the partial day which shall be reimbursed as follows:

- (1) for less than 2 hours, none;
 - (2) for 2 hours but less than 6 hours, [~~\$8.00~~] \$12.00;
 - (3) for 6 hours or more, but less than 12 hours, [~~\$16.00~~] \$20.00;
 - (4) for 12 hours or more, [~~\$22.50~~] \$30.00;
 - (5) no reimbursement for actual expenses will be granted in lieu of partial day per diem rates.
- [2.42.2.9 NMAC - Rn, DFA Rule 95-1, Section 4, 07/01/03; A, 01/15/04]

End of Adopted Rules Section

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