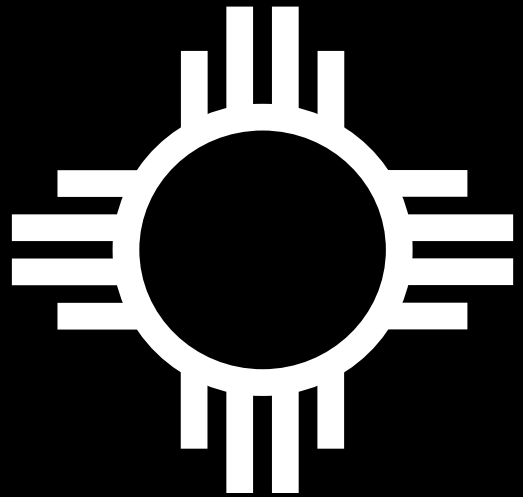


**NEW
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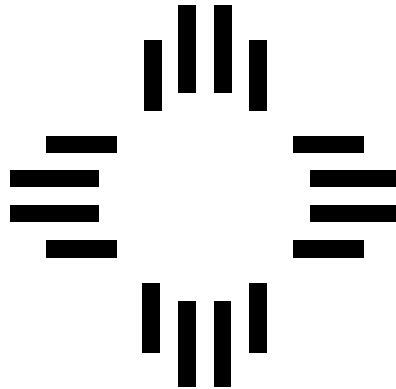


Volume XV
Issue Number 9
May 14, 2004

New Mexico Register

Volume XV, Issue Number 9

May 14, 2004



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2004

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New Mexico Register

Volume XV, Number 9

May 14, 2004

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

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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 AGING AND LONG-TERM SERVICES DEPARTMENT

NOTICE OF PUBLIC RULEMAKING HEARING

The New Mexico Aging and Long-Term Services Department hereby gives notice that a public hearing will be held on **Tuesday, June 15, 2004 at 9:00 a.m. in Hearing Room # 1 at the department's offices, 2550 Cerrillos Road, Santa Fe, N.M.**

The purpose of the hearing will be to receive comments on a proposed new rule relating to patient care monitoring (i.e., "granny cams") in long-term care facilities: 9.2.23 NMAC - Patient Care Monitoring Act Regulations.

Any person requesting a copy of the proposed rule or wishing to testify at the hearing should contact Andrea Allen by mail at 1410 San Pedro NE, Albuquerque, NM 87110, by toll-free telephone at 1-866-842-9230, or by e-mail at Andrea.Allen@state.nm.us. Any person wishing to submit written or e-mail comments may do so by submitting them to Ms. Allen on or before the date of the hearing. No written or e-mail comments will be accepted after 5:00 p.m. on the date of the hearing.

Persons requiring special accommodations at the hearing are asked to contact Ms. Allen by June 1, 2004 so that arrangements can be made.

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

NOTICE OF HEARING AND REGULAR MEETING

On June 9, 2004, at 5:15 PM, the Albuquerque/Bernalillo County Air Quality Control Board (Board) will hold a combined public hearing in the basement level Council/Commission Chambers of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM. The hearing will address:

* Proposal to amend 20.11.100

NMAC, Motor Vehicle Inspection-Decentralized, (Part 100) and incorporate the complete and amended 20.11.100 NMAC into the SIP.

* Proposal to amend 20.11.102 NMAC, Oxyfuels, (Part 102) and incorporate the complete and amended 20.11.102 NMAC into the SIP.

* Request for Board approval of the State Implementation Plan (SIP) Revision: Limited Maintenance Plan for Carbon Monoxide (CO): Albuquerque/Bernalillo County, New Mexico. The Clean Air Act requires that, 8 years after redesignation to attainment status, areas shall submit a maintenance plan revision for the second half of the 20-year maintenance plan commitment. Bernalillo County was redesignated to attainment status for CO on June 13, 1996. This revision covers the second planning period of 2006-2016.

* Proposal to incorporate the State Implementation Plan (SIP) Revision: Limited Maintenance Plan for CO: Albuquerque/Bernalillo County, New Mexico, into the New Mexico State Implementation Plan (SIP) for air quality.

The purpose of the Part 100 phase of the combined hearing is to receive testimony on proposed changes to 20.11.100 NMAC, Motor Vehicle Inspection-Decentralized, and to receive testimony on placing amended Part 100 into the SIP. The Part 100 proposed regulatory change would remove the current contingency measure that requires annual vehicle testing if an EPA-confirmed violation (two exceedances) of the federal ambient carbon monoxide standards occurs within Bernalillo County. The changes are proposed to be effective on the later of June 13, 2006 or when the SIP revision becomes effective.

The purpose of the Part 102 phase of the combined hearing is to receive testimony on proposed changes to 20.11.102 NMAC, Oxyfuels, and to receive testimony on placing amended Part 102 into the SIP. The proposed regulatory change would establish a contingency measure that requires the oxygenate content in fuels to increase from 2.7% by weight to 3.0% by weight if carbon monoxide levels in Bernalillo County exceed 85% of the federal ambient carbon monoxide standards. The proposed revisions also include elimination of existing contingency measures. The changes are proposed to be effective on the later of June 13, 2006 or when the SIP revision becomes effective.

Following the Part 100 and Part 102 phases of the hearing, the Board will be asked to approve the State Implementation Plan (SIP) Revision: Limited Maintenance Plan for Carbon Monoxide (CO): Albuquerque/Bernalillo County, New Mexico.

Following the combined hearing, the Board will hold its regular monthly meeting. The Board is expected to consider adopting the proposed revisions to 20.11.100 NMAC, Motor Vehicle Inspection-Decentralized, and 20.11.102 NMAC, Oxyfuels, incorporating both amended regulations into the SIP, and approving the State Implementation Plan (SIP) Revision: Limited Maintenance Plan for Carbon Monoxide (CO): Albuquerque/Bernalillo County, New Mexico.

The Air Quality Control Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require that local air pollution sources comply with air quality standards and regulations.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony is asked to submit a written notice of intent before 5:00 pm on Wednesday June 2, 2004 to: Attn: June Hearing Record, Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW. The notice of intent shall identify the person's name, address and affiliation.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on June 2, 2004. The comments shall include the name, address and affiliation of the individual or organization submitting the statement. Written com-

ments may also be submitted electronically to clehner@cabq.gov before 5:00 pm on June 2, 2004 and shall include the required name, address and affiliation information. Interested persons may obtain a copy of the proposals at the Environmental Health Department Office, or by contacting Mr. Neal Butt electronically at nbutt@cabq.gov or by phone (505) 768-2660.

NOTICE FOR PERSON WITH DISABILITIES: *If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes.*

**NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:00 a.m., on June 14, 2004, at the New Mexico State Library (1205 Camino Carlos Rey) Santa Fe, New Mexico. The subject of the hearing will be Reserve Bed Days for Residents of Nursing Facilities.

Medicaid pays to hold or reserve a bed for an eligible Medicaid resident in a nursing home when the resident leaves or is absent from the facility for a short time.

Currently, Medicaid covers six (6) reserve bed days per calendar year for every nursing home resident without prior approval, and covers an additional six (6) reserve bed days per year with prior approval to enable residents to adjust to a new environment as part of a discharge plan. The proposed regulation changes the number of reserve bed days to three (3) days without prior approval and three (3) days with prior approval.

Interested persons may submit written comments no later than 5:00 p.m., June 14, 2004, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM

Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at www.state.nm.us/hsd/register.html or by sending a self-addressed stamped envelope to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

**NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 10:30 a.m., on June 14, 2004, at the New Mexico State Library (1205 Camino Carlos Rey) Santa Fe, New Mexico. The subject of the hearing will be Reserve Bed Days for Residents of Intermediate Care Facilities for the Mentally Retarded.

Medicaid pays to hold or reserve a bed for an eligible Medicaid resident in a Intermediate Care Facility For The Mentally Retarded (ICF/MR) when the resident leaves or is absent from the facility for a short time.

Medicaid covers 65 reserve bed days per calendar year for every resident in an ICF/MR without prior approval, and covers an additional six (6) reserve bed days per year with prior approval to enable residents to adjust to a new environment if this is part of discharge planning. The proposed regulation changes the number of reserve bed days without approval to eighteen (18) days and three (3) days with prior approval.

Interested persons may submit written comments no later than 5:00 p.m., June 14, 2004, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-

800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at www.state.nm.us/hsd/register.html or by sending a self-addressed stamped envelope to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

**NEW MEXICO
BOARD OF NURSING**

**NEW MEXICO
BOARD OF NURSING**

NOTICE OF PUBLIC HEARING

Notice is hereby given that the New Mexico Board of Nursing will convene a Rules Hearing to amend:

16.12.3 NMAC Nursing Education Programs

This Hearing will be held at New Mexico Junior College, Ben Alexander Student Center, 5317 Lovington Highway, Hobbs, NM 88240, on Friday, June 25, 2004 at 8:45 a.m.

Any person wishing to present testimony at the Hearing is requested to submit, to the Board of Nursing Office, 4206 Louisiana NE, Suite A, Albuquerque, NM, 87109, a written statement of intent (10 copies) to be received no later than June 4, 2004

The Statement shall provide:

Name of Witness:

Who Witness represents:

Brief statement of subject matter of testimony; & anticipated length of presentation.

Notice: Any person presenting testimony, who is representing a client, employer or group, must be registered as a lobbyist through the Secretary of State's Office (505) 827-3600 or do so within 10 days of the Public Hearings.

Persons requiring special accommodations at the hearing are asked to call the Board office (841-8340) no later than May 17, 2004 so that arrangements can be made. Hearing impaired persons call TDD 1-800-659-8331.

Drafts of proposed changes may be downloaded from our website: www.state.nm.us/nursing or requested through the Board of Nursing office.

**NEW MEXICO OIL
CONSERVATION
COMMISSION**

NOTICE OF RULE MAKING

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL
RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing at 9:00 A.M. on **June 17, 2004** in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, concerning the amendment of 19.15.1 NMAC to adopt a new section to be codified at 19.15.1.21 NMAC. The new section, which applies to the Chihuahuan desert areas of Otero and Sierra counties, New Mexico, prohibits the use of pits and imposes additional location, construction, operation and testing requirements on injection wells and related facilities used to dispose of produced water. Copies of the text of the proposed amendment are available from Division Administrator Florene Davidson at 505 476-3458 or from the Division's web site at <http://www.emnrd.state.nm.us/ocd/whatsnew.htm>. Written comments on the proposed amendment must be received no later than 5:00 P.M. on Tuesday, June 8, 2004. Written comments may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at 476-3462. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Davidson at (505) 476-3458 or through the New Mexico Relay Network (1-800-659-1779) as soon as possible.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 22nd day of April, 2004.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**

**Joanna Prukop, Cabinet Secretary
Acting Director, Oil Conservation
Division**

NEW MEXICO OIL CONSERVATION COMMISSION

NOTICE OF PUBLIC HEARING

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL
RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing at 9:00 A.M. on **July 15, 2004** in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, concerning the amendment of 19.15.5.307 NMAC to allow the operation of wells and gathering systems at below atmospheric pressure in appropriate circumstances. The amendment will have state-wide application. Copies of the text of the proposed amendment are available from Division Administrator Florene Davidson at 505 476-3458 or from the Division's web site at <http://www.emnrd.state.nm.us/ocd/whatsnew.htm>. Written comments on the proposed amendment must be received no later than 5:00 P.M. on Thursday, **July 8, 2004**. Written comments may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at 476-3462. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Davidson at (505) 476-3458 or through the New Mexico Relay Network (1-800-659-1779) as soon as possible.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 26th day of April, 2004.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**

**Joanna Prukop, Cabinet Secretary
Energy Minerals and Natural Resources Department
Acting Director, Oil Conservation Division**

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
NOTICE OF HEARING AND PROPOSED RULEMAKING**

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico, 87501-2786, on Friday, June 18, 2004, from 9 a.m. to noon regarding the following proposed rulemaking actions:

Rule Number	Rule Name	Proposed Action
6.75.2 NMAC	RELATING TO THE STATE DEPARTMENT OF PUBLIC EDUCATION INSTRUCTIONAL MATERIAL BUREAU	Amend rule

Interested individuals may testify at the public hearing or submit written comments to Rose Marie Sherman, Director, Instructional Material Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (rsherman@ped.state.nm.us) or telefaxed to (505) 827-6411. Written comments must be received no later than 5 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Rose Sherman, Director, Instructional Material Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 at (505) 827-6414.

Individuals with disabilities who require this information in an alternative format or need

any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Sherman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

NOTICE OF P.E.R.A. RULEMAKING

The Public Employees Retirement Association ("PERA") will consider changes to its rules promulgated under the Public Employees Retirement Act. The changes will implement statutory amendments to the Public Employees Retirement Act enacted during the 2004 regular session of the New Mexico Legislature. Changes are proposed for the following Rules:

- 2.80.400 NMAC Employee Membership
- 2.80.500 NMAC Remittance of Contributions
- 2.80.600 NMAC Service Credit and Purchase of Service Credit
- 2.80.700 NMAC Normal Retirement
- 2.80.1100 NMAC Retired Members
- 2.80.1200 NMAC Legislative Retirement
- 2.80.1400 NMAC Reciprocity
- 2.80.1500 NMAC Appeal of Denial of Claim of Benefits

Copies of the draft rules are available for inspection in PERA's Office of General Counsel. Hard copies of the draft rules may be purchased for \$3.00. E-mailed copies of the draft rules will be provided free of charge in Microsoft Word format. Written comments, inquiries or requests for copies should be directed to PERA's Office of General Counsel, P.O. Box 2123, Santa Fe, New Mexico, 87504-2123, (505) 827-4783 or 1-800-342-3422. Written comments or requests for copies may be submitted electronically to: jaolson@pera.state.nm.us. To be considered, written comments, arguments, views or relevant data should be submitted by 5:00 p.m. June 15, 2004. The PERA Board will review and consider all written comments addressing the proposed rule changes.

A formal rulemaking hearing will be held on July 13, 2004 at 8:30 a.m. in the PERA Board Room of the PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico. Oral comments will be taken at the public hearing. Final action on the rules will occur at the monthly meeting of the PERA Board on July 29, 2004, which will be held at 9:00 a.m. in Apodaca Hall of the PERA Building. All interested parties are requested to

attend. Lobbyists must comply with the Lobbyist Regulation Act, NMSA 1978, Section 2-11-1 et. seq. (1997), which applies to rulemaking proceedings.

Individuals with a disability who are 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 may contact Jane Clifford at (505) 827-1232 or toll free at 1-800-342-3422 seven days prior to the hearing or as soon as possible.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, May 25, 2004, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. Pursuant to the New Mexico Open Meetings Act, Section 10-15-1(H)(2) NMSA 1978, a portion of the meeting may be closed to discuss a limited personnel matter. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Ruben Rivera at 476-7902 by May 17, 2004. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

The Commission of Public Records may consider the following items of rulemaking at the meeting:

Amendment

- 1.15.2 NMAC G R R D S , General Administrative Records
- 1.17.218 NMAC JRRDS, New Mexico Magistrate Courts
- 1.18.333 NMAC E R R D S , Taxation and Revenue Department
- 1.18.378 NMAC E R R D S , State Personnel Office
- 1.18.419 NMAC E R R D S , Economic Development Department
- 1.18.665 NMAC E R R D S , Department of Health

New

- 1.19.11 NMAC L G R R D S , Soil And Water Conservation Districts and Watershed Districts

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER) Case No. 04-
OF THE ADOPTION) 00078-UT
OF RULES)
REGARDING)
EX PARTE)
COMMUNICATIONS)**

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission ("Commission") proposes to adopt rules regarding *ex parte* communications. This matter comes before the Commission on its own Motion, as set forth in the Commission's Notice of Inquiry, which was issued on March 16, 2003. In its Notice of Inquiry, the Commission invited interested persons to file their Comments and Responses, together with any proposed rules, no later than April 9, 2004. Having considered those Comments and Responses, and the draft rules attached to those filings, and being fully advised in the premises, **THE COMMISSION FINDS AND CONCLUDES:**

1. The Public Regulation Commission Act ("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). In particular, the Act, as amended by the New Mexico Legislature in its 2004 Regular Session, in Senate Bill 369, (*See* Laws 2004, ch. 81, S.B. 369, as amended) vests in the Commission the duty to establish, by July 1, 2004, rules regarding how a party to a proceeding may consult with the Commission's advisory staff. NMSA 1978, Section 8-8-17(C)(5).

2. The following persons have filed comments, responses, or both in connection with the Commission's Notice of Inquiry:

Alltel, Voicestream Wireless, d/b/a T-Mobile, and Western Wireless (joint filing), (presented as "Motion to Intervene.")

American Association of Retired Persons (AARP),

Association of Commerce and Industry (ACI) and Greater Albuquerque Chamber of Commerce (joint filing),

Coalition for Clean Affordable

Energy,
 Commission's Utility and
 Transportation Division Staff (hereinafter
 referred to as "Staff"),
 Communications Workers of
 America (CWA) Local No. 7011,
 International Brotherhood of
 Electrical Workers (IBEW) Local No. 611,
 MCI,
 New Mexico Attorney General,
 New Mexico Industrial Electric
 Consumers (NMIEC),
 New Mexico Internet
 Professionals Association (NMIPA),
 New Mexico Public Interest
 Research Group (NMPIRG),
 PNM,
 Qwest,
 Senator Phil Griego, and
 Southwestern Public Service
 (SPS).

3. The following persons have filed copies of proposed rules in response to the Commission's Notice of Inquiry: MCI, PNM, Qwest, and Staff.

4. The Commission finds that it should consider adopting such rules as Staff proposes, and that Staff's proposed rule should, in substance, be adopted as the Commission's proposed rule.

5. The Commission has formatted Staff's proposed rule to be more closely consistent with the language of the Act and the requirements for compilation into the New Mexico Administrative Code. The Commission has also made certain stylistic changes to the language of Staff's proposed rule.

6. If the proposed rules are adopted, they would be contained in Title 1 of the New Mexico Administrative Code.

7. The Commission will take written comments on the rules proposed in this Notice from any interested person. Interested persons shall file their written comments no later than May 14, 2004. Any person wishing to respond to comments may do so by submitting written response comments no later than May 25, 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.

8. Specific proposed language changes to the proposed rules shall be in legislative format. A copy of the proposed rule 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 Notice.

9. Comments on the proposed rules shall be sent to, and additional copies of the proposed rules can be obtained from:

Mr. Ron X. Montoya
 New Mexico Public
 Regulation Commission
 224 East Palace Avenue
 P.O. Box 1269
 Santa Fe, NM 87504-1269
 Telephone: (505) 827-6940

Copies of the proposed rules may also be downloaded from the Commission's Web Site, www.nmprc.state.nm.us.

10. 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 is as follows:

(i) Wednesday, May 5, 2004 at 10:00 a.m., at Marian Hall, 1st floor hearing room, 224 East Palace Avenue, Santa Fe, New Mexico; and

(ii) Tuesday, May 25, 2004, at 1:30 p.m., at the P.E.R.A. Building, 1120 Paseo de Peralta (located at the corner of Old Santa Fe Trail), 4th floor hearing room, Santa Fe, New Mexico; and

(iii) Tuesday, June 22, 2004, at 1:30 p.m., at the P.E.R.A. Building, 1120 Paseo de Peralta (located at the corner of Old Santa Fe Trail), 4th floor hearing room, Santa Fe, New Mexico.

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

12. Any person with a disability requiring special assistance in order to participate in a hearing should contact Ron Montoya at (505) 827-6940 at least 48 hours prior to the commencement of the hearing.

IT IS THEREFORE ORDERED:

A. The rules regarding *ex parte* communications, attached to this Notice and labeled as Exhibit 1, are proposed for adoption as permanent rules as provided by this Notice.

B. Interested persons, including Staff, shall file their written comments on the proposed rules as provided in this Notice.

C. Any late filings, including comments, responses, and proposed rules, that were made pursuant to the Commission's of its Notice of Inquiry but filed before the issuance of this NOPR, are hereby excused.

D. Public hearings shall be held as provided in this Notice.

E. Staff shall mail a copy of this Notice, excluding Exhibit 1, to all persons listed on the Commission's ordinary service lists for gas, electricity, water, sewer, telecommunications, and transportation, and to any other person requesting service. Staff shall cause this Notice to be published in four newspapers of general circulation in the State and in the *New Mexico Register*, shall provide the Notice by e-mail or facsimile transmission to those persons who have so requested, and shall post a copy of the proposed rules on the Commission's Website.

F. Because of its length, the Certificate of Service for this Notice shall be attached only to the original of this Notice, which shall be available for inspection by any interested person at the Commission's Records Office, 224 East Palace Avenue, Santa Fe, New Mexico 87504.

G. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 20th day of April, 2004.

NEW MEXICO PUBLIC REGULATION COMMISSION

HERB H. HUGHES, CHAIRMAN

DAVID W. KING, VICE CHAIRMAN

JEROME D. BLOCK, COMMISSIONER

LYNDA M. LOVEJOY, COMMISSIONER

E. SHIRLEY BACA, COMMISSIONER

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a rulemaking and public hearing will be held in the Commission Conference Room,

300 San Mateo N.E., Albuquerque, New Mexico, commencing in executive session at 8:00 o'clock a.m. on Tuesday, May 18, 2004. The public session will begin at 10:00 o'clock a.m. on Tuesday, May 18, 2004. The Commission will consider adoption of proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No. 15.2.5.14 NMAC (regarding protests); 15.2.1.9 NMAC (regarding proceedings before the stewards); 15.2.6 NMAC (attachment); and 15.2.1.9 NMAC (regarding proceedings by the Commission).

Copies of these proposed rules may be obtained from India Hatch, Agency Director, New Mexico Racing Commission, 300 San Mateo N.E., Suite 110, Albuquerque, New Mexico 87108, (505) 841-6400. Interested persons may submit their views on the proposed rules to the Commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the Commission of such needs at least five days prior to the meeting.

India Hatch
Agency Director

Dated: April 26, 2004

**NEW MEXICO
DEPARTMENT OF
TRANSPORTATION**

**THE NEW MEXICO DEPARTMENT
OF TRANSPORTATION**

NOTICE OF PUBLIC HEARING

The New Mexico Department of Transportation (NMDOT) will hold a public hearing for the purpose of receiving oral and written public comment on proposed amendments to 18.21.3 NMAC, Traffic Control Signage, Requirements For Signs On Gas, Food, Lodging, Camping and Attraction, Traveler Information Signs.

The hearing is scheduled on June 16th, from 1:00 p.m. to 4:00 p.m. at the New Mexico Department of Transportation, Training Room, located at 1120 Cerrillos Road, in Santa Fe, New Mexico. Please contact Charles Remkes to request a copy of the rule.

The hearing will be held before a hearing officer appointed by the Secretary

of the NMDOT. Interested persons may also present their views by written statements submitted on or before June 16th, to Charles Remkes, NMDOT, P.O. Box 1149, Santa Fe, New Mexico 87504-1149, (505) 827-0285.

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearings, or who needs copies of the proposed rule in an accessible form may contact Charles Remkes at least ten days before the hearing.

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 21.17.45 NMAC, Section 8.

21.17.45.8 ASSESSMENT:

A. The committee assessment rate is set forth at [~~12 dollars (\$12)~~] 6 dollars (\$6) per land acre of irrigated cotton and 6 dollars (\$6) per land acre for dryland cotton to be collected each annum from cotton producers in the control district. The control committee may annually set an incentive for early payment of the assessment.

B. Payment of the assessment levied by a local control committee against a cotton producer will be due and payable when the cotton producer receives an assessment statement from the control committee or their authorized agent.

C. The number of acres used in calculating the assessment amount due will be the number of land acres the cotton producer has certified with the farm service agency, or if the cotton acreage is not certified by the farm service agency the number of land acres used in calculating the assessment amount due shall be determined by other methods set by the control committee or their authorized agent. Any cotton acreage is subject to verification by the control committee.

D. Failure to comply with payment of assessment to the committee or their authorized agent may result in the recording of a lien on the cotton crop and/or property in the county clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed at a rate of 8½ percent per annum on the balance unpaid after 30 days. [21.17.45.8 NMAC - N, 02/28/2001; A, 05/14/2004]

NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 21.17.46 NMAC, Section 8.

21.17.46.8 ASSESSMENT:

A. The committee assessment rate is set forth at [~~12 dollars (\$12)~~] 6 dollars (\$6) per land acre of irrigated cotton and [~~6 dollars (\$6)~~] 4 dollars (\$4) per land acre for dryland cotton to be collected each annum from cotton producers in the control

district. The control committee may annually set an incentive for early payment of the assessment.

B. Payment of the assessment levied by a local control committee against a cotton producer will be due and payable when the cotton producer receives an assessment statement from the control committee or their authorized agent.

C. The number of acres used in calculating the assessment amount due will be the number of land acres the cotton producer has certified with the farm service agency, or if the cotton acreage is not certified by the farm service agency the number of land acres used in calculating the assessment amount due shall be determined by other methods set by the control committee or their authorized agent.

D. Failure to comply with payment of assessment to the committee or their authorized agent may result in the recording of a lien on the cotton crop and/or property in the county clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed at a rate of 8½ percent per annum on the balance unpaid after 30 days.

[21.17.46.8 NMAC - N, 02/14/2001; A, 05/14/2004]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD OCCUPATIONAL HEALTH AND SAFETY BUREAU

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 5 OCCUPATIONAL HEALTH AND SAFETY PART 6 CONVENIENCE STORES

11.5.6.1 ISSUING AGENCY:
New Mexico Environmental Improvement Board.

[11.5.6.1 NMAC - N, 6/1/04]

11.5.6.2 SCOPE: All convenience store employers and employees.

[11.5.6.2 NMAC - N, 6/1/04]

11.5.6.3 STATUTORY AUTHORITY: NMSA 1978, Sections 50-9-7, 50-9-13, and 74-1-8.

[11.5.6.3 NMAC - N, 6/1/04]

11.5.6.4 DURATION:
Permanent.

[11.5.6.4 NMAC - N, 6/1/04]

11.5.6.5 EFFECTIVE DATE:
June 1, 2004, unless a later date is cited at the end of a section.

[11.5.6.5 NMAC - N, 6/1/04]

11.5.6.6 OBJECTIVE: To establish standards related to the occupational health and safety of employees in the convenience store industry.

[11.5.6.6 NMAC - N, 6/1/04]

11.5.6.7 DEFINITIONS:
General: Unless otherwise specified, the following definitions, in addition to those contained in 11.5.1.12 NMAC and the state act, are applicable to this part.

A. "American society for testing materials standard D3935" means the American society for testing materials classification standards for transparent polycarbonate bullet-resistant materials.

B. "B rated" means a safe box industry standard, which, at a minimum, conforms to the specifics of a one-fourth inch body and a one-half inch door constructed of steel or an equivalent material.

C. "Controlled access area" means an enclosure of the service counter area with transparent polycarbonate or other bullet-resistant material that meets American society for testing materials or underwriters laboratory standards.

D. "Convenience store" means any business that is primarily engaged in the retail sale of convenience goods, or both convenience goods and gasoline, and employs one or more employees during the normal operating hours of the establishment. This term does not include: gasoline service stations, grocery stores, or supermarkets. This term includes all businesses with separate structures on their premises that are engaged in the retail sale of convenience goods or both convenience goods and gasoline separate from their primary business.

E. "Depository or time lock safe" means a B or higher rated safe box equipped with an electronic or manually programmed time lock, or drop slot, that prevents unauthorized access.

F. "Environmental engineering controls" means an established store floor plan adopted or developed by the employer to reduce theft or robbery by measures, which include, but are not limited to, cash register placement in plain view of customers, properly functioning indoor and outdoor lighting, and proper placement of security cameras.

G. "Pass-through window" means a manually operated mechanical pass-through trough, front-loading deposit

door, or other similar device that is encased in a transparent polycarbonate window or other bullet-resistant material that meets American society for testing materials standard D3935, or underwriters laboratory standard 752.

H. "Security surveillance system" means a VHS or digital camera surveillance system that is capable of recording and retrieving a clear video or digital recorded image.

I. "Security alarm system" means any device or series of devices, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to notify law enforcement or a private security agency of an unlawful act in progress.

J. "Underwriters laboratories 752 rated" means the underwriters laboratory standards for transparent polycarbonate bullet-resistant materials.

K. "Service counter" means, at a minimum, the counter space designated by the employer to include the service transaction area of the money register(s) and the surrounding perimeter.

L. "Signage" means posters, placards, neon lights, or logos, positioned in the convenience store windows and doors.

M. "Training curriculum" means the instruction manual or pamphlet adopted or developed by the employer containing security policies, safety and security procedures, and personal safety and crime prevention techniques.

[11.5.6.7 NMAC - N, 6/1/04]

11.5.6.8 SECURITY REQUIREMENTS: All convenience stores shall be equipped with the following security devices and standards:

A. Exterior Lighting: The employer shall provide and maintain exterior lighting during all evening and nighttime operating hours that ensures clear visibility of the parking areas, walkways, building entrances and exits, and gasoline pump areas.

B. Employee Training:
(1) The employer shall provide each employee, at the time of his or her initial appointment, and by periodic review not to exceed three-month intervals, crime prevention and safety training in accordance with a written training curriculum. The training curriculum may include computer-based training. Training shall be conducted in a language that is understood by the employee. The employer shall conduct training, or designate a knowledgeable representative to conduct training, in accordance with the written training curriculum

that includes but is not limited to:

(a) an overview of the potential risk of assault;

(b) operational procedures, such as cash handling rules, that are designed to reduce risk;

(c) proper use of security measures and engineering controls that have been adopted in the workplace;

(d) behavioral strategies to defuse tense situations and reduce the likelihood of violence, such as techniques of conflict resolution and aggression management;

(e) specific instructions on how to respond to a robbery and how to respond to attempted shoplifting; and

(f) emergency action procedures to be followed in the event of a robbery or violent incident.

(2) Store specific training shall be conducted by the employee's immediate supervisor.

(3) Current employees shall receive training within ninety days of the effective date of this regulation.

(4) All employers shall prepare training documentation for each employee and have employees sign a statement indicating the date, time, and place they received their safety training. Employers shall maintain documentation of an employee's training for a period of at least twelve months, or six months after termination of an employee's employment. All training documentation, including training curricula, shall be kept on the convenience store premises and made available on request by the Department.

C. Late night security measures:

(1) In addition to the other security requirements of this part, convenience stores operating between the hours of 5:00 p.m. and 5:00 a.m. shall employ at least one of the following security measures:

(a) two employee shift: the employer shall employ a minimum of two employees during the operating hours of 5:00 p.m. to 5:00 a.m.; or, shall substitute the second employee requirement by employing security personnel on the premises;

(b) controlled access area: the employer shall provide a controlled access area by means of a secured safety enclosure of transparent polycarbonate or other bullet-resistant material that meets American society for testing materials standard D3935 or underwriters laboratory standard 752;

(c) pass-through window(s): the employer shall provide a pass-through window of transparent polycarbonate or other bullet-resistant material that meets American society for testing materials standard D3935 or underwriters laboratory standard 752 that restricts access to and encom-

passes the service counter area, providing an enclosure that extends not less than five feet above the service counter; or

(d) alternative operation: between the hours of 5:00 p.m. and 5:00 a.m., the employer shall close the store and prohibit all sales transactions but allow employees to perform duties such as store stocking, maintenance, cleaning and other non-sales transaction duties. Signs shall be conspicuously posted on all entryways stating the store is closed.

D. Limits on Store Window Signage: The employer shall maintain door and window signage so that a clear and unobstructed view of the service counter and cash register exists from outside the building.

E. Security Surveillance System:

(1) The employer shall provide each convenience store with a fully operational VHS or digital security surveillance system that, at a minimum, shall:

(a) record a continuous unobstructed view of the service counter area, all entryways and exits, parking areas, walkways, building entrances and exits, and gasoline pump areas during all operating hours; and

(b) include a high resolution black and white or color screen monitor with on screen date and time capabilities.

(2) The employer shall:

(a) conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the security surveillance system, and, in the event of an extended mechanical malfunction that exceeds an eight hour period, provide alternative security that may include closure of the premises;

(b) maintain documentation, for a period of at least twenty-four months, of all inspections, servicing, alterations, and upgrades performed on the security surveillance system. All documentation shall be kept on the convenience store premises and made available on request by the department; and

(c) maintain a VHS or digital library of all in-store transactions recorded by the security surveillance system during normal operating hours of the convenience store for a period of no less than twenty business days.

F. Security Alarm System:

(1) The employer shall provide and maintain in each convenience store a fully operational security alarm system with a working personal panic alarm for each employee that, when activated, notifies law enforcement or a private security agency when an unlawful act is in progress.

(2) The employer shall:

(a) conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the alarm system, and, in the event of an extended mechanical malfunction that exceeds an eight hour period, provide alternative security that may include closure of the premises; and

(b) maintain documentation for a period of at least twenty-four months of all inspections, servicing, alterations, and upgrades performed on the security alarm system; all documentation shall be kept on the convenience store premises and made available on request by the department.

(3) The security alarm activators shall be located in a location accessible to the employees and be available to the employees as a portable device that can be carried on their person.

G. Depository or Time Lock Safe:

(1) The employer shall:

(a) provide at least one B or higher rated depository or time lock safe in each store;

(b) utilize each depository or time lock safe to ensure controlled access to cash;

(c) conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the depository or time lock safe system, or, in the event of an extended mechanical malfunction that exceeds an eight hour period, provide alternative security that may include closure of the premises; and

(d) maintain documentation, for a period of at least twenty-four months, of all inspections, servicing, alterations, and upgrades performed on the depository or time lock safe; all documentation shall be kept on the convenience store premises and made available on request by the department.

(2) The location of the depository time lock safe may be determined by the employer but shall be located within the service counter area.

H. Cash Management: The employer shall not have more than fifty dollars in the cash register at any time.

I. Required Signs:

(1) The employer shall conspicuously post a notice in English and in Spanish in the convenience store that contains, at a minimum, the following information:

(a) there is a safe in the store;

(b) employees do not have access to the safe;

(c) there is an active security alarm system;

(d) there is an active surveillance system; and

(e) there is no more than fifty dol-

lars in the cash register.

(2) Employers will not be cited by the department for providing employees access to a time lock or other safe.

J. Pay Phones: Any outside pay phones located on convenience store premises shall be located on the outside perimeter of the property, in clear view of the service counter area. The owner shall provide adequate lighting to the pay phone area.

K. Unobstructed View of Sales Area: The employer shall ensure an unobstructed view throughout the store from the service counter area. This may be accomplished by different means, including mirrors and video monitors.

[11.5.6.8 NMAC - N, 6/1/04]

11.5.6.9 to 11.5.6.20

[RESERVED]

11.5.6.21 COMPLIANCE PROVISION: Unless otherwise provided, compliance with the sections of this part shall be achieved within ninety days of its effective date.

[11.5.6.21 NMAC - N, 6/1/04]

11.5.6.22 CONSTRUCTION: This regulation shall be liberally construed to carry out the purposes of the Occupational Health and Safety regulations and Act.

[11.5.6.22 NMAC - N, 6/1/04]

11.5.6.23 SEVERABILITY: If any provision or application of this regulation is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[11.5.6.23 NMAC - N, 6/1/04]

11.5.6.24 ENFORCEMENT AUTHORITY: Department representatives shall be responsible for the enforcement of this regulation.

[11.5.6.24 NMAC - N, 6/1/04]

11.5.6.25 REFERENCES IN OTHER REGULATIONS: Any reference to the Convenience Store regulations or 11.5.6 NMAC in any other rule shall be construed as a reference to this regulation.

[11.5.6.25 NMAC - N, 6/1/04]

11.5.6.26 COMPLIANCE WITH OTHER REGULATIONS: Compliance with this regulation does not relieve a person from the obligation to comply with any other applicable federal, state, or local regulations.

[11.5.6.26 NMAC - N, 6/1/04]

11.5.6.27 SAVINGS CLAUSE: Future amendments: no future amendment

to 11.5.6 NMAC shall affect any administrative or judicial enforcement action pending on the effective date of the amendment. [11.5.6.27 NMAC - N, 6/1/04]

HISTORY OF 11.5.6 NMAC: [RESERVED]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.2 NMAC, Section 9, effective 5/14/04.

15.1.2.9 REQUESTS FOR DISCLOSURE OF CONFIDENTIAL INFORMATION:

A. Nothing in this rule may be construed as requiring the board to create any document or compilation of any confidential information for the purpose of responding to a request for disclosure.

B. Any person seeking access to confidential information in the board's possession may file a request for disclosure by the board. The request must be in writing, must state the purpose of the request and the proposed use of the information, and must be sufficient to adequately identify and limit the documents or information sought. A separate request must be filed for each applicant or licensee about whom information is sought. The procedure for requesting confidential information described herein does not apply to information subject to disclosure pursuant to the Inspection of Public Records Act, Section 14-2-1 et seq NMSA.

C. Within 10 working days of receipt of the request, the board will make a preliminary assessment whether the request satisfies the requirements of Subsection 15.1.2 9(B). If the request fails to satisfy the requirements of Subsection 15.1.2 9(B), the board will deny the request on the basis of the deficiencies and will return the request to the person seeking the information with an explanation of the deficiencies. No further action will be required of the board.

D. Within 15 working days of receipt of the request, if the request meets the requirements of Subsection 15.1.2 9(B), the board will send a consent form and a copy of the request to the relevant applicant or licensee. The applicant or licensee must return the consent form to the board indicating the applicant's or licensee's consent or refusal to consent to disclosure of all or part of the requested information. Failure of the licensee or applicant to return the consent form within 10 working days of the date mailed by the board to the applicant or licensee will be deemed refusal of consent to the disclosure of the requested information.

E. The applicant's or licensee's refusal to consent to disclosure of the requested information is final and precludes the board from disclosing the requested information, except upon court order as set forth in Section 60-2E-42 of the act.

F. If the disclosure request is approved by the applicant or licensee, the board will permit inspection of the requested material as soon as practicable but in no event later than three days after the date approval of the disclosure was received. Before permitting inspection, the board will redact any information that reveals financial institution account numbers, social security numbers, and any other information protected from disclosure by state or federal law. The board may charge a reasonable fee for copying any of the documents subject to the request.

G. Any person may, at any time, seek a court order for release of the requested information pursuant to Section 60-2E-42 of the act.

H. The board, upon its own motion, may seek the release of confidential information by following the procedures outlined in this section and all its subparts.

I. That information described as nonconfidential in Subsection 15.1.2.8(B) and in Section 15.1.2.10 is not subject to the disclosure procedures described in this rule.

[11/30/98; 15.1.2.9 NMAC - Rn, 15 NMAC 1.2.9, 1/31/02; A, 5/14/04]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.5 NMAC, Sections 10, 17, 21, effective 5/14/04.

15.1.5.10 APPLICATIONS, STATEMENTS, AND NOTICES - FORM AND GENERAL REQUIREMENTS:

A. Every application, statement, and notice required to be filed under the act or this rule must be submitted on forms supplied or approved by the board and must contain such information and documents as specified.

B. The applicant must file with the application all supplemental forms provided by the board. Such forms require full disclosure of all details relative to the applicant's antecedents, immediate family, habits and character, criminal record, business activities, financial affairs and business associates for the ten-year period immediately preceding the filing date of the application.

C. Upon request of the

board, the applicant must further supplement any information provided in the application. The applicant must provide all requested documents, records, supporting data, and other information within the time period specified in the request, or if no time is specified, within 30 days of the date of the request. If the applicant fails to provide the requested information within the required time period as set forth in the request or this rule, the board may deny the application unless good cause is shown.

D. An applicant must submit evidence satisfactory to the board that the applicant is sufficiently capitalized to conduct the business proposed in the application. In determining whether an applicant is sufficiently capitalized, the board will consider such things as the applicant's annual financial statements and federal tax returns for the preceding three years, whether the applicant has adequate financing available to pay all current obligations, and whether the applicant is likely to be able to adequately cover all existing and foreseeable obligations in the future.

E. All information required to be included in an application must be true and complete as of the date of board action sought by the applicant. If there is any change in the information contained in the application, the applicant must file a written amendment in accordance with this rule.

F. The application and any amendments must be sworn to or affirmed by the applicant before a notary public. If any document is signed by an attorney for the applicant, the signature must certify that the attorney has read the document and that, to the best of the attorney's knowledge, information and belief, based on diligent inquiry, the contents of the documents supplied are true.

G. The applicant must cooperate fully with the board and any agent of the board with respect to background investigation of the applicant, including, upon request, making available any and all of its books and records for inspection. The board will examine the background, personal history, financial associations, character, record and reputation of the applicant, including an applicant seeking a finding of suitability, to the extent the board determines is necessary to evaluate the qualifications and suitability of the applicant.

H. The board will automatically deny the application of any applicant that refuses to submit to a background investigation as required pursuant to the act and this rule.

I. Neither the state, the board, any agency with which the board contracts to conduct background investiga-

tions, or the employees of any of the foregoing, may be held liable for any inaccurate information obtained through such an investigation.

J. All new applications submitted to the New Mexico gaming control board shall be completed within 120 days of receipt of the application, which time may be extended by the board upon good cause. Failure to complete the application within such time period shall result in the forfeiture of all licensing fees. Applicant shall be required to re-submit a new application with licensing fees should the applicant still wish to pursue licensure.

[11/30/98; 15.1.5.10 NMAC - Rn, 15 NMAC 1.5.10, 3/31/00; A, 2/14/02; A, 5/14/04]

15.1.5.17 APPLICATION FOR WORK PERMIT:

A. Application for a work permit must be made, processed, and determined in the same manner as set forth in the act or this rule for other applications. No person may be employed as a gaming employee unless the board has first approved the application for such a permit.

B. The applicant must submit his or her fingerprints in duplicate on fingerprint cards and his or her photograph in duplicate. The fingerprints will not be accepted unless the fingerprints were taken under the supervision of, and certified by, a state police officer, a county sheriff, municipal chief of police, or sworn peace officer, or, upon board approval, another entity providing the services of a certified identification technician. The photographs must be no smaller than 2" x 3" and must be satisfactory to the board. The photographs also must have been taken no earlier than three months before the date the application for work permit was filed.

C. In addition to grounds for denial of an application described in the act and this rule, the board may deny the application if the applicant has had a work permit revoked in any jurisdiction or has committed any act that is grounds for revocation of a work permit under the act or this rule.

D. A work permit issued to a gaming employee must identify the manufacturer's, distributor's, or gaming operator's license under which the permit is issued and must have clearly imprinted on the permit a statement that the permit is valid for gaming purposes.

E. A work permit issued by the board is not an endorsement or clearance by the board, but is merely verification that the individual has furnished his or her fingerprints and photograph to the board as required by this rule.

F. A work permit expires

unless renewed in accordance with this title or if the employee is not employed as a gaming employee for more than 90 days.

G. A work permit is property of the state of New Mexico. Any gaming employee whose employment is terminated for any reason ~~must~~ shall surrender his or her work permit to the board upon termination. A licensee shall notify the board, in writing, of a work permit termination within three (3) business days of the termination.

H. Any otherwise qualified person may obtain a work permit to work as a gaming employee for a nonprofit gaming operator licensee and is not required to be a member of the nonprofit organization. A person holding a work permit may provide services to the nonprofit gaming operator licensee on a paid or volunteer basis.

I. The holder of a work permit must submit an application for a new work permit if the employee changes employers and the new employer is an applicant or licensee of the board. The employee may not begin working for the new employer until the employee has obtained a new work permit.

J. Upon the receipt of a completed application, an applicant shall be provided a provisional gaming license which shall be terminated upon the issuance of a permanent work permit or the written determination to deny the work permit. [11/30/98; 15.1.5.17 NMAC - Rn & A, 15 NMAC 1.5.17, 3/31/00; A, 10/15/00; A, 2/14/02; A, 5/14/04]

15.1.5.21 APPLICATION FEES:

A. The applicant must pay, in the amount and manner prescribed by this rule, all license fees and fees and costs incurred in connection with the processing and investigation of any application submitted to the board.

B. Applicants must submit the following nonrefundable fees with an application for licensure or other approval:

- (1) manufacturer's license, \$10,000;
- (2) distributor's license, \$5,000;
- (3) gaming operator's license for racetrack, \$25,000;
- (4) gaming operator's license for nonprofit organization, \$100;
- (5) approval of application to install pre-approved modification to a licensed gaming machine filed by gaming operator licensee, \$25;
- (6) gaming machine license, \$100 per machine;
- (7) work permit, \$25;
- (8) certification of finding of suitability, \$25 for each person requiring inves-

tigation; and

(9) approval of amended gaming operator license, \$50 for amended license due to addition or deletion of five or fewer machines; \$250 for all other amended licenses.

C. In addition to any non-refundable license or approval fee paid, the applicant must pay all supplementary investigative fees and costs, as follows:

(1) an applicant for a manufacturer's license, distributor's license, or gaming operator's license for a racetrack must pay, in advance, an amount equal to the license fee as a deposit on fees and costs of the investigation. Upon completion of the investigation and determination of the actual fees and costs, the board will refund overpayments or charge the applicant for underpayments in an amount sufficient to reimburse the board for actual fees and costs;

(2) all other applicants must reimburse the board in an amount sufficient to cover actual fees and costs of the investigation upon completion of the investigation; and

(3) all applicants must fully reimburse the board within 30 days of receipt of notice of actual fees and costs incurred by the board for any underpayment or other amount owed by the applicant.

D. Investigative fees are charged at the rate of \$50 per hour for each hour spent by investigators of the board or the board's agents in conducting an investigation. In addition to fees, costs to be paid by the applicant include transportation, lodging, meals, and other expenses associated with traveling, which expenses will be reimbursed based on state mileage and per diem rules, and office expenses, document copying costs, and other reasonable expenses incurred. Checks must be made payable to the New Mexico gaming control board.

E. In addition to any non-refundable application and supplementary investigation fees and costs, licensed manufacturers and distributors must pay a gaming device inspection fee in an amount not to exceed the actual cost of the inspection. The manufacturer or distributor must pay the estimated cost of the inspection in advance. Upon completion of the inspection and determination of the actual cost, the board will refund overpayments or charge the manufacturer or distributor for underpayments in an amount sufficient to reimburse the board for the actual cost. The manufacturer or distributor must fully reimburse the board within 30 days of receipt of notice of underpayment. Lab fees are charged at the rate of \$50 per hour for each hour spent by the board's technical personnel to inspect or test a gaming device.

F. The board may refuse to take final action on any application

unless all license, approval, and investigation fees and costs have been paid in full. The board may deny the application if the applicant refuses or fails to pay all such fees and costs. In addition to any other limitations on reapplication, the applicant will be debarred from filing any other application with the board until all such fees and costs are paid in full.

G. If the board determines at any time during the application process that the applicant is not qualified, or cannot qualify, to hold the license or other approval sought, the board will notify the applicant, in writing. The board will discontinue investigation and processing of the application and will issue a final, written order denying the application.

H. The maximum fee for processing any application will not exceed \$100,000, regardless of actual costs of supplemental investigations.

I. The board may contract with any state board or agency to conduct any investigation required or permitted to be conducted under the act or board regulations, as determined necessary by the board.

J. Neither the license or approval fees nor any other fees or costs arising in connection with the application or investigation will be refunded or waived on the grounds that the application was denied or withdrawn or that processing was otherwise terminated.

K. Gaming machine licensing fees may be pro-rated if the license is granted within three months of December 31.

[11/30/98; 15.1.5.21 NMAC - Rn, 15 NMAC 1.5.21, 3/31/00; A, 10/15/00; A, 2/14/02; A, 5/14/04]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.7 NMAC, Section 20, and 26, effective 5/14/04.

15.1.7.20 DISPLAY OF RULES OF PLAY:

A. The rules of play for a gaming device ~~must~~ shall be displayed on the face or screen of the gaming device or capable of display at the player's option through use of an easily-accessible help screen.

B. The rules of play ~~must~~ shall be evaluated by the independent testing laboratory designated by the board and ~~must~~ shall be approved by the board. The board may reject the rules if the board determines that the rules are incomplete, conflicting, confusing, or misleading.

C. The rules of play ~~must~~ shall be kept under glass or other

transparent substance.

D. The rules of play ~~[may]~~ shall not be altered without prior approval from the board.

E. Except for posting of odds pursuant to Section 15.1.10.21 NMAC and the display of the rules of play, stickers or other removable devices [may] shall not be placed on the gaming device face unless their placement is approved [or required] by the board.
[11/30/98; 15.1.7.20 NMAC - Rn, 15 NMAC 1.7.20, 3/31/00; A, 5/14/04]

15.1.7.26 THEORETICAL PERCENTAGE PAYOUT REQUIREMENTS:

A. During the expected lifetime of the gaming machine, the gaming machine ~~[must]~~ shall not pay out less than 80% ~~[nor more than 96% of the amount wagered].~~

B. The theoretical payout percentage must be determined using standard methods of the probability theory. The percentage must be calculated using the highest level of skill where player skill impacts the payback percentage.

C. A gaming machine must have a probability of obtaining the single highest posted maximum payout of more than 1 in 50,000,000.
[11/30/98; 15.1.7.26 NMAC - Rn, 15 NMAC 1.7.26, 3/31/00; A, 1/31/02; A, 5/14/04]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.8 NMAC, Sections 9, 13, 14, 18, and 21, effective 5/14/04.

15.1.8.9 ACCOUNTING RECORDS:

A. Each licensee must keep accurate, complete, legible, and permanent records, in the manner required or approved by the board and in accordance with generally accepted accounting principles, pertaining to revenue that is taxable or subject to fees under the act. Each licensee that keeps permanent records in an electronic format must provide to the audit and compliance services division, upon request, a detailed index of computer records in a format satisfactory to the board.

B. Each licensee must use double-entry accounting and maintain detailed subsidiary records, including the following:

(1) detailed records of revenues, expenses, assets, liabilities, and equity of the gaming establishment;

(2) gaming machine analysis reports that compare, by each machine,

actual hold percentages to theoretical hold percentages;

(3) the records required either by the board's minimum standards for internal control systems or, if the board determines that the licensee's system is at least equivalent to the board's minimum standards, the records required by the licensee's system of internal control;

(4) journal entries prepared by the licensee and its independent accountant; and

(5) any other records that the board specifically requires to be maintained.

C. If a licensee fails to keep adequate gaming revenue records, the board may compute the amount of taxable revenue upon the basis of an audit conducted by the audit and compliance services division, on the basis of any information within the board's possession, upon statistical analysis, or upon any other basis deemed reasonable by the board.

D. Non-profit licensees are required to have a designated gaming accountant, who shall be found suitable as a key person by the board. The gaming accountant shall have a reasonable amount of experience in accounting/bookkeeping. In the event that the designated gaming accountant cannot provide monthly financial statements and books acceptable to the board, the board may require the non-profit licensee to contract with a qualified independent bookkeeper. The independent bookkeeper is not required to be found suitable as a key executive or to obtain a work permit so long as the bookkeeper duties are limited to preparing the gaming books and financial statements and not signing gaming forms.
[12/31/98; 15.1.8.9 NMAC - Rn & A, 15 NMAC 1.8.9, 10/15/00; A, 5/14/04]

15.1.8.13 STANDARD FINANCIAL STATEMENTS FOR NON-PROFITS:

~~[A. Each gaming operator licensee will prepare standard financial statements covering all financial activities of the licensee's gaming operations for each business year. The financial statements must be submitted on forms provided or approved by the board.~~

~~B. If the licensee or an affiliate of the licensee owns or operates food, beverage, or other facilities at the gaming establishment, the standard financial statements must cover those operations as well as gaming operations.~~

~~C. Licensees must submit the financial statements to the board not later than the 15th day of the third month following the end of the business year covered by the statement. Each financial state-~~

~~ment must be signed by the licensee, who thereby attests to the completeness and accuracy of the statement.~~

~~D. In the event a license is terminated for any reason or a change is made in the business entity, the licensee or former licensee will notify the board of the event within 15 days of the event and, within 60 days of the event, will submit to the board a financial statement covering the period since the period covered by the previous standard financial statement.~~

~~E. The board will prescribe a uniform chart of accounts and accounting classifications. Licensees will prepare their financial statements in accordance with the chart or in a similar format that provides the same information.~~

~~F. Each licensee will furnish to the board, upon request, statistical and financial data in the format prescribed by the board for use in compiling, evaluating, and disseminating financial information regarding gaming activity within the State.]~~

A. Non-profit licensees shall prepare monthly financial statements covering all financial activities of the licensees' gaming operations for submission to the board. Gaming financial statements include monthly and year to date profit and loss statements and balance sheets.

B. The monthly financial statements shall be prepared using a double entry accounting system.

C. Non-profit licensees shall prepare financial statements in accordance with the uniform chart of accounts prescribed by the board.

D. Non-profit licensees shall submit their financial statements to the board no later than the 28th day of the following month. Each financial statement shall be signed by the preparer, who thereby attests to the completeness and accuracy of the data provided.

E. In the event that a non-profit licensee fails to submit monthly gaming financial statements to the board, the board may require the non-profit licensee to provide annual CPA audited financial statements.

F. Non-profit licensees shall submit copies of their federal income tax returns (Form 990) to the board within 30 days of filing with the internal revenue service.

[12/31/98; 15.1.8.13 NMAC - Rn, 15 NMAC 1.8.13, 10/15/00; A, 5/14/04]

15.1.8.14 TAX RETURNS; AUDITED FINANCIAL STATEMENTS; OTHER LICENSEES:

A. [Licensees must submit copies of their federal income tax returns to the board within 30 days of filing their

~~returns with the Internal Revenue Service.] Racetrack gaming operator, distributor, and manufacturer licensees shall submit copies of their federal income tax returns to the board within 30 days of filing their returns with the internal revenue service. If a licensee files an "application for automatic extension of time to file U.S. income tax return" with the internal revenue service, the licensee shall submit a copy of the request for extension within 30 calendar days of submitting such request to the internal revenue service.~~

~~B. [Each licensee must submit audited financial statements every two years covering all financial activities of the licensee's establishment for the two preceding business years.] Racetrack gaming operator, distributor, and manufacturer licensees shall submit annually two copies of their audited financial statements with comparative figures from the prior year covering all financial activities of the licensee to the board no later than 120 days after the close of the licensee's fiscal year end.~~

C. Each licensee ~~[will]~~ shall engage an independent certified public accountant who ~~[will]~~ shall audit the financial statements in accordance with ~~[general]~~ accepted auditing standards. ~~The financial statements must be prepared on a consistent basis unless the board approves otherwise in writing. The licensee must submit two copies of its audited financial statements to the board not later than 120 days after the last day of the second business year in the two year period.] auditing standards generally accepted in the United States of America. The financial statements shall be prepared in conformity with accounting principles generally accepted in the United States of America.~~

D. In the event of a license termination or change in business entity, the licensee or former licensee will, not later than 90 days after the event, submit to the board two copies of its financial statements, or if required by the board, audited financial statements, covering the period from the end of the period covered by the previous financial statement to the date of the event. If a license termination or change in business entity occurs within 90 days after the end of a business year for which a financial statement has not been submitted, the licensee may submit financial statements covering both the business year and the final period of business rather than separate statements.

E. If a licensee changes its business year, the licensee must prepare and submit to the board financial statements covering the period from the end of the previous business year to the beginning of the new business year, submitted within 90

days after the end of the period. Such financial statements must be audited if required by the board. With board approval, the licensee may incorporate the financial results of the period in the financial statements for the new business year.

F. The licensee shall submit to the board a copy of any audit and review findings reports and management advisory letters with the audited financial statements and independent auditor's report on compliance with minimum internal control standards. The licensee ~~[must]~~ shall submit audit and review reports and management advisory letters within ~~[15]~~ 30 days of receipt.

G. The board may request additional information and documents from either the licensee or the licensee's independent certified public accountant, directly or through the licensee, regarding the financial statements or services performed by the accountant. Failure to submit the requested information or documents constitutes an unsuitable method of operation. [12/31/98; 15.1.8.14 NMAC - Rn, 15 NMAC 1.8.14, 10/15/00; A, 5/14/04]

15.1.8.18 NON PROFIT LICENSEES; SEPARATE OPERATING ACCOUNTS:

A. ~~[A nonprofit organization gaming operator] Nonprofit licensees [must]~~ shall establish and maintain a separate operating account exclusively for the deposit of all gaming ~~[receipts not required to be deposited into the gaming tax transfer account]~~ funds. The account ~~[must]~~ shall be in a ~~[bank]~~ financial institution that is licensed by the state, in a national bank with an office in the state, or in another financial institution acceptable to the board. The bank or other financial institution ~~[may]~~ shall not be an affiliate of the nonprofit ~~[organization gaming operator]~~ licensee.

B. The operating account is subject to the following restrictions and requirements:

(1) ~~[all gaming receipts not required to be deposited into the gaming tax transfer account must be promptly deposited into the operating account.] all net revenue after replenishment of imprest funds shall be deposited into the gaming operating account;~~

(2) a nonprofit gaming licensee who does not prepare and file a correct financial statement shall deposit all gaming funds into their gaming operating account after each drop and count; determination of this requirement should be made by the board or their designee; once the deposit is made, a check is written back to the cashier cage and/or vault (if applicable) for replenishment;

(3) at the end of the month, the

required charity and educational funds shall be transferred from the operating account into the charity account;

(4) at the end of the month, the required gaming tax shall be transferred from the operating account into the gaming tax account;

~~[(2)] (5) the nonprofit [organization gaming operator] licensee [must]~~ shall maintain detailed records of all deposits into, and withdrawals and disbursements from, the operating account;

~~[(3)] (6) monies in the operating account, with the exception of charity fund transfers, discretionary fund transfers and gaming tax fund transfers, [must]~~ shall be used exclusively for the payment of allowable gaming expenses ~~[and charitable or educational purposes as set forth in this title]; and~~

~~[(4)] (7) gaming [receipts may] funds shall not be commingled with any other monies of the nonprofit organization [gaming operator] licensee.~~

C. Commingling of gaming ~~[receipts]~~ funds and other monies of the nonprofit ~~[organization gaming operator]~~ licensee and use of any monies in the operating account for any purpose other than the payment of allowable gaming expenses ~~[and charitable or educational purposes], charity and educational fund transfers, discretionary fund transfers, and gaming tax fund transfers as identified in this title constitute unsuitable methods of operation.~~

D. Non-profit licensees shall establish and maintain a separate charity and education bank account exclusively for the deposit of all required charitable and educational funds. The account shall be in a financial institution that is licensed by the state, a national bank with an office in the state, or in another financial institution accepted by the board. The bank or other financial institution shall not be an affiliate of the non-profit organization gaming operator licensee.

E. The charitable and education account is subject to the following restrictions and requirements:

(1) non-profit licensees shall deposit the required charity/educational percentage of net revenue (gross revenues less jackpot payouts) into their charity/educational account by the end of each month;

(2) the non-profit licensee shall maintain detailed records of all deposits into, and withdrawals, and disbursements from, the charity/educational account unless an exemption is granted by the board;

(3) monies in the charity/educational account shall be used exclusively for charitable and educational payments as set forth in this title; and

(4) charitable/educational funds shall not be commingled with any other

monies of the non-profit gaming licensee. [12/31/98; 15.1.8.18 NMAC -Rn, 15 NMAC 1.8.18, 10/15/00; A, 5/14/04]

15.1.8.21 SLOT ACCOUNTING SYSTEM; RACETRACKS: A slot accounting system shall be required for all racetracks licensed after September 1, 2003. A racetrack in operation as of September 1, 2003, is not required to obtain a slot accounting system. If a racetrack in operation prior to September 1, 2003, has implemented a slot accounting system, the racetrack shall maintain a slot accounting system.

[15.1.8.21 NMAC - N, 5/14/04]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.10 NMAC, Sections 7, 13, 17, 20, 21, 22, 23, 28, 32, 45, and 46, effective 5/14/04.

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 payout 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;

[C-] D. "allocate" means the transfer of an allocating racetrack's right to operate a number of its authorized gaming machines to the receiving racetrack;

[D-] E. "allocation agreement" means a written contract between an allocating racetrack and a receiving racetrack;

[E-] 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;

[F-] G. "allowable gaming expenses" means the following bona fide expenses in reasonable and customary amounts: (a) purchase prices of non-cash prizes; (b) security and surveillance expenses; (c) independent accountant's fees; (d) license fees, including renewals and gaming machine license fees; (e) utilities attributable to the licensed premises; (f) installment payments to an independent administrator or lease payments for licensed gaming machines; (g) gaming device repair and

maintenance; (h) gaming employee salaries and employment taxes; (i) gaming supplies; (j) approved management fees; and (k) licensed premises repair and maintenance;

[G-] 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;

[H-] 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;

[I-] J. "credit slip" means a cash-out ticket for winnings earned on a gaming machine that provides for credit play;

[J-] K. "educational purposes" means activities or uses that develop the capabilities of individuals by formal instruction;

[K-] L. "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;

[L-] M. "independent administrator" means (a) a bank licensed by the state of New Mexico or a national bank with an office in New Mexico; or (b) an insurance company admitted to transact business in New Mexico with a best insurance rating of "A+" or other equivalent rating; and (c) one that is not an affiliate of the gaming operator licensee;

[M-] N. "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;

[N-] O. "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;

[O-] P. "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;

[P-] Q. "periodic payments" means a series of payments that are paid at least annually and includes annuities;

[Q-] R. "person" means a legal entity or individual;

[R-] S. "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; "promotion" includes

the gift of nominal value items, such as T-shirts and mugs;

[S-] T. "representative copy" means a reproduction of the intended advertising in substantially the same form as the final advertising for the promotion;

[T-] U. "state" means the state of New Mexico;

[U-] V. "this title" means Title 15, Chapter 1 of the state administrative code;

[V-] W. "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. [12/31/98; 15.1.10.7 NMAC - Rn & A, 15 NMAC 1.10.7, 3/31/00; A, 04/30/02; A 5/14/04]

15.1.10.13 REPORTS OF VIOLATIONS:

Each licensee ~~with~~ 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 gaming law.

[12/31/98; 15.1.10.13 NMAC - Rn, 15 NMAC 1.10.13, 3/31/00; A, 5/14/04]

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, ~~may~~ 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) the officer holding the highest rank;

(2) 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;

(3) key executives, such as the gaming manager; and

(4) 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, ~~may~~ 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 ~~[may]~~ 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.

D. No person holding a work permit shall play any gaming device while on duty as a gaming employee. [12/31/98; 15.1.10.17 NMAC - Rn & A, 15 NMAC 1.10.17, 3/31/00; A, 12/28/01; A, 5/14/04]

15.1.10.20 ADDITIONAL PAYOUTS; PROMOTIONS:

~~[D.]~~ A. Additional payouts and promotions 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. The gaming operator licensee ~~[must]~~ shall notify the board in writing at least ten business days before the beginning date for the proposed additional payouts. The written notice must 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, which may not exceed 90 days without written approval from the board, 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 same information ~~[must]~~ shall be clearly posted on the gaming premises in a clearly visible location during the effective dates of the additional payout program.

~~[B.]~~ Additional payouts and promotions must be conducted in a manner that promotes responsible gaming. All printed promotional advertising, including direct mail promotions, must include an appropriate responsible gaming message and toll free telephone number for compulsive gambling assistance.

~~[E.]~~ B. The gaming operator licensee ~~[must]~~ shall notify the board in writing at least ten business days before the beginning date of a promotion. The written notice ~~[must]~~ shall include a description of the promotion, a representative copy of all advertising related to the promotion, the proposed beginning and ending dates of the promotion, and a description and dollar value of cash and non-cash prizes or promotional items to be awarded. The gaming operator licensee also ~~[must]~~ shall notify the board immediately in writing if there is any change in the beginning or ending date of a

promotion.

~~[A.]~~ C. The value of additional payouts and substantial cash or non-cash prizes awarded as part of a promotion and based on gaming machine wagers may be deducted from gaming machine revenue provided the gaming operator licensee complies with all applicable requirements of this section. The cost of advertising, promotional materials, reimbursements to patrons, and promotions involving gifts of nominal value may not be deducted from gaming machine revenue. ~~[A gaming operator licensee is not required to notify the board of any additional payout that is not to be deducted from gaming machine revenue.]~~ The racetrack gaming operator licensee shall notify the board in writing (using the form approved by the board) at least ten business days before the beginning date of the proposed additional payout promotion that will be conducted by the licensee. The written notification shall include a description of the proposed additional payout promotion (e.g., double jackpots for all dollar gaming machines), the proposed effective dates (beginning and ending dates) for the additional payouts, which shall not exceed 90 days without written approval from the board, 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 promotion shall be conducted shall be written on 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 promotion

D. The racetrack gaming operator licensee shall notify the board in writing (using the form approved by the board) at least ten business days before the beginning date of the proposed promotion that shall be conducted by the licensee that is not an additional payout and whether or not a patron is required to make a wager on the gaming machine (e.g., enter name in a drawing for cash or prizes, participate in a game for cash or prize that does not involve using gaming machine, etc.). The written notification shall include a description of the proposed promotion, the proposed effective dates (beginning and ending dates) for the promotion, which shall not exceed 90 days without written approval from the board, and a description and dollar value of cash and non-cash prizes or promotional items to be awarded. The licensee's written notice must include a representative copy of all advertising (printed, television, newspapers, posters, direct mail, etc., excluding radio) related to the promotion. The rules or any special conditions of how the promo-

tion will be conducted shall be written on the notification. The same information shall be clearly posted on the gaming premises in a clearly visible location during the effective dates of the promotion. The licensee also shall notify the board immediately in writing if there is any change in the beginning and end dates of the promotion or there are any changes or modifications as to how the promotion shall be conducted.

~~[E.]~~ E. The licensee also shall notify the board immediately in writing if there is any change in the beginning and end dates of the promotion or there are any changes or modifications as to how the promotion shall be conducted. Player tracking systems ~~[must]~~ shall be approved by the board in accordance with rules governing approval of associated equipment. A gaming operator licensee ~~[must]~~ shall delete a player's name from the system immediately upon the player's request. Names deleted from the player tracking system at the player's request ~~[may]~~ shall not be reprogrammed into the system except upon express authorization by the player.

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

G. The board is not required to approve or disapprove the proposed additional payouts or promotion, except for extensions of effective dates. The board, however, may direct the gaming operator licensee to cancel, modify or discontinue the additional payouts or promotion if the board determines the additional payouts or promotion is contrary to law or otherwise contrary to the public health, safety, morals, or general welfare.

H. Failure to give the board notice of a proposed additional payout or promotion as required in this rule, or failure to cancel, discontinue or modify those activities as directed by the board, may subject the gaming operator licensee to fines or other disciplinary action.

I. 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.

[12/31/98; 15.1.10.20 NMAC - Rn & A, 15 NMAC 1.10.20, 3/31/00; A, 12/28/01; A, 5/14/04]

15.1.10.21 DETERMINATION AND POSTING OF ODDS:

A. The gaming operator licensee ~~[must]~~ shall post the odds of winning ~~[or]~~ in a conspicuous place on the face of each gaming machine or in a conspicuous

place immediately adjacent to the gaming machine. Failure to post odds for any gaming machine ~~[will]~~ shall subject the licensee to disciplinary action.

(1) The odds must be posted in a manner which is clearly legible.

(2) If the odds are posted adjacent to the gaming machine, the posting must clearly identify the gaming machine to which it applies.

B. The odds to be posted on a gaming machine ~~[will]~~ shall be the odds of any player achieving a winning outcome from the games available on that gaming machine. For example, if the odds are that a player will win something from the particular gaming machine 20% of the time, a notice containing the words "The odds of winning are 1 in 5" should be posted as required in this section.

[12/31/98; 15.1.10.21 NMAC - Rn, 15 NMAC 1.10.21, 3/31/00; A, 5/14/04]

15.1.10.22 SECURITY:

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

B. ~~[Off duty police officers or security guards licensed under the Private Investigators and Polygraphers Act by the State Regulation and Licensing Department are required in all gaming establishments with more than 15 gaming machines offered for play.]~~ Security personnel ~~[must]~~ shall possess and maintain valid ~~[identification]~~ work permit cards at all times while on duty.

C. A sufficient number of security personnel must 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. Failure to maintain adequate security measures is an unsuitable method of operation.

[12/31/98; 15.1.10.22 NMAC - Rn, 15 NMAC 1.10.22, 3/31/00; A, 12/28/01; A, 5/14/04]

15.1.10.23 SURVEILLANCE SYSTEMS:

A. Each gaming operator licensee ~~[must]~~ 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 activi-

ty 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. Unless exempted, failure of the licensee to install, maintain and continuously operate an adequate surveillance system, as determined by the board, constitutes an unsuitable method of operation.

C. Within 60 days after filing its application, each applicant for a gaming operator's license ~~[must]~~ shall submit a written surveillance system plan to the board. The plan ~~[must]~~ shall be in a form approved or required by the board and ~~[must]~~ 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 ~~[must]~~ shall be approved before a gaming operator license ~~[will be]~~ is issued.

D. Before implementing any changes to a surveillance system plan, the licensee ~~[must]~~ shall submit the proposed changes to the board for approval. If, after reviewing the gaming operator licensee's proposed changes, the board determines that the proposed plan is not adequate, the board ~~[will]~~ shall notify the gaming operator licensee in writing. The gaming operator licensee ~~[must]~~ 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. Failure to submit a revised plan for board approval constitutes an unsuitable method of operation, unless a hearing has been requested in accordance with this subsection.

E. A licensee ~~[must]~~ 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 licensed 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.

[12/31/98; 15.1.10.23 NMAC - Rn, 15 NMAC 1.10.23, 3/31/00; A, 12/28/01; A, 5/14/04]

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

A. In the event a dispute arises with a patron concerning payment of alleged winnings, the gaming operator licensee ~~[must]~~ shall notify the patron in writing, at the time of the dispute, that the patron has a right to contact the board regarding the dispute.

B. A gaming operator licensee ~~[must immediately]~~ shall notify the board within 48 hours of the time the dispute arises if the licensee refuses to pay alleged winnings to a patron, and the licensee and the patron are unable to resolve the dispute to the patron's satisfaction, or the dispute involves \$500 or more. The board ~~[will]~~ shall conduct whatever investigation it deems necessary and ~~[will]~~ shall determine whether payment should be made. An agent of the board may conduct the investigation and report to the board for a final decision.

C. Within 30 days of receipt of notice of the dispute, the board ~~[will]~~ shall notify the licensee and patron in writing of the board's decision regarding the dispute.

D. It is a violation of this rule for a gaming operator licensee to fail ~~[immediately]~~ to notify the board of a dispute within 48 hours or to notify a patron at the time of the dispute of the patron's rights or to fail to pay the patron after an adverse decision by the board.

[12/31/98; 15.1.10.28 NMAC - Rn, 15 NMAC 1.10.28, 3/31/00; A, 5/14/04]

15.1.10.32 USE OF GAMING RECEIPTS BY NONPROFIT OPERATOR LICENSEE:

A. A nonprofit operator licensee may utilize up to 65% of net take, after payment of the gaming tax and income taxes, 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 65% maximum shall be distributed as follows:

(1) up to 40% of net take for payment to licensed distributors pursuant to a lease or other arrangement for furnishing a gaming machine; and

(2) for payment of other allowable gaming expenses, an amount equal to the difference between 65% 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 ~~[may]~~ 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.

C. ~~[In no event may a]~~ A nonprofit operator licensee shall not under any circumstances pay to any distributor licensee the percentage payment allowed in this section until the gaming tax and other applicable taxes have been paid and provided all taxes and fees are current.

D. ~~[No]~~ A nonprofit operator licensee or distributor licensee ~~[may]~~ shall not enter into a contract, written or oral, in which the distributor's compensation or other payment is based on a percentage of net take for furnishing gaming machines under a lease or other arrangement until the contract has been reduced to writing and approved by the board.

E. The nonprofit operator licensee ~~[must]~~ shall distribute at least 60% 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 licensee's fiscal year end. The maximum 40% remaining after such distribution may be used for other expenses at the discretion of the nonprofit operator licensee, provided none of those expenses ~~[has been]~~ shall be incurred to compensate a licensed distributor for the furnishing of gaming machines.

F. All distributions for charitable and educational expenses shall be made no later than 120 days after the close of the nonprofit licensee's fiscal year end. [12/31/98; 15.1.10.32 NMAC - Rn & A, 15 NMAC 1.10.32, 3/31/00; A, 7/31/02; A, 5/14/04]

15.1.10.45 NONPROFIT CONTRACTS:

A. A nonprofit gaming operator licensee shall submit any contract or lease agreement between the nonprofit gaming operator 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.

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 (5) 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 - N, 5/14/04]

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 40% 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 40% of net take. [15.1.10.46 NMAC - N, 5/14/04]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.13 NMAC, Section 10, effective 5/14/04.

15.1.13.10 LATE RENEWAL OF LICENSE:

A. The board may, in its discretion, accept and process a renewal application filed after the deadline established in section 15.1.13.8 above. Any such application, however, will be subject to a late renewal fee of \$250 plus \$10 per day for each additional day the renewal application is late.

B. To allow sufficient processing time by the board, no renewal application will be accepted by the board within ~~[45]~~ 45 days of the expiration date of the license, regardless of whether the licensee pays late fees. Any licensee who fails to submit a complete renewal application ~~[45]~~ 45 days before the expiration date of his or her license will be required to file a full application for licensure and pay all applicable fees and investigation costs if that person desires to engage in the conduct of gaming activities.

[12/31/98; 15.1.13.10 NMAC - Rn & A, 15 NMAC 1.13.10, 3/31/00; Repealed, 1/31/02; 15.1.13.10 NMAC - Rn, 15.1.13.11 NMAC, 1/31/02; A, 5/14/04]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.14 NMAC, Sections 7, 8, 9, 10, 12, 14, 15, 16, 17, 18, 19, and 20, effective 5/14/04.

15.1.14.7 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. "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;

C. "party" means each person named or admitted as a party to a proceeding before the board or duly appointed hearing examiner;

D. "person" means a legal entity or individual;

E. "petitioner" means the board or ~~[a person who files a request for hearing before the board]~~ the board's representative;

F. "respondent" means a

licensee or person to which an approval has been granted and who is the subject of a complaint issued by the board;

G. "state" means the state of New Mexico.

[12/31/98; 15.1.14.7 NMAC - Rn, 15 NMAC 1.14.7 5/31/00; A, 5/14/04]

15.1.14.8 PUBLIC HEARINGS; LOCATION; HEARING EXAMINER:

A. All hearings held pursuant to Section 60-2E-32(B) of the act will be conducted by a hearing examiner duly appointed by the board.

B. Except for telephonic hearings, the location of the hearing [will] shall be in Albuquerque unless either party makes a written request to have the hearing conducted in the place or area affected.

C. All hearings held pursuant to the act [will] shall be open to the public.

D. The hearing [must] shall be recorded on audiotape or other means of sound reproduction, or by a certified court reporter.

E. Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution.

[12/31/98; 15.1.14.8 NMAC - Rn & A, 15 NMAC 1.14.8, 5/31/00; A, 7/31/02; A, 5/14/04]

15.1.14.9 SUMMONING OF LICENSEE:

A. The board may summon any licensee, or its agents or employees, to appear to testify before the board or its agents concerning the conduct of a licensee or any of the licensee's agents or employees. All such testimony [will] shall be given under oath and may cover any matter the board determines is relevant to the discharge of its duties.

B. Any person who is summoned to appear before the board or its agents has the right to be represented by legal counsel. Any testimony taken may be used by the board as evidence in any proceeding or matter then before it or which may later come before it. Failure to appear and testify at the designated time and place, unless excused by the board, constitutes grounds for the revocation or suspension of any license held by the person summoned, his or her principal, or employer.

[12/31/98; 15.1.14.9 NMAC - Rn, 15 NMAC 1.14.9, 5/31/00; A, 5/14/04]

15.1.14.10 INITIATION OF HEARING; CONTENTS OF COMPLAINT; SERVICE, ANSWER:

A. If after investigation the board determines that a license, registration, finding of suitability or other prior approval

by the board should be limited, conditioned, suspended or revoked, or that a fine should be assessed, the board [will] shall initiate a hearing by issuing a complaint.

B. The complaint [will] shall consist of a written statement that describes the acts or omissions with which the respondent is charged and the specific statutes or rules that the respondent is alleged to have violated or other grounds for the complaint.

C. The board [will] shall serve the complaint, together with a summary of evidence in the board's possession and a transcript of testimony at any investigative hearing conducted in the matter, upon the licensee. Service [must] shall be made by registered or certified mail or by personal service. Proof of service may be provided by a certificate or affidavit of service signed by the person effecting service and which specifies the date and manner of service.

D. The summary of evidence is confidential and [may] shall not be disclosed to any person other than the respondent until public hearing.

E. The respondent [must] shall file a written answer with the board within 30 days of service of the complaint. [12/31/98; 15.1.14.10 NMAC - Rn, 15 NMAC 1.14.10, 5/31/00; A, 5/14/04]

15.1.14.12 [DEPOSITIONS] DISCOVERY; SUBPOENAS:

A. The board may, subject to the rules of privilege and confidentiality recognized by law, require the furnishing of information, the attendance of witnesses, and the production of books, records, papers or other objects necessary and proper for the purposes before it, and may take the deposition of witnesses, including parties.

B. The board may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding. Subpoenas to compel any person to appear at a deposition or at a hearing on the merits of the matter [must] shall be served no later than 10 calendar days before the deposition or hearing unless good cause is shown by the party requesting the subpoena.

C. The subpoena [must] shall state with reasonable specificity the nature of the evidence required to be produced, the time and place of the hearing or deposition, the nature of the inquiry or investigation, and the consequences of failure to obey the subpoena. The subpoena [must] shall be signed and attested to by the board or its designee.

D. Witnesses summoned [will] shall be paid the same fees for atten-

dance and travel as in civil actions in the district court unless otherwise provided for by law.

E. Any party to the proceeding may request issuance of a subpoena by the board in connection with the proceeding. The board [will] shall issue the subpoena upon written application to the board. The subpoena will show on its face the name and address of the party at whose request the subpoena was issued.

F. Any witness summoned may petition the board to vacate or modify the subpoena served on the witness. The board [must] shall give prompt notice to the party, if any, who requested service of the subpoena. The board may grant the petition in whole or in part if, after the investigation it deems appropriate, the board determines that:

(1) the testimony or evidence to be produced does not reasonably relate to any matter in question;

(2) the testimony or evidence to be produced is unreasonable or oppressive;

(3) the subpoena was not issued a reasonable period of time in advance of the time when evidence is requested; or

(4) any other reason justifies vacating or modifying the subpoena.

G. In any enforcement action, the respondent and the board may conduct discovery in accordance with the New Mexico rules of civil procedure for the district courts, except that interrogatories shall be limited in number to 20 including all discrete subparts, unless, upon motion and for good cause shown, the hearing examiner grants a party leave to file additional interrogatories.

[12/31/98; 15.1.14.12 NMAC - Rn, 15 NMAC 1.14.12, 5/31/00; A, 5/14/04]

15.1.14.14 PROCEDURES; EVIDENCE:

A. The respondent may be represented by any person licensed to practice law in the state. ~~[or by any other person authorized by law.]~~ An individual respondent may represent himself.

B. The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence may be admitted, and such evidence [will] shall be sufficient in itself to support a finding if it is reliable, regardless of the existence of any statutory or common law rule that might make admission of such evidence improper in a civil action. Irrelevant, immaterial, or unduly repetitious evidence may be excluded at a party's request or on the hearing examiner's own initiative.

C. Documentary evidence may be received in evidence in the form of true copies of the original.

D. Documentary and other

physical evidence may be authenticated or identified by any reasonable means that shows that the matter in question is what its proponent claims it to be.

E. The experience, technical competence and specialized knowledge of the hearing examiner, the board, or its staff may be used in the evaluation of evidence. Evidence on which the board may base its decision is limited to the following:

(1) all evidence, including any records, investigation reports, and documents in the board's possession, of which it desires to avail itself as evidence in making a decision, that is offered and made a part of the record of the proceeding;

(2) testimony and exhibits introduced by the parties; and

(3) official notice of any fact of which judicial notice may be taken and other facts within the board's specialized knowledge; whenever the hearing examiner takes official notice of any fact, the noticed fact and its source must be stated at the earliest possible time before or during the hearing, and any party must be given, on timely request, an opportunity to show the contrary.

F. The record will include all briefs, proposed findings and exceptions and must show the ruling on each finding, exception or conclusion presented.

G. A party to a ~~telephonic~~ hearing ~~must~~ shall submit to the hearing examiner and to all other parties to the hearing all documents to be introduced at the hearing no later than five days from the scheduled hearing date to insure that the hearing examiner and other parties receive the documents before the hearing. [12/31/98; 15.1.14.14 NMAC - Rn & A, 15 NMAC 1.14.14, 5/31/00; A, 5/14/04]

15.1.14.15 CONDUCT OF ENFORCEMENT HEARING:

A. In addition to the procedures prescribed by the act, the following procedures ~~will~~ shall apply, when appropriate:

(1) the board will present its opening statement on the merits. The respondent then will be permitted to make an opening statement on defense;

(2) the board will present its case in chief in support of the complaint;

(3) upon conclusion of the board's case in chief, the respondent will present its case in defense;

(4) upon conclusion of the respondent's case, the board may present rebuttal evidence;

(5) the board will present its closing argument, the respondent will present answering argument, and the board may present rebuttal argument. Thereafter, the matter will be submitted for recommenda-

tion by the hearing examiner.

B. The hearing examiner may ask questions of witnesses and may request or allow additional evidence at any time as determined appropriate by the hearing examiner.

[12/31/98; 15.1.14.15 NMAC - Rn, 15 NMAC 1.14.15, 5/31/00; A, 5/14/04]

15.1.14.16 CONTINUANCES:

The hearing examiner ~~will~~ shall not grant a continuance except for good cause shown. A motion to continue a hearing ~~must~~ shall be made at least 10 calendar days before the hearing date.

[12/31/98; 15.1.14.16 NMAC - Rn, 15 NMAC 1.14.16, 5/31/00; A, 5/14/04]

15.1.14.17 DEFAULT; PROCEDURE FOR RECOMMENDATION OF DEFAULT:

A. Failure of the respondent either to file an answer to the complaint or to appear at the hearing on the merits personally or by telephone, ~~if given prior approval by the hearing examiner,~~ without having obtained a continuance, ~~will~~ shall constitute an admission on all matters and facts contained in the complaint filed with respect to the respondent and ~~will~~ shall be deemed a waiver of the right to an evidentiary hearing on the matter.

B. If the respondent fails to file an answer to the complaint, the petitioner shall file a motion requesting the hearing examiner to recommend to the board that default judgment be entered against respondent.

(1) The respondent shall file a response to the motion and shall request a hearing on the motion to recommend default judgment within 10 calendar days of the date the motion is served. Failure of the respondent to file a response and to request a hearing shall constitute consent to the granting of the motion.

(2) If the respondent timely files a response to the motion, the hearing examiner shall hear the matter. The hearing examiner may deny the motion and allow the respondent additional time to answer the complaint if an accident, illness or other good cause prevented the respondent from timely answering the complaint.

C. If a party fails to appear at a hearing on the merits personally or by telephone ~~in such cases, the board~~ the hearing examiner may hear the evidence of witnesses who appear, and make a recommendation to the board based upon such evidence. Upon recommendation of the hearing examiner the board may proceed to consider the matter and dispose of it on the basis of the ~~evidence~~ record before it.

~~B.~~ **D.** If an accident, illness, or other good cause prevents the ~~petitioner~~

~~respondent~~ from requesting a continuance or appearing at the hearing, the ~~person~~ ~~respondent~~ may, within 15 days of the date of the hearing, apply to the board to reopen the proceeding. Upon finding sufficient cause, the board ~~will~~ shall immediately fix a time and place for the hearing and give the ~~petitioner~~ ~~respondent~~ notice as required under this rule.

[12/31/98; 15.1.14.17 NMAC - Rn & A, 15 NMAC 1.14.17, 5/31/00; A, 5/14/04]

15.1.14.18 RECOMMENDED ACTION; FINAL DECISION:

A. At the request of the hearing examiner or upon motion by either party granted by the hearing examiner, and before the hearing examiner recommends action by the board, the parties may submit briefs including findings of fact and conclusions of law for consideration by the hearing examiner. The hearing examiner has the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing examiner. Briefs submitted ~~must~~ shall include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law. Should the hearing examiner request briefs or grant a party's motion to submit briefs, the hearing ~~will~~ shall be continued until the hearing examiner has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, ~~must~~ shall be completed no later than 45 days from the date of continuance.

B. The hearing examiner ~~will~~ shall prepare a written decision containing his or her recommendation of action to be taken by the board. The hearing examiner's recommendation may include any, or any combination, of the following:

(1) revocation of the license or approval;

(2) suspension of the license or approval;

(3) limitation or conditioning of the license or approval; and

(4) imposition of a fine not to exceed \$25,000 for the first violation and \$50,000 for each subsequent violation.

C. Notice of the hearing examiner's recommended action ~~must~~ shall be served on the parties within 30 days of the conclusion of the hearing on the matter. Service ~~must~~ shall be made by registered or certified mail.

D. The board ~~will~~ shall accept, reject or modify the hearing examiner's recommendation by majority vote. The final decision or order ~~will~~ shall be issued in writing and ~~will~~ shall include a statement of findings and conclusions and the reasons therefore, on all material issues of fact, law or discretion involved, together with the specific action taken, including

limiting, conditioning, suspending, or revoking any license or imposing a fine, or any combination thereof. The board ~~may~~ shall not impose any sanction or order except within the board's jurisdiction or as authorized by law.

E. The final decision or order ~~will~~ shall be public and ~~will~~ shall become a part of the record.

[12/31/98; 15.1.14.18 NMAC - Rn, 15 NMAC 1.14.18, 5/31/00; A, 7/31/02; A, 5/14/04]

15.1.14.19 EX PARTE COMMUNICATIONS:

A. No party or representative of any other person ~~may~~ shall communicate off the record with the hearing examiner or any board member except upon notice and opportunity to all parties to participate.

B. Neither the hearing examiner nor any member of the board ~~may~~ shall communicate off the record with any party or representative of any party in connection with any issue of fact or law related to a proceeding under this rule except upon notice and opportunity to all parties to communicate.

C. Notwithstanding the provisions of Subsections A and B of 15.1.14.19 NMAC, a party may submit information to the board in confidence when such information is required by law or the rules of the board or required by a subpoena issued by the board to be made or transmitted to the board. However, information ruled by the board as nonconfidential or information described as nonconfidential in board rule Subsection B of 15.1.2.8 NMAC is subject to the prohibition on ex parte communications.

D. Notwithstanding the provisions of Subsections A and B of 15.1.14.19 NMAC, ex parte communications are permitted, where circumstances require, for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if the board member or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication.

E. Upon receipt of a communication knowingly made or caused to be made by a party to a board member or hearing examiner in violation of this section, the board member or hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

F. This section does not

preclude:

(1) the hearing examiner or any member of the board from consulting with board counsel concerning any matter before the board, except any matter relating to a proceeding in which board counsel is representing the state; or

(2) any party from conferring with the hearing examiner or board counsel concerning procedural matters that do not involve issues of fact or law related to the proceeding.

[12/31/98; 15.1.14.19 NMAC - Rn, 15 NMAC 1.14.19, 5/31/00; A, 2/14/02; A, 5/14/04]

15.1.14.20 TELEPHONIC HEARINGS:

A. Any party requesting a telephonic hearing ~~must~~ shall do so within 10 working days of the date of the notice. When the parties agree to conduct the hearing by telephone, notice of the telephonic hearing ~~must~~ shall be made to all parties and ~~must~~ shall include all necessary telephone numbers.

B. Any party that has agreed to a telephonic hearing but subsequently requests an in-person hearing ~~must~~ shall do so in writing to the hearing examiner no later than 10 days before the scheduled date of the hearing. The request ~~must~~ shall specifically state the reasons the requesting party believes an in-person hearing is necessary, including, at a minimum, the issues in question, the expected conflicting testimony, and how an in-person hearing would significantly advance the hearing examiner's fact-finding ability. The hearing examiner's decision to grant or deny the hearing ~~must~~ shall be issued in writing and ~~must~~ shall include the specific reasons for granting or denying the request. If the hearing examiner grants the request, the hearing ~~will~~ shall be rescheduled to a time convenient for all parties. If the hearing examiner denies the request, the telephonic hearing ~~will~~ shall proceed as scheduled.

C. The location or locations of the parties during the hearing ~~must~~ shall have a speaker telephone and facsimile machine available so that all may hear the proceedings and documents may be transmitted between witnesses and the hearing examiner.

D. The ~~State will~~ petitioner shall initiate the telephone call. The respondent is responsible for ensuring that the telephone number to the respondent's location for the telephonic hearing is accurate and that the respondent is available at that telephone number at the time the hearing is to commence. Failure to provide the correct telephone number or failure to be available at the commencement of the hear-

ing ~~will~~ shall be treated as a failure to appear and ~~will~~ shall subject the respondent to a default judgment.

E. The in-person presence of some parties or witnesses at the hearing does not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing examiner.

[12/31/98; 15.1.14.209 NMAC - Rn, 15 NMAC 1.14.20, 5/31/00; A, 5/14/04]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.15 NMAC, Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19, effective 5/14/04.

15.1.15.7 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. "agent" means any member or employee of the board or any other person authorized to act on the board's behalf.

C. "party" means each person named or admitted as a party to a proceeding before the board or its duly appointed hearing examiner.

D. "person" means a legal entity or individual.

E. [~~"petitioner"~~] "appellant" means a person aggrieved by an action of the board, who files a request for hearing before the board.

F. [~~"respondent"~~] "appellee" means the board, [a licensee, a person to which an approval has been granted by the board, or other person who is required to respond to a complaint issued by the petitioner] an agent of the board or the board's representative.

G. "state" means the state of New Mexico.

[12/31/98; 15.1.15.7 NMAC - Rn, 15 NMAC 1.15.7, 5/31/00; A, 5/14/04]

15.1.15.8 PUBLIC HEARINGS; LOCATION; HEARING EXAMINER:

A. All hearings held pursuant to Section 60-2E-59 of the act ~~will~~ shall be conducted by a hearing examiner duly appointed by the board.

B. Except for telephonic hearings, hearings ~~will~~ shall be conducted in Albuquerque or, upon written request by an aggrieved person, in the place or area affected.

C. All hearings held pursuant to Section 60-2E-59 of the act ~~will~~ shall be open to the public.

D. The hearing ~~[must]~~ shall be recorded on audiotape or other means of sound reproduction, or by a certified court reporter.

E. Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution. [12/31/98; 15.1.15.8 NMAC - Rn & A, 15 NMAC 1.15.8, 5/31/00; A, 7/31/02; A, 5/14/04]

15.1.15.9 REQUEST FOR REVIEW OF BOARD ACTION:

A. Any person aggrieved by an action of the board or one of its agents may request a hearing for the purpose of review of such action. The ~~[petitioner must]~~ appellant shall file the request for hearing within 30 days of the date the action is taken. The request ~~[must]~~ shall include the following:

- (1) a statement of the facts relevant to the review of the action;
- (2) a statement of the provision of the act and the rules promulgated under the act that are relevant to the review of the action;
- (3) a statement of the arguments that the ~~[petitioner]~~ appellant considers relevant to the review of the action; and
- (4) any other evidence considered relevant.

B. The board will schedule the hearing as soon as practicable but in any event no later than 60 days from the date it receives the ~~[petitioner's]~~ appellant's request for hearing. The hearing examiner may extend the 60 day time upon motion for good cause shown, or the parties may extend the 60 day time period by mutual agreement. The board will issue notice of the hearing, which will include:

- (1) a statement of the time, place and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a short and plain statement of the matters of fact and law asserted;
- (4) notice to any other parties to give prompt notice of issues controverted in fact or law; and
- (5) all necessary telephone numbers if a telephonic hearing will be conducted.

C. All parties ~~[will]~~ shall be given the opportunity to respond and present evidence and argument on all relevant issues. [12/31/98; 15.1.15.9 NMAC - Rn & A, 15 NMAC 1.15.9, 5/31/00; A, 5/14/04]

15.1.15.10 RECORD OF PROCEEDING:

A. The record of the proceeding ~~[will]~~ shall include:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections and rulings thereon;

(5) proposed findings and conclusions; and

(6) any action recommended by the hearing examiner.

B. A party may request a transcription of the proceedings. The party requesting the transcript ~~[will]~~ shall bear the cost of transcription.

[12/31/98; 15.1.15.10 NMAC - Rn, 15 NMAC 1.15.10, 5/31/00; A, 5/14/04]

15.1.15.11 [DEPOSITIONS] DISCOVERY; SUBPOENAS:

A. The board may, subject to the rules of privilege and confidentiality recognized by law, require the furnishing of information, the attendance of witnesses, and the production of books, records, papers or other objects necessary and proper for the purposes before it, and may take the deposition of witnesses, including parties.

B. The board may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding. Subpoenas to compel any person to appear at a deposition or at a hearing on the merits of the matter ~~[must]~~ shall be served no later than 10 calendar days before the deposition or hearing unless good cause is shown by the party requesting the subpoena.

C. The subpoena ~~[must]~~ shall state with reasonable specificity the nature of the evidence required to be produced, the time and place of the hearing or deposition, the nature of the inquiry or investigation, and the consequences of failure to obey the subpoena. The subpoena ~~[must]~~ shall be signed and attested to by the board or its designee.

D. Witnesses summoned ~~[will]~~ shall be paid the same fees for attendance and travel as in civil actions in the district court unless otherwise provided for by law.

E. Any party to the proceeding may request issuance of a subpoena by the board in connection with the proceeding. The board ~~[will]~~ shall issue the subpoena upon written application to the board. The subpoena ~~[will]~~ shall show on its face the name and address of the party at whose request the subpoena was issued.

F. Any witness summoned may petition the board to vacate or modify the subpoena served on the witness. The

board ~~[must]~~ shall give prompt notice to the party, if any, who requested service of the subpoena. The board may grant the petition in whole or in part if, after the investigation it deems appropriate, the board determines that:

(1) the testimony or evidence to be produced does not reasonably relate to any matter in question;

(2) the testimony or evidence to be produced is unreasonable or oppressive;

(3) the subpoena was not issued a reasonable period of time in advance of the time when evidence is requested; or

(4) any other reason justifies vacating or modifying the subpoena.

G. In any administrative appeal, the appellant and the board may conduct discovery in accordance with the New Mexico rules of civil procedure for the district courts, except that interrogatories shall be limited in number to 20, including all subparts, unless, upon motion and for good cause shown, the hearing examiner grants a party leave to file additional interrogatories.

[12/31/98; 15.1.15.11 NMAC - Rn, 15 NMAC 1.15.11, 5/31/00; A, 5/14/04]

15.1.15.12 PROCEDURES; EVIDENCE:

A. Any party may be represented by a person licensed to practice law in the state. ~~[or by any other person authorized by law].~~ An individual appellant may represent himself.

B. The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence may be admitted, and such evidence ~~[will]~~ shall be sufficient in itself to support a finding if it is reliable, regardless of the existence of any statutory or common law rule that might make admission of such evidence improper in a civil action. Irrelevant, immaterial, or unduly repetitious evidence may be excluded at a party's request or on the hearing examiner's own initiative.

C. Documentary evidence may be received in evidence in the form of true copies of the original.

D. Documentary and other physical evidence may be authenticated or identified by any reasonable means that shows that the matter in question is what its proponent claims it to be.

E. The experience, technical competence and specialized knowledge of the hearing examiner, the board, or its staff may be used in the evaluation of evidence.

F. Evidence on which the board may base its decision is limited to the following:

(1) all evidence, including any records, investigation reports, and docu-

ments in the board's possession, of which it desires to avail itself as evidence in making a decision, that is offered and made a part of the record of the proceeding;

(2) testimony and exhibits introduced by the parties; and

(3) official notice of any fact of which judicial notice may be taken and other facts within the board's specialized knowledge. Whenever the hearing examiner takes official notice of any fact, the noticed fact and its source must be stated at the earliest possible time before or during the hearing, and any party must be given, on timely request, an opportunity to show the contrary.

G. The record will include all briefs, proposed findings and exceptions and must show the ruling on each finding, exception or conclusion presented.

H. A party to a ~~telephonic~~ hearing ~~must~~ shall submit to the hearing examiner and to all other parties to the hearing all documents to be introduced at the hearing no later than five days from the scheduled hearing date to insure that the hearing examiner and other parties receive the documents before the hearing. [12/31/98; 15.1.15.12 NMAC - Rn & A, 15 NMAC 1.15.12, 5/31/00; A, 5/14/04]

15.1.15.13 CONDUCT OF PROCEEDING:

A. Unless the hearing examiner reasonably determines that a different procedure is appropriate, the hearing ~~must~~ shall be conducted in accordance with the procedures set forth in this rule.

B. In addition to any procedures described by the act, the following procedures ~~will~~ shall apply:

(1) the ~~petitioner~~ appellant may present an opening statement on the merits and the ~~respondent~~ appellee may make a statement of the defense or reserve the statement until presentation of its case;

(2) after the opening statements, if made, the ~~petitioner will~~ appellant shall present its case in chief in support of its petition;

(3) upon conclusion of ~~petitioner's~~ appellant's case in chief, the ~~respondent~~ appellee may move for dismissal of the petition. The hearing examiner may suspend the hearing and refer the motion to the board, which ~~must~~ shall grant, deny, or reserve decision on the motion, with or without argument, as soon as practicable but in no event later than its next regularly scheduled board meeting;

(4) if no motion to dismiss is made, or if the board denies or reserves decision on the motion, the ~~respondent will~~ appellee shall present its case in defense;

(5) upon conclusion of the

~~respondent's~~ appellee's case, the ~~petitioner~~ appellant may present rebuttal evidence;

(6) after presentation of the evidence by the parties, the ~~petitioner~~ appellant may present a closing argument. The ~~respondent~~ appellee then may present its closing argument, and the ~~petitioner~~ appellant may present a rebuttal argument; and

(7) thereafter, the matter ~~will~~ shall be submitted for recommendation by the hearing examiner.

[12/31/98; 15.1.15.13 NMAC - Rn, 15 NMAC 1.15.13, 5/31/00; A, 5/14/04]

15.1.15.14 BURDEN OF PROOF:

The ~~petitioner~~ appellant bears the burden of showing by a preponderance of the evidence that the decision made by the board or an agent of the board should be reversed or modified.

[12/31/98; 15.1.15.14 NMAC - Rn, 15 NMAC 1.15.14, 5/31/00; A, 5/14/04]

15.1.15.15 CONTINUANCES:

The hearing examiner ~~will~~ shall not grant a continuance except for good cause shown. A motion to continue a hearing ~~must~~ shall be made at least 10 calendar days before the hearing date.

[12/31/98; 15.1.15.15 NMAC - Rn, 15 NMAC 1.15.15, 5/31/00; A, 5/14/04]

15.1.15.16 DEFAULT; PROCEDURE FOR RECOMMENDATION OF DEFAULT:

A. Failure of ~~a respondent~~ the appellee to ~~file an answer to the complaint~~ schedule a hearing within 60 days, ~~unless the 60 day time period is extended~~, or of any party to appear at the hearing on the merits personally or by telephone, ~~if given prior approval by the hearing examiner,~~ without having obtained a continuance may constitute a default and an admission on all matters and facts alleged by the opposing party and shall be deemed a waiver of the right to an evidentiary hearing on the matter. The hearing examiner may proceed to consider the matter, and the board may dispose of it, on the basis of the evidence before it.

B. If the appellee fails to schedule a hearing within 60 days, the appellant shall file a motion requesting the hearing examiner to recommend to the board that default judgment be entered against the appellee.

(1) The appellee shall file a response to the motion and shall request a hearing on the motion to recommend default judgment within 10 calendar days of the date the motion is served. Failure of the appellee to file a response and to request a hearing shall constitute consent to the granting of the motion.

(2) If the appellee timely files a response to the motion, the hearing examiner shall hear the matter. The hearing examiner may deny the motion and allow the appellee additional time to schedule a hearing on the merits if an accident, illness or other good cause prevented the appellee from timely scheduling a hearing.

C. If a party fails to appear at a hearing on the merits personally or by telephone the hearing examiner may hear the evidence of witnesses who appear, and make a recommendation to the board based upon such evidence. Upon recommendation of the hearing examiner the board may proceed to consider the matter and dispose of it on the basis of the record before it.

~~B.~~ **D.** If an accident, illness, or other good cause prevents any party from requesting a continuance or appearing at the hearing, the ~~person~~ party may, within 15 days after the date of the hearing, apply to the board to reopen the proceeding. Upon finding sufficient cause, the board ~~will~~ shall immediately fix a time and place for the hearing and give the ~~petitioner~~ opposing party notice as required under this rule. [12/31/98; 15.1.15.16 NMAC - Rn & A, 15 NMAC 1.15.16, 5/31/00; A, 5/14/04]

15.1.15.17 RECOMMENDED ACTION; FINAL DECISION:

A. At the request of the hearing examiner or upon motion by either party granted by the hearing examiner, and before the hearing examiner recommends action by the board, the parties may submit briefs including findings of fact and conclusions of law for consideration by the hearing examiner. The hearing examiner has the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing examiner. Briefs submitted ~~must~~ shall include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law. Should the hearing examiner request briefs or grant a party's motion to submit briefs, the hearing ~~will~~ shall be continued until the hearing examiner has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, ~~must~~ shall be completed no later than 45 days from the date of continuance.

B. Not more than 30 days after completion of the hearing, the hearing examiner ~~will~~ shall prepare a written decision containing his or her recommendation of action to be taken by the board. The recommendation may propose to sustain, modify, or reverse the initial decision of the board or its agent.

C. Notice of the hearing examiner's recommended action ~~must~~ shall be served on the parties as promptly as possible but in no event later than 15 days

after the date of the hearing on the matter. Service ~~[must]~~ shall be made by registered or certified mail.

D. The board ~~[will]~~ shall accept, reject or modify the hearing examiner's recommendation by majority vote. The final decision or order ~~[will]~~ shall be issued in writing and ~~[will]~~ shall include a statement of findings and conclusions and the reasons therefor, on all material issues of fact, law or discretion involved, together with the specific action taken to sustain, modify, or reverse the initial decision of the board or its agent.

E. The final decision or order will be public and ~~[will]~~ shall become a part of the record.

[12/31/98; 15.1.15.17 NMAC - Rn, 15 NMAC 1.15.17, 5/31/00; A, 7/31/02; A, 5/14/04]

15.1.15.18 EX PARTE COMMUNICATIONS:

A. No party or representative of any other person ~~[may]~~ shall communicate off the record, orally or in writing, with the hearing examiner or any board member except upon notice and opportunity to all parties to participate.

B. Neither the hearing examiner nor any member of the board ~~[may]~~ shall communicate off the record, orally or in writing, with any party or representative of any party in connection with any issue of fact or law related to a proceeding under this rule except upon notice and opportunity to all parties to communicate.

C. Notwithstanding the provisions of Subsections A and B of 15.1.15.18 NMAC, a party may submit information to the board in confidence when such information is required by law or the rules of the board or required by a subpoena issued by the board to be made or transmitted to the board. However, information ruled by the board as nonconfidential or information described as nonconfidential in Subsection B of 15.1.2.8 NMAC is subject to the prohibition on ex parte communications.

D. Notwithstanding the provisions of paragraphs Subsections A and B of 15.1.15.18 NMAC, ex parte communications are permitted, where circumstances require, for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if the board member or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication.

E. Upon receipt of a communication knowingly made or caused to be made by a party to a board member or hearing examiner in violation of this section, the

board member or hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

F. This section does not preclude:

(1) the hearing examiner or any member of the board from consulting with board counsel concerning any matter before the board, except any matter relating to a proceeding in which board counsel is representing the state; or

(2) any party from conferring with the hearing examiner or board counsel concerning procedural matters that do not involve issues of fact or law related to the proceeding.

[12/31/98; 15.1.15.18 NMAC - Rn, 15 NMAC 1.15.18, 5/31/00; A, 2/14/02; A, 5/14/04]

15.1.15.19 TELEPHONIC HEARINGS:

A. Any party requesting a telephonic hearing ~~[must]~~ shall do so within 10 working days of the date of the notice. When the parties agree to conduct the hearing by telephone, notice of the telephonic hearing ~~[must]~~ shall be made to all parties and ~~[must]~~ shall include all necessary telephone numbers.

B. Any party that has agreed to a telephonic hearing but subsequently requests an in-person hearing ~~[must]~~ shall do so in writing to the hearing examiner no later than 10 days before the scheduled date of the hearing. The request ~~[must]~~ shall specifically state the reasons the requesting party believes an in-person hearing is necessary, including, at a minimum, the issues in question, the expected conflicting testimony, and how an in-person hearing would significantly advance the hearing examiner's fact-finding ability. The hearing examiner's decision to grant or deny the hearing ~~[must]~~ shall be issued in writing and ~~[must]~~ shall include the specific reasons for granting or denying the request. If the hearing examiner grants the request, the hearing ~~[will]~~ shall be rescheduled to a time convenient for all parties. If the hearing examiner denies the request, the telephonic hearing ~~[will]~~ shall proceed as scheduled.

C. The location or locations of the parties during the hearing ~~[must]~~ shall have a speaker telephone and facsimile machine available so that all may hear the proceedings and documents may be transmitted between witnesses and the hearing examiner.

D. The ~~[State]~~ will

appellee shall initiate the telephone call. The ~~[petitioner]~~ appellant is responsible for ensuring that the telephone number to the ~~[petitioner's]~~ appellant's location for the telephonic hearing is accurate and that the ~~[petitioner]~~ appellant is available at that telephone number at the time the hearing is to commence. Failure to provide the correct telephone number or failure to be available at the commencement of the hearing ~~[will]~~ shall be treated as a failure to appear and will subject the petitioner to a default judgment.

E. The in-person presence of some parties or witnesses at the hearing does not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing examiner.

[15.1.15.19 NMAC - N, 5/31/00; A, 5/14/04]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.17 NMAC, Section 6, 9, and 10, effective 5/14/04.

TITLE 15 GAMBLING AND LIQUOR CONTROL CHAPTER 1 GAMES AND GAMING GENERAL PROVISIONS PART 17 SCHEDULE OF ~~[PENALTIES]~~ VIOLATIONS UNDER THE GAMING CONTROL ACT WHICH PENALTIES COULD BE ASSESSED

15.1.17.6 OBJECTIVE: The objective of this rule is to establish ~~[uniform standards for fines and penalties that may be imposed for violations of the Act and rules promulgated by the Gaming Control Board. The schedule will be used as a guide for the settlement of cases where settlement is in the best interest of the State. The schedule will also be generally followed in cases where a formal hearing is conducted.]~~ a schedule of violations in which to cite under the Gaming Control Act which penalties could be assessed.

[12/31/98; 15.1.17.6 NMAC - Rn, 15 NMAC 1.17.6, 3/31/00; A, 5/14/04]

15.1.17.9 SCHEDULE ~~[OF FINES AND PENALTIES]~~ OF VIOLATIONS:

~~[A. Penalties to be imposed for violations of the Act or this title will be determined by the board depending upon the facts and circumstances of each case. The penalty for a first violation will include the imposition of administrative fines within the ranges shown below, unless circumstances warrant enhancement of the fine. The maximum fine for each subsequent violation is \$50,000. The penalty for any vio-~~

lation may also include suspension or revocation of the license or denial of license renewal.]

[B-] A. Licensing violations include.

(1) Engaging in gaming activity without valid license [~~—\$10,000 to \$25,000 fine (Code 201).~~]

(2) Possession of illegal gaming device [~~—\$500 to \$1,000 fine (Code 202).~~]

(3) Failure to apply for certification of finding of suitability [~~—\$500 to \$1,000 fine (Code 203).~~]

(4) Employing persons without work permits or key person certifications [~~—\$500 to \$1,000 fine (Code 204).~~]

(5) Expired work permit [~~—\$250 to \$500 fine (Code 205).~~]

(6) Unlicensed gaming machine [~~—\$1,000 to \$5,000 fine (Code 206).~~]

(7) Selling, offering to sell, or distributing a gaming device to other than a gaming operator licensee [~~—\$10,000 to \$25,000 fine (Code 207).~~]

(8) Purchasing, leasing, or otherwise receiving a gaming machine from other than an authorized licensee [~~—\$5,000 to \$10,000 fine (Code 208).~~]

(9) Association with distributor or manufacturer with revoked license [~~—\$1,000 to \$5,000 fine (Code 209).~~]

(10) Unauthorized transfer of license [~~—\$5,000 to \$10,000 (Code 210).~~]

[C-] B. Operating violations include.

(1) Permitting play on an unauthorized gaming machine [~~—\$5,000 to \$10,000 fine (Code 301).~~]

(2) Permitting play of an unauthorized game [~~—\$1,000 to \$5,000 fine (Code 302).~~]

(3) Possessing or installing a gaming machine at other than an authorized location [~~—\$2,500 to \$10,000 fine (Code 303).~~]

(4) Engaging in dishonest or deceptive practices involving gaming activity [~~—\$5,000 to \$10,000 fine (Code 304).~~]

(5) Public nuisance [~~—\$5,000 to \$10,000 fine (Code 305).~~]

(6) Minor playing a gaming machine [~~—\$5,000 to \$10,000 fine (Code 306).~~]

(7) Unauthorized person on licensed premises [~~—\$2,500 to \$7,500 fine (Code 307).~~]

(8) Unauthorized person playing a gaming machine [~~—\$5,000 to \$10,000 fine (Code 308).~~]

(9) Sale, service, delivery or consumption of alcoholic beverage on licensed premises [~~—\$5,000 to \$10,000 fine (Code 309).~~]

(10) Operating or permitting the playing of gaming machine on unauthorized days or times [~~—\$2,500 to \$5,000 fine~~

(Code 310).].

(11) Operating or permitting the operation of more than maximum number of gaming machines allowed [~~—\$5,000 to \$10,000 fine (Code 311).~~]

(12) Failure to pay winnings or award prizes [~~—\$1,000 to \$5,000 fine (Code 312).~~]

(13) Failure to maintain adequate security [~~—\$1,000 to \$5,000 fine (Code 313).~~]

(14) Unauthorized or improper use of tokens [~~—\$500 to \$1,000 fine (Code 314).~~]

(15) Unauthorized or improper disposition of tokens [~~—\$500 to \$1,000 fine (Code 315).~~]

(16) Unauthorized or improper disposal of gaming device [~~—\$500 to \$1,000 fine (Code 316).~~]

(17) Unauthorized modification of gaming device where the modification changes the manner of operation from that approved by the board or from that represented to patrons [~~—\$1,000 to \$5,000 fine (Code 317).~~]

(18) Knowingly associating with, employing, or assisting, directly or indirectly, persons or businesses of disreputable character [~~—\$5,000 to \$10,000 fine (Code 318).~~]

(19) Employing a person who has been denied, or failed or refused to apply for, a gaming license, work permit or finding of suitability in any jurisdiction [~~—\$5,000 to \$10,000 fine (Code 319).~~]

(20) Failing to comply with all federal, state and local laws and rules governing gaming activity, including payment of fees and taxes due [~~—\$5,000 to \$10,000 fine (Code 320).~~]

(21) Conducting, operating, or dealing with any cheating game or device [~~—\$5,000 to \$10,000 fine (Code 321).~~]

(22) Unauthorized modification of licensed premises [~~—\$1,000 to \$5,000 fine (Code 322).~~]

(23) Facilitating, participating in, or allowing the issuance of any loans or extending credit to a gaming patron for gaming purposes [~~—\$1,000 to \$5,000 fine (Code 323).~~]

(24) Misleading or deceptive payoff schedule [~~—\$500 to \$1,000 fine (Code 324).~~]

(25) Failure to make payments in accordance with payoff schedule [~~—\$1,000 to \$5,000 fine (Code 325).~~]

(26) Failure to install or maintain adequate surveillance system [~~—\$1,000 to \$5,000 fine (Code 326).~~]

(27) Insufficient funds in gaming tax transfer account [~~—\$5,000 to \$10,000 fine (Code 327).~~]

(28) Failure to comply with minimum accounting standards [~~—\$1,000 to~~

~~\$5,000 fine (Code 328).~~]

(29) Commingling of gaming receipts with other monies of nonprofit organization gaming operator licensee [~~—\$500 to \$7,500 fine (Code 329).~~]

(30) Failure to maintain minimum bankroll required or to notify board of deficiencies [~~—\$1,000 to \$10,000 fine (Code 330).~~]

(31) Failure to request excluded person to leave or to prohibit entry on licensed premises or to properly notify board of excluded person on licensed premises [~~—\$5,000 to \$10,000 fine (Code 331).~~]

(32) Failure to implement or maintain adequate internal controls for gaming operations [~~—\$1,000 to \$10,000 fine (Code 332).~~]

(33) Unlawful or unauthorized operation of progressive system [~~—\$5,000 to \$10,000 fine (Code 333).~~]

(34) Unlawful or unauthorized promotion or additional payout [~~—\$250 to \$5,000 fine (Code 334).~~]

(35) Shipment of unapproved gaming device [~~—\$1,000 to \$5,000 fine (Code 335).~~]

(36) Unauthorized change in minimum internal controls [~~—\$250 to \$2,500 fine (Code 336).~~]

(37) Engaging in other unsuitable method of operation [~~—\$1,000 to \$10,000 fine (Code 337).~~]

[D-] C. Miscellaneous violations include.

(1) Interference with investigation, including denying the board or its agent or other authorized person access to, or inspection of, a gaming establishment [~~—\$10,000 to \$25,000 fine (Code 401).~~]

(2) Providing false or misleading information to the board or the board's agent [~~—\$1,000 to \$10,000 fine (Code 402).~~]

(3) Failure to file required report or disclose information [~~—\$500 to \$10,000 fine (Code 403).~~]

(4) Failure to renew license while continuing to conduct licensed activity [~~—\$500 to \$1,000 fine (Code 404).~~]

(5) Unlawful gaming operations contract [~~—\$1,000 to \$5,000 fine (Code 405).~~]

(6) ATM on licensed premises [~~—\$500 to \$1,000 fine (Code 406).~~]

(7) Failure to implement or maintain compulsive gambling assistance plan [~~—\$1,000 to \$5,000 fine (Code 407).~~]

(8) Failure to disclose gaming contracts [~~—\$1,000 to \$5,000 fine (Code 408).~~]

(9) Failure to retain required records [~~—\$500 to \$2,500 fine (Code 409).~~]

(10) Felony conviction of licensee, employee or other agent of licensee [~~—~~

~~[\$5,000 to \$25,000 fine (Code 410)].~~

(11) Failure to be in possession of work permit [~~—\$250 to \$500 fine (Code 411)].~~]

(12) Failure to post gaming license [~~—\$250 to \$500 fine (Code 412)].~~]

(13) Failure to post required signs [~~—\$250 to \$500 fine (Code 413)].~~]

(14) Failure to provide required notice [~~—\$250 to \$1,000 fine (Code 414)].~~]

(15) Failure to comply with gaming machine registration, transport, possession and use requirements by public post-secondary educational institution or a trade show vendor [~~—\$1,000 to \$5,000 fine (Code 415)].~~]

(16) Other violation [~~—\$250 to \$10,000 fine (Code 999)].~~]

[12/31/98; 15.1.17.9 NMAC - Rn & A, 15 NMAC 1.17.9, 3/31/00; A, 1/31/02; A, 7/31/02; A, 10/31/02; A, 5/14/04]

15.1.17.10 [ENHANCEMENT OF FINES AND PENALTIES: ~~The board or its agent may increase any penalty set forth in this rule to larger fines up to the statutory limit, or revoke the license, or both, if the board or its agent determines, in its discretion, that the facts and circumstances warrant enhancement.]~~

[RESERVED]

[12/31/98; 15.1.17.10 NMAC - Rn, 15 NMAC 1.17.10, 3/31/00; Repealed, 5/14/04]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.18 NMAC, Section 12, effective 5/14/04.

15.1.18.12 COMPULSIVE GAMBLING FUNDS DISTRIBUTION:

A racetrack gaming operator shall spend all funds required by statute to fund or support programs for the treatment and assistance of compulsive gamblers each year within 120 days after the close of the licensees fiscal year.

[15.1.18.12 NMAC - N, 5/14/04]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.19 NMAC, Sections 9, and 10, effective 5/14/04.

15.1.19.9 VERIFICATION OF WINNINGS; REPORTING PROCEDURES:

A. When the [any] winning patron seeks payment of winnings in the amount [excess] of \$1,200.00 or more, the gaming operator licensee [must] shall verify the winnings in accordance with approved minimum internal control stan-

dards.

B. Upon verification of the validity of the winnings, and before payment of the winnings, the gaming operator licensee must ensure that the winning patron completes a form provided or approved by the board to report the winnings.

C. The form must include the following information and must be completed in full:

(1) the name, address, telephone number, and social security number of the winning patron;

(2) the exact amount of the winnings;

(3) the date the winnings were won; and

(4) the name, address, telephone number, and gaming operator license number of the gaming operator.

D. In addition to providing the information required in Subsection C of 15.1.19.9 NMAC above, the winning patron must sign and date the following statements, under penalty of perjury:

(1) a statement declaring, to the best of the winning patron's knowledge and belief, that the winning patron does not owe and is not delinquent in child support payments in any state; and

(2) a statement attesting to the accuracy of the information provided.

E. After the winning patron completes the form, the gaming operator licensee ~~[must] shall~~ verify the identity of the winning patron and the information provided by the winning patron on the form against at least one of the following forms of photograph identification: [checking the form against at least two forms of identification. Any of the following may be used for verification purposes, provided one of the forms contains a photograph:]

(1) [valid driver's license issued by any state;] valid driver license issued by any state in the United States of America;

(2) [military identification card;] valid identification card issued by any state in the United States of America;

(3) [current passport;] valid employment card issued by any state in the United States of America;

(4) [social security card;] valid military identification card and/or military dependent identification card;

(5) [identification card issued by the United States government; and] valid passport issued by the United States government and/or other country recognized by the United States government; and

(6) [major credit card;] valid alien resident identification card.

F. The gaming operator licensee must also verify the social number

provided by the winning patron on the form against one of the following documents:

(1) winning patron's social security card; or

(2) by having patron complete IRS form W-9.

~~[F.] G.~~ Upon verification of the information provided by the winning patron; the gaming operator licensee may pay the winnings.

~~[G.] H.~~ If a winning patron refuses to provide any of the information required by this rule, or fails or refuses to complete the reporting form, the gaming operator licensee must withhold the winnings until such time as the information is provided.

[4/30/99; 15.1.19.9 NMAC - Rn, 15 NMAC 1.19.9, 10/15/00; A, 1/31/02; A, 7/31/02; A, 5/14/04]

15.1.19.10 DISTRIBUTION OF REPORTING FORM:

A. The gaming operator licensee must provide a copy of the reporting form to the winning patron and retain a copy for the gaming operator's records.

B. The gaming operator licensee must provide, on a weekly basis, copies of all such reporting forms to the director of child support enforcement or his designee.

C. Reports of winnings may not be made to the department by telephone.

D. The gaming operator licensee is ~~[not]~~ required to report to the department in any week in which the gaming operator licensee makes ~~[no]~~ payments of winnings in the amount [excess] of \$1,200.00 or more.

~~[E.]~~ The board will provide to the Department, on a monthly basis, a record of all winnings in excess of \$1,200.00 resulting from single wagers at each licensed gaming establishment for the prior month.

[4/30/99; 15.1.19.10 NMAC - Rn, 15 NMAC 1.19.10, 10/15/00; A, 1/31/02; A, 7/31/02; A, 5/14/04]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.20 NMAC, Section 7, 8, 9, 10, 11, and 12, effective 5/14/04.

15.1.20.7 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. "board" means the gaming control board or its designee;

C. “[**disciplinary enforcement 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;

D. “**fee**” includes all license, approval, and investigative costs, all gaming taxes, all payments for charitable and educational purposes and all payments for compulsive gaming and horseman’s purses, and any fines that have been imposed by the board;

E. “**fine**” means any monetary penalty assessed by the board for a violation of the act after an administration hearing has been held or as negotiated between the board and the applicant or licensee in settlement proceedings;

F. “**gaming tax**” means the excise tax imposed pursuant to Section 60-2E-47 of the act;

G. “**willfully**” means knowingly or purposefully.
[4/30/99; 15.1.20.7 NMAC - Rn & A, 15 NMAC 1.20.7, 10/15/00; A, 5/14/04]

15.1.20.8 BASIS FOR ISSUANCE OF AN EMERGENCY ORDER:

A. The board or any board member may issue, in accordance with this rule, an emergency order to do any one or more of the following:

(1) suspend, limit or condition a license, registration, finding of suitability or work permit; a fine may be imposed as a condition of continued operation of the license;

(2) take other action in relation to the licensee, including disabling gaming devices, ordering the licensee to cease all gaming activities or involvement in gaming activities, and stopping the movement of gaming devices;

(3) require a gaming operator licensee to exclude an individual licensee from the premises of the gaming operator licensee’s gaming establishment; or

(4) require a gaming operator licensee not to pay an individual licensee any remuneration for services or any profits, income or accruals on his investment in the licensed gaming establishment.

B. The board or any board member may issue an emergency order only when [the board believes] there is probable cause to believe that:

(1) a licensee has willfully failed to report, pay or truthfully account for and pay any fee imposed by the provisions of the Act or willfully attempted in any manner to evade or defeat any fee or payment of a fee;

(2) a licensee or gaming employ-

ee has cheated at a game; or

(3) the emergency order is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare.

C. For purposes of Subsection B of 15.1.20.8 NMAC, failure to pay the gaming tax by the fifteenth of the month following the month in which the taxable event occurs constitutes willful failure to pay the gaming tax.

D. Within ten days of the issuance of the emergency order by an individual board member, the board shall meet in special session to consider whether the emergency order should remain in place or be stayed until an administrative hearing is held.

[4/30/99; 15.1.20.8 NMAC - Rn & A, 15 NMAC 1.20.8, 10/15/00; A, 2/14/02; A, 5/14/04]

15.1.20.9 CONTENTS OF EMERGENCY ORDER:

The emergency order [must] shall include the specific grounds upon which the order is issued, a statement of facts that constitute the alleged emergency requiring the action, and the specific [disciplinary] enforcement action to be taken.

[4/30/99; 15.1.20.9 NMAC - Rn, 15 NMAC 1.20.9, 10/15/00; A, 5/14/04]

15.1.20.10 SERVICE OF EMERGENCY ORDER; EFFECT:

A. The board [must] shall effect personal service of the emergency order as follows:

(1) upon the licensee or resident agent of the licensee or gaming employee; or

(2) in cases involving registration or findings of suitability, upon the person or entity involved or resident agent of the entity involved.

B. Proof of service must be provided by a certificate or affidavit of service signed by the person effecting service and specifying the date and time of service.

C. The emergency order is effective immediately upon issuance and service as set forth in this rule. The emergency order remains in effect until further order of the board or final disposition of the case.

[4/30/99; 15.1.20.10 NMAC - Rn, 15 NMAC 1.20.10, 10/15/00; A, 5/14/04]

15.1.20.11 COMPLAINT; ADMINISTRATIVE HEARING:

A. Within five days after the issuance of an emergency order, the board [will] shall file and serve a complaint upon the person or entity involved in accordance with the provisions in 15.1.14

NMAC, except that the respondent [will] shall have 10 days to file an answer with the board.

B. The board will conduct a hearing on the complaint no later than ~~[20]~~ 30 days after service of the complaint.
[4/30/99; 15.1.20.11 NMAC - Rn, 15 NMAC 1.20.11, 10/15/00; A, 5/14/04]

15.1.20.12 NONPAYMENT OF FEES; SUSPENSION OF GAMING LICENSE AND DISABLING OF GAMING MACHINES:

A. The board may suspend a gaming operator’s license and disable gaming machines due to nonpayment of a fee owed by the gaming operator licensee.

B. If the overdue fee is the gaming tax, the board [will] shall contact the taxation and revenue department by telephone, letter or e-mail to verify that the gaming operator licensee has not paid the overdue fee.

C. Following verification that the fee has not been paid, the board [will] shall provide to the gaming operator licensee written notice of the overdue fee. The written notice [will] shall include a demand for payment and [will] shall be sent by certified mail or personally delivered to the licensee.

D. The gaming operator licensee [must] shall pay the overdue fee in full and submit proof of payment satisfactory to the board within five days of receipt of the notice.

E. The board [will] shall issue an emergency order to suspend the gaming operator’s license and to disable the gaming machines if the gaming operator licensee fails to submit to the board satisfactory proof of full payment of the fee as set forth above. The gaming operator’s license [will] shall be suspended and the gaming machines [will] shall be disabled upon service of the emergency order on the gaming operator licensee.

F. Nothing in this Section 15.1.20.12 NMAC shall be construed as prohibiting the board from taking any other appropriate action in the emergency order in addition to suspending the gaming operator’s license and disabling the gaming machines, including imposing a fine against the licensee as a condition of continued operation of the license.

G. In addition to issuance of an emergency order suspending the gaming operator’s license and disabling the gaming machines, the board may initiate enforcement proceedings seeking to revoke, limit, condition or further suspend the license, or impose additional fines against the gaming operator licensee, or both.

H. Provided the gaming operator license has not been revoked, the

board ~~will~~ shall issue an order to lift the suspension and enable the gaming machines upon proof satisfactory to the board that the gaming operator licensee has:

- (1) paid the overdue fee in full;
 - (2) paid any fines or other fees assessed by the board or other agency in connection with the overdue fee;
 - (3) completed any period of suspension imposed on the license by the board; and
 - (4) complied with any and all other conditions imposed by the board.
- [15.1.20.12 NMAC - N, 10/15/00; A, 2/14/02; A, 5/14/04]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.24.10 NMAC, effective 5/14/04.

15.1.24.10 MULTIPLE LINKAGE OF PROGRESSIVE GAMING MACHINES:

A. There is no administrative limit on the number of progressive gaming machines that may be linked at a gaming premises. Each linked gaming machine must have the same probability of hitting the combination or other event that will trigger an award of the progressive jackpot. Gaming machines that are part of the linked system must have jackpot meters, support multiple jackpots, and follow the jackpot terminal protocol developed by the board.

B. Linkage of progressive gaming machines between racetrack operator licensees, with progressive systems or gaming machines operated at tribal casinos or casinos located outside of New Mexico, or with gaming machines operated by any other person, ~~is expressly prohibited~~ shall be electronically verifiable by the board.

[15.1.24.10 NMAC - N, 5/31/00; A, 5/14/04]

NEW MEXICO HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 50 CHILD SUPPORT ENFORCEMENT PROGRAM PART 132 U N C L A I M E D CHILD, SPOUSAL OR MEDICAL SUPPORT

8.50.132.1 ISSUING AGENCY: New Mexico Human Services Department - Child Support Enforcement Division.
[8.50.132.1 NMAC - N, 05/14/04]

8.50.132.2 SCOPE: To the general public. For use by the human services department and recipients of federal Title IV services.
[8.50.132.2 NMAC - N, 05/14/04]

8.50.132.3 S T A T U T O R Y AUTHORITY: Public Assistance Act, Section 27-2-27 (A)(5) NMSA 1978. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).
[8.50.132.3 NMAC - N, 05/14/04]

8.50.132.4 D U R A T I O N : Permanent.
[8.50.132.4 NMAC - N, 05/14/04]

8.50.132.5 EFFECTIVE DATE: May 14, 2004, unless a later date is cited at the end of a section.
[8.50.132.5 NMAC - N, 05/14/04]

8.50.132.6 OBJECTIVE: To establish regulations for the disposition of unclaimed child, spousal or medical support payments. The regulations here codify present practices in accordance with federal and state law and regulations.
[8.50.132.6 NMAC - N, 05/14/04]

8.50.132.7 DEFINITIONS: For purposes relating to unclaimed child, spousal or medical support payments the following definitions will apply.

A. "Apparent owner" means a person whose name appears on the records of the department as the person entitled to property held, issued, or collected by the department.

B. "Owner" means a person who has a legal interest in property or the person's legal representative.

C. "Child, spousal or medical support payments" means money (including a check, draft, deposit, interest, overpayment, refund or credit), real or personal property, or other assets held, received or seized pursuant to an order to pay child support, spousal support (alimony) or medical support.

D. "Unclaimed" means no person to whom to deliver moneys or properties received or seized by the department can be located or identified. "Unclaimed" also means the custodial parent and child(ren) are deceased and no claimant comes forward after notice sent to the last known address or last known employer of the custodial parent and non-custodial parent.
[8.50.132.7 NMAC - N, 05/14/04]

8.50.132.8 EFFORTS TO

LOCATE: Before property may be declared unclaimed by the department, the department shall make reasonable attempts to locate the custodial parent; the non-custodial parent. These attempts shall include:

A. If there is no case or payee identified in the money or property transmittal, the department shall:

(1) attempt to ascertain the case to which property should be applied through any documents accompanying payment;

(2) attempt to contact the person, if any, listed on the mailing envelope by phone; and

(3) mail notice of intent to declare property unclaimed to the address, if any, on the envelope in which money or property is received without case identification.

B. If the custodial parent has moved or property cannot be delivered to the custodial parent's last known address on file with the department; utilize standard locate resources to determine if a current address or employer can be obtained for the custodial parent and/or non-custodial parent. If use of standard locate resources is unsuccessful, the department shall mail notice of intent to declare property unclaimed to the custodial parent's last known employer's address, if the address is on file with the department.
[8.50.132.8 NMAC - N, 05/14/04]

8.50.132.9 NOTICE AND PUBLICATION OF LISTS OF ABANDONED PROPERTY:

A. The department shall establish and maintain a list of persons for whom the department is searching to make payment to for unclaimed support on its website and shall post their names for a period of one year. The list shall contain:

(1) the name of each person appearing to be the owner of the property;

(2) the last known address or location of each person appearing to be the owner of the property;

(3) a statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request and proof of the persons right to such property to the department.

B. The department is not required to post or list unclaimed property having a total value less than one hundred dollars. Money not claimed and deemed as "unclaimed property" will be processed in accordance with applicable state and federal regulations and guidelines, no earlier than thirty six months after receipt.
[8.50.132.9 NMAC - N, 05/14/04]

8.50.132.10 RECOVERY BY PERSON TO WHOM MONEYS ARE OWED: The department may subsequent-

ly make payment or return property to a person reasonably appearing to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the department shall promptly reimburse the holder. The department shall require the claimant's social security number and proof of identity together with such other evidence as may be needed to establish the claimant's rights to such property.

[8.50.132.10 NMAC - N, 05/14/04]

8.50.132.11 CREDITING OF DIVIDENDS, INTEREST AND INCREMENTS TO OWNER'S ACCOUNT: If property other than money was delivered to the department, the non-custodial parent is entitled to receive credit for any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money less the cost of liquidation or conversion. The department shall not pay interest on any unclaimed money or property.

[8.50.132.11 NMAC - N, 05/14/04]

8.50.132.12 FILING CLAIM WITH DEPARTMENT; HANDLING OF CLAIMS BY DEPARTMENT: A person, claiming they are owed money or property from the department under this rule, may file a claim on a form prescribed by the department and verified under oath or affirmation by the claimant.

A. Within thirty days after a claim is filed, the department shall allow or deny the claim and give written notice of the decision to the claimant.

B. A person whose claim has not been acted upon within thirty days after its filing may immediately file an administrative appeal to establish the claim.

C. A person adversely affected by a decision of the department, may within thirty days after notice of the decision, file an administrative appeal in accordance with Part 130 (Administrative Hearings - 8.50.130 NMAC).

[8.50.132.12 NMAC - N, 05/14/04]

HISTORY OF 8.50.132 NMAC: [RESERVED]

NEW MEXICO BOARD OF NURSING

This is an amendment to Section 16.12.1.8 NMAC, effective 06-01-04. This action amends this Section by removing unnecessary language due to changes in the role in accordance with the current (NMAC) New Mexico Administrative Code Requirements.

16.12.1.8 ADMINISTRATION:

A. Members of the board are appointed by the governor and are accountable to the governor for the enforcement of the Nursing Practice Act, Section 61-3-1 *et seq.*, NMSA, 1978.

(1) Rules are adopted by the board to further define the Nursing Practice Act and the functions of the board.

~~[(a) Request for exceptions to the rules may be made, in writing to the board. All requests will be considered by the board at its next regularly scheduled meeting following receipt of the request.]~~

~~[(b) Board staff shall not make exceptions to the rules.]~~

(2) A code of conduct shall be adopted by the board, and shall be reviewed annually at a regularly scheduled meeting of the board.

(3) The board shall meet at least once every three months.

(a) A meeting notice resolution, consistent with the Open Meetings Act, Section 10-15-1 *et seq.*, NMSA, 1978, shall be adopted by the board and shall be reviewed annually at a regularly scheduled board meeting.

(b) A schedule of regular meeting dates shall be approved by the board at a regular meeting prior to the beginning of the next calendar year, and shall be published in the board's fall/winter newsletter, and on the board's website.

(4) The board may appoint advisory committees consisting of at least one member who is a board member and at least two members expert in the pertinent field of health care to assist it in the performance of its duties, Section 61-3-10, M. NMSA, 1978.

(a) Exception: no current board members shall be appointed to an advisory committee for the diversion program, Section 61-3-29, B. NMSA, 1978.

(b) Members of advisory committees who fail to attend three consecutive committee meetings shall automatically be removed as a member of the committee.

(c) Advisory committee members may be reimbursed as provided in the Per Diem and Mileage Act, Section 10-8-8 NMSA, 1978 for travel to a committee meeting and/or function.

(i) Mileage may be paid when there is a total of sixty (60) miles or more traveled,

(ii) Per diem may be paid for overnight stays only upon prior approval of the executive director or assistant director.

(5) The board shall elect a chairman, vice-chairman and secretary annually. The term of office begins with the meeting subsequent to the election. Any member of the board may serve as an officer of the board.

(6) Board members shall not be involved with the administration and/or management of the board office.

(7) Board may appoint site visitors who have expertise in the pertinent field of education/health care to accompany board staff on visits to educational programs, health care institutions/facilities, etc. to assist it in the performance of its duties and responsibilities. Site visitors may be reimbursed as provided in the Per Diem and Mileage Act, Section 10-8-1 to 10-8-8 NMSA, 1978, for travel to a committee meeting and/or function.

(a) Mileage may be paid when there is a total of sixty (60) miles or more traveled, and

(b) Per diem may be paid for overnight stays only upon prior approval of the executive director or assistant director.

B. The board shall hire an executive director who is accountable to the board for the administration and management of the board office, including but not limited to the fiscal operation, records, hiring and firing of personnel. The operation of the board office shall be in accordance with the state of New Mexico statutes and rules.

(1) The executive director shall not have the power to grant, deny or withdraw approval for schools of nursing or to revoke, suspend or withhold any license authorized by the NPA.

(2) The executive director, or designee, shall represent the board to the public.

C. Honorarium: members of the board and board staff, when speaking on behalf of the board of nursing, may accept an honorarium. The honorarium shall be made in the name of the New Mexico board of nursing and deposited in the nursing fund with the state of New Mexico.

D. Verification of license/certificate

(1) Employers and other interested persons may request verification of the status of a license/certificate.

(2) Verification of relicensure/recertification status is available immediately by phone and 24 hours on board website.

(3) Requests for verification of licensure/certification to other boards of nursing should be submitted through the NCSBN web based system.

E. Reimbursement for disciplinary witnesses and experts on behalf of the state.

(1) Individuals subpoenaed as a disciplinary witness for the state may be reimbursed for mileage as provided for in the Per Diem and Mileage Act, Section 10-8-1 to 10-8-8 NMSA, 1978, when sixty (60)

miles or more are traveled to a disciplinary hearing.

(2) Individuals who serve as an expert witness for the state in a disciplinary matter may be reimbursed by the board in an amount not to exceed: two hundred dollars (\$200.00) for reviewing the file, research and advisement in the matter, and three hundred dollars (\$300.00) for testifying at a disciplinary hearing.

(3) The executive director may approve additional reimbursement for the review of files and testimony of expert witnesses when such reimbursement is essential to the prosecution of the case.

F. Telephonic attendance at board meetings by board members

(1) Pursuant to the provisions of the Open Meetings Act, Section 10-15-1 C NMSA, 1978, as amended, board members may participate in a meeting of the board by means of a conference telephone or similar communications equipment.

(2) Board members participation in meeting telephonically shall constitute presence in person at the meeting. Telephonic participation may only occur when it is difficult or impossible for the person to be physically present. That is, there are circumstances beyond the member's control which make attendance in person extremely burdensome.

(3) Each board member participating telephonically must be identified when speaking and all participants must be able to hear all other participants.

(4) Members of the public attending the meeting must be able to hear all members of the board and members of the public who speak during the meeting.

G. Use of fax: The board of nursing may accept and send facsimile of documents with the exception of communications related to participants of the diversion program.

[1-1-98; 16.12.1.8 NMAC – Rn & A, 16 NMAC 12.1.8, 7-30-01; A, 11-16-01; A, 1-2-04; A, 6-01-04]

NEW MEXICO BOARD OF NURSING

This is an amendment to Section 16.12.2.10 NMAC, effective 06-01-04. This action amends this Section by removing unnecessary language due to changes in the role in accordance with the current (NMAC) New Mexico Administrative Code Requirements.

16.12.2.10 LICENSURE REQUIREMENTS FOR REGISTERED AND PRACTICAL NURSES:

Licensure with the New Mexico board of nursing is mandatory and is the responsibility of the individual nurse, pursuant to the nursing

practice act. For states who are a part of the nurse licensure compact, licensure in New Mexico can only be issued to applicants who declare New Mexico as their primary state of residence.

A. Prerequisites for licensure of RNs and LPNs by examination in New Mexico.

(1) Completion of and eligible for graduation from a board approved course of study for the preparation of registered nurses or practical nurses, or an acceptable level of education as determined by the board or graduation from a program which is equivalent to an approved program of nursing in the United States.

(a) RN and PN graduates from non-U.S. nursing programs:

(i) may have an evaluation of their nursing education credentials sent to the New Mexico board directly from a board recognized educational credentialing agency; or

(ii) may request an official transcript sent to the New Mexico board directly from the non- US nursing program; if the transcript is not in English, a copy of a translated transcript certified by a qualified translator must be sent directly to the New Mexico board.

(b) RN applicants educated in non-U.S. nursing programs may submit a copy, certified by a notary, of the commission of graduates of foreign nursing school's (CGFNS) examination certificate in lieu of an evaluation of their educational credentials; Puerto Rico applicants who are graduates of NLNAC accredited registered nurse programs are eligible to sit the NCLEX-RN.

(2) Completion of the required board of nursing application for licensure by examination according to instructions and including the required fee.

(3) Completion of NCLEX application for the testing service according to instructions.

B. Nationwide criminal background check. Applicants for initial licensure in New Mexico are subject to a state and national criminal background check at their cost.

(1) Submit two (2) full sets of fingerprints, completed finger print certificate form, signed authorization for criminal background check and fee.

(2) Applications for exam or endorsement will not be processed without submission of fingerprints, finger print certificate form, authorization for criminal background check form and fee.

(3) If the criminal background check reveals a felony or violation of the Nursing Practice Act, the applicant/licensee will be notified to submit copies of legal documents and other related information to

the board who will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

C. Complete application for licensure by examination, certification of eligibility for graduation or official transcript and fee must be received by the board office prior to being granted permission to take the national licensing examination (NCLEX). Certification of eligibility for graduation or official transcript, indicating date requirements for graduation from the nursing program were met and certificate or degree awarded or to be awarded, must be received in the board office directly from the registrar's office.

D. Results of the examination shall be reported, by mail, to the individual applicant within four (4) weeks following the applicant's examination date. Examination results shall be released to the applicant's nursing program, and boards of nursing unless otherwise instructed, in writing, by applicant.

E. An initial license shall be valid for two (2) years.

F. Applications containing fraudulent or misrepresented information could be the basis for denial or revocation of licensure.

G. If the licensure process is not completed, the application becomes null and void one (1) year after date of last noted activity.

H. Permits-to-practice may be issued for employment at a specific institution(s) in New Mexico. Permits can be faxed or mailed directly to the New Mexico employing institution(s).

(1) To be eligible for a permit-to-practice, the applicant must:

(a) complete the application process to take the NCLEX within twelve (12) weeks of graduation; the permit to practice for RN and PN graduates of U.S. schools may be issued for a period not to exceed six months from the date of application; permits to practice may not be issued by New Mexico for employment at specific institution(s) in compact states; permits to practice will not be issued for applicants who declare residency in other compact states;

(b) RN and PN graduates from non-U.S. nursing programs may be issued a permit to practice in New Mexico for a period not to exceed six months from the date of application;

(c) assure that prospective New Mexico employer(s) submit a letter of intent to employ to the board office, on agency letterhead, indicating the name of a specific New Mexico employer and name and nursing license number of the RN who is responsible for assuring direct supervision by a registered nurse;

(d) submit fingerprint cards and documents and fee to initiate a state and national criminal background check.

(2) Permits-to-practice cannot be transferred or renewed.

(3) Written notification from employer must be made to the board office in case of lost or stolen permit-to-practice.

(4) Permits-to-practice shall be valid until the examination results are disseminated but shall not exceed the expiration date on the permit.

(5) Candidates who were not successful on the *national licensure examination* will receive the results as soon as they are available.

(6) Applicants who hold a graduate permit and do not become licensed prior to expiration date of the permit, may not continue to practice as a graduate nurse or graduate practical nurse.

I. Applicants who fail the examination may apply to retake the examination a maximum of eight (8) times per year, but must wait forty-five (45) days to retake.

(1) A fee will be charged by the board for all reexaminations.

(2) Applicants for reexamination must meet all NCLEX requirements for retaking the examination.

J. National council licensure examination.

(1) Applicants for licensure as RNs shall be required to pass the NCLEX for RNs.

(2) Applicants for licensure as PNs shall be required to pass the NCLEX for PNs.

(3) Applicants observed giving and/or receiving unauthorized assistance during the taking of the national licensing examination shall be referred to the board by a sworn complaint.

K. Prerequisites for licensure of registered nurses and licensed practical nurses by endorsement.

(1) Verification DIRECTLY from the licensing authority which shall include:

(a) graduation from an approved nursing program or an acceptable level of education as determined by the board or a nursing program which is equivalent to an approved program of nursing in the United States; and

(b) initial licensure by passing a national licensure examination in English or a state constructed licensure examination prior to October 1986.

(2) Applicants from licensing authorities which do not verify graduation from a nursing education program, must assure that a final transcript is sent to the board of nursing DIRECTLY from the educational institution or custodian of records verifying graduation from an approved

nursing program or equivalent, or

(3) RN and PN graduates from non-U.S. nursing programs:

(a) may have an evaluation of their nursing education credentials sent to the New Mexico board directly from a board recognized educational credentialing agency or;

(b) may request an official transcript sent to the New Mexico board directly from the non-US nursing program. If the transcript is not in English, a copy of a translated transcript certified by a qualified translator must be sent directly to the New Mexico board.

(4) RN applicants educated in non-U.S. nursing programs may submit a copy, certified by a notary, of the commission of graduates of foreign nursing school's (CGFNS) examination certificate in lieu of an evaluation of their educational credentials. Puerto Rico applicants who are graduates of NLNAC accredited registered nurse programs are eligible to sit the NCLEX-RN.

~~(5) [Canadian educated RN and LPN applicants who took the Canadian licensing exam (CNATS) in English subsequent to 1970 are eligible for endorsement.]~~

~~(6) [Non Canadian educated applicants who took the Canadian licensing exam (CNATS) in English must submit an official transcript sent directly from their nursing program or the Canadian board to determine if they met requirements of the New Mexico board. If the transcript is not in English, a copy of a translated transcript certified by a qualified translator must be sent directly to the New Mexico board.]~~

(7) (5) Complete and submit the required application for licensure by endorsement in accordance with all instructions, including the required fee.

(8) (6) Complete and submit two full sets of fingerprints, finger print certificate form, the authorization for criminal background check, and the fee in accordance with all instructions found in Subsection B of 16.12.1.10 NMAC.

L. Qualifications for licensure as a RN or PN are pursuant to the nursing practice act.

(1) LPN applicants initially licensed after July 1, 1969 must meet the educational requirements.

(2) Military personnel, licensed as LPNs by successful writing of the national licensing examination prior to July 1, 1977, may be licensed in New Mexico by endorsement providing their DD-214 shows the related civilian occupation to be "LPN."

(3) Continuing education is not required for initial licensure by endorsement. CE requirements must be met at the time of the first renewal.

(4) Disciplinary action taken or

pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.

M. A permit-to-practice may be issued to a New Mexico employer(s), for an endorsee who has not declared primary residence in a nurse licensure compact state awaiting results of the national licensing examination or the English equivalent from another country. The following must be submitted to the board:

(1) a completed endorsement application and fee;

(2) two full sets of fingerprints, fingerprint certification form, the authorization for criminal background check and fee;

(3) written verification must be received DIRECTLY from the licensing authority: (a) that the applicant applied for the licensing examination within twelve (12) weeks of graduation and is eligible for licensure, or (b) that the first licensing examination after completion of nursing education has been applied for or taken;

(4) assure prospective New Mexico employer(s) submits a letter of intent to employ, on agency letterhead, indicating the name of the specific New Mexico employing institution and name and nursing license number of the RN who is responsible for assuring direct supervision by a registered nurse;

(5) meeting all other endorsement requirements;

(6) a permit-to-practice shall be valid from date of issuance until the applicant's examination results and licensure status have been verified by the other state or country, but shall not exceed twenty-four (24) weeks from the date of graduation.

N. A temporary license may be issued to an endorsee upon submission of:

(1) a completed endorsement application and required fee;

(2) two full sets of fingerprints, fingerprint certificate form, the authorization for criminal background check and fee;

(3) the board will issue the temporary license to the applicant;

(4) a temporary license is valid for a period not to exceed six (6) months from the date of application, is non renewable and becomes null and void upon issuance of a current license, expiration, or withdrawal by board action;

(5) applicant is responsible for assuring that all requirements have been met and all documents have been received prior to the expiration date of the temporary license;

(6) the discovery of inaccurate or false information, on the licensure application, may be subject to recall of the temporary license by the board and denial of licensure.

O. An initial license shall be valid for two (2) years.

P. If the licensure process is not completed, the application becomes null and void one (1) year after date of last noted activity.

Q. In case of a medical emergency (as defined in these rules), nurses currently licensed to practice as a RN or LPN in a jurisdiction of the United States may practice in New Mexico without making application for a New Mexico license for a period not to exceed thirty (30) days.

R. Requirements for relicensure. Applicants for relicensure must meet CE requirements as stated in these rules, pursuant to the nursing practice act [Section 61-3-24 NMSA 1978].

(1) Licensed nurses shall be required to complete the renewal process by the end of their renewal month every two (2) years.

(2) A renewal application form shall be mailed to the licensee at least six (6) weeks prior to the end of the renewal month.

(a) The renewal application form may be accepted no more than sixty (60) days prior to the expiration date of the license.

(b) Failure to receive the application for renewal shall not relieve the licensee of the responsibility of renewing the license by the expiration date.

(c) If the license is not renewed by the end of the renewal month, licensee does not hold a valid license and shall not practice nursing in New Mexico until the lapsed licensed has been reactivated.

(d) **Exception:** if renewing, nurses who are mobilized for active duty are not required to renew their license while on active duty, other than training, during a military action. A copy of the mobilization orders must be submitted to the board office prior to expiration of the license. The license extension shall end one month after deployment is concluded. No reactivation fee will be charged when the license is renewed.

(3) Thirty (30) hours of approved CE must be accrued within the 24 months immediately preceding expiration of license.

(a) Certified nurse practitioners must complete a total of 50 hours of approved CE each renewal.

(b) Certified RN anesthetists must submit a copy of the recertification card issued by AANA council on recertification for renewal of the CRNA license.

(c) Clinical nurse specialist must complete a total of 50 hours of approved continuing education each renewal.

(d) **Exception:** if renewing, nurses mobilized for military action are not

required to meet the CE requirements while on active duty, other than training, during a military action. A copy of the mobilization order must be submitted along with the renewal application.

(4) Individuals who reside out-of-state who do not hold primary residence in a nurse licensure compact state, but wish to maintain a current, valid New Mexico license, must meet the same requirements for licensure as licensees residing within the state who have declare New Mexico as their primary residence.

(5) **Penalty:** Failure of licensee to meet the CE requirement for licensure shall result in the license not being renewed, reinstated, or reactivated. When the CE requirement has been met, an application for licensure may be submitted for consideration.

(6) Licenses are issued by mail only.

S. Requirements for reporting lost-stolen licenses/name-address change, and requesting duplicate license.

(1) **Lost/stolen license:** Licensee is required to give immediate, notification to the board office of lost or stolen license.

(2) **Address change:** Immediate notification of address change **must be made**, to the board office.

(3) **Name change:** Nurse must use name as it appears on current license;

(a) duplicate may be requested upon change of name, or;

(b) name may be changed when license is renewed.

(4) Procedure for obtaining a duplicate license.

(a) Submit a written request for a duplicate license including the following information: Licensee's name, date of birth, nursing license number, social security number and address.

(b) Submit a copy of the legal document required for name change (ONLY recorded marriage certificate, divorce decree or court order accepted).

(c) Remit the required fee.

(d) Duplicate license may be reissued, within a given renewal period, ONLY upon return of the previously issued duplicate.

(e) Duplicate licenses are issued by mail only.

T. Reactivation/reinstatement of a lapsed license must meet the requirements for relicensure pursuant to the nursing practice act and these rules. A reactivated or reinstated license shall be valid for two (2) years.

U. Inactive Status. Licensee may request her/his license be placed on inactive status during the renewal cycle only; however, the licensee may not function in a nursing capacity as a New Mexico licensed nurse until the license is

reactivated.

(1) In order to place a license on inactive status, the licensee must, prior to the expiration date of the current license submit a completed renewal form and submit the inactive status fee.

(2) The license may remain in an inactive status indefinitely.

(3) The inactive fee is charged each time inactive status is requested following reactivation of the license.

[1-1-98; 16.12.2.10 NMAC – Rn & A, 16 NMAC 12.2.10, 7-30-01; A, 12-31-01; A, 04-01-02; A, 1-2-04; A, 6-01-04]

NEW MEXICO BOARD OF NURSING

This is an amendment to Section 16.12.3.12 NMAC, effective 06-01-04. This action amends this Section by adding new language due to changes in the role in accordance with the current (NMAC) New Mexico Administrative Code Requirements.

16.12.3.12 MINIMUM STANDARDS FOR NURSING PROGRAMS:

A. Administration and organization.

(1) The nursing education program shall be an integral part of a regionally accredited institution authorized by this state to confer credentials in nursing.

(2) The nursing programs shall have status comparable with other academic units. There shall be an organizational chart which identifies the relationships, within and between the program and other administrative areas of the parent institution.

(3) The administration of the parent institution shall provide adequate financial support for the nursing program.

(4) The parent institution shall designate a qualified, nursing director who is licensed to practice as a registered nurse in New Mexico. The nursing program director shall have responsibility and authority comparable with the administrative position including but not limited to development, implementation, evaluation, administration and organization of the nursing program.

(5) Faculty, administration and students shall have the opportunity to participate in the governance of the nursing program and the parent institution.

B. Curriculum.

(1) The mission of the nursing unit shall be consistent with that of the parent institution.

(2) The curriculum shall be developed, implemented, controlled and evaluated by the faculty within the framework of the mission, goals and outcomes of the nursing program.

(3) The curriculum shall extend over a period of time sufficient to provide essential, sequenced learning experiences which enable a student to develop nursing competence and shall evidence an organized pattern of instruction consistent with principles of learning and educational practice.

(4) Clinical experience shall provide opportunities for application of theory and for achievement of the stated objectives in a client care setting, and shall include clinical learning experience to develop nursing skills required for safe practice. Student/faculty ratio in the clinical setting shall be based upon the level of students, the acuity level of the clients, the characteristics of the practice setting and shall not exceed 8:1. Clinical evaluation tools for evaluation of students progress, performance and learning experiences shall be stated in measurable terms directly related to course objectives.

(5) The curriculum shall provide instruction in the discipline of nursing, appropriate to the RN or PN level, across the lifespan and include content relevant to national and local health care needs. Support courses shall be an integral part of the nursing curriculum.

(6) A plan for curriculum and program evaluation shall be in place.

C. Students: There shall be written policy statements consistent with those of the parent institutions which shall be made available to the student. Students shall be provided with opportunities to participate in the development and revisions of policies and procedures related to students including but not limited to philosophy, objectives, clinical sites, learning experiences, and evaluation of the program.

D. Faculty requirements.

(1) The director of the nursing program and all nursing program faculty shall hold current licenses to practice as registered nurses in New Mexico or in a compact state.

(2) Faculty shall meet the educational requirements of the parent institution and those requirements shall be at least comparable to other faculty members of like status.

(3) Beginning on January 1, 2002, all new nursing program directors and nursing faculty must meet the following requirements:

(a) the director shall hold a graduate degree in nursing;

(b) nursing faculty shall hold a graduate degree in nursing; faculty without a graduate degree may be employed for one year and then are required to complete a graduate degree within the next five years;

(c) nursing faculty who teach part time shall hold a minimum of a bachelors

degree in nursing; faculty without a BSN may be employed for one year and then are required to be enrolled in a BSN completion program;

(4) Personnel policies for nursing faculty shall be the same as those in effect for other faculty with the exception of:

(a) at least 80% of the director's assignment should be administrative; additional administrative time should be given when preparing for accreditation, curriculum revision and other such activities;

(b) nursing faculty workload shall be calculated by teaching clock/contact hour.

E. Resources: The parent institution shall provide sufficient resources, services and facilities to operate the nursing program.

[1-1-98; 16.12.3.12 NMAC - Rn & A, 16 NMAC 12.3.12, 7-30-01; A, 12-31-01; A, 1-2-04; A, 6-01-04]

NEW MEXICO BOARD OF NURSING

This is an amendment to Sections 16.12.7.7 and 16.12.7.16 NMAC, effective 06-01-04. This action amends these Sections by removing unnecessary language and adding new language due to changes in the role in accordance with the current (NMAC) New Mexico Administrative Code Requirements.

16.12.7.7 DEFINITIONS:

A. "Administrator" means the operating officer of an agency.

B. "Board" means the NM board of nursing.

C. "Certified medication aide (CMA)" means a person who under the supervision/direction of a registered nurse, in licensed nursing facilities is permitted to administer medications as outlined in these rules.

D. "Clinical preceptor" means a licensed nurse at each participating nursing facility that is physically present and providing 1:1 direct supervision for the clinical experience.

E. "CMA coordinator" means a designated licensed nurse at each participating nursing facility that is responsible for coordination of the pilot medication aide program at the nursing facility, oversight of the clinical preceptor, liaison with the nurse educator and submission of reports to the nurse educator.

F. "Curriculum" means a detailed course outline, description, or syllabus, which includes objectives, content, teaching-learning activities and evaluation strategies.

G. "Delegation of medication administration" means authorizing and supervising licensed and certified staff

(certified medication aides) in the performance of medication administration.

H. "Medications" means substances intended for use in diagnosis, care, mitigation, treatment or prevention of a disease.

I. "Medication aide program" means the formal program of study, certification, continuing education, standards of functions, disciplinary action, and minimum standards.

J "NPA": means the nursing practice act.

K. "Nurse educator" means a registered nurse who is the pilot program administrator and is developing and teaching the pilot program at the selected site in New Mexico.

L. "Nursing facility" means a facility that serves persons/residents that is licensed as a nursing facility by the department of health ~~and is in substantial compliance therewith.~~

M. "OTC medications" means medications that are purchased over the counter without a prescription. OTC medications must be stored in original manufacturer's packaging and affixed with the original manufacturer's labeling. Physician's orders (see Paragraph 1 of Subsection B of 16.12.5.10. NMAC) with adequate instructions must be obtained prior to the administration of OTC medications by the certified medication aide.

N. "Properly labeled container" means a medication container which includes the name, address and telephone number of the pharmacy, the name of the prescriber, the full name of the resident, the date the order was filled, the brand and generic name of the drug, the dosage of the drug, strength of the drug, lot number, expiration date, adequate instructions for use and cautionary label as necessary.

O. "PRN" means instruction to give a medication as needed. Requires judgment.

P. "Resident" means admitted to and receiving care of treatment in a department of health licensed nursing facility.

Q. "Routine medication" means a medication for which the frequency of administration, amount, strength, and method of administration are specifically fixed as determined by the physician or person authorized to order medications in the state of New Mexico. Routine does not include medications for which the time of administration, the amount, the strength of dosage, the method of administration or the reason for administration is left to judgment or discretion.

R. "Supervision/direction" means initial verification of a person's knowledge and skills in the performance of

a specific functions and/or activity followed by periodic observation, direction and evaluation of that person's knowledge and skills as related to the specific function and/or activity.

S. "ULA" means the Uniform Licensing Act.
[16.12.7.7 NMAC - N, 1-2-04; A, 6-01-04]

16.12.7.16 CHANGES REQUIRING NOTIFICATION TO THE TASK FORCE OR BOARD APPROVAL:

A. Once a trial medication aide pilot program has been granted approval by the board, there shall be no:

- (1) major curriculum changes and/or reorganization of the curriculum;
- (2) major changes in the program's objectives or goals;
- (3) changes in the required didactic and/or clinical hours.

B. Changes requiring notification to the task force and board.

(1) Changes in the internal, administrative or organizational plan of the agency which affects the medication aide pilot program.

(2) Changes in the licensure status of the nursing facility.

(3) Changes in medications aide program faculty.

C. The board shall determine whether a trial pilot program site experiencing any or all of the changes requiring notification may continue to participate in the trail pilot program.

(1) A trial medication aide pilot program site may be asked to cease operation when there is evidence of:

(a) substantial non-compliance with the minimum standards for medication aide pilot programs in this trial;

(b) disruptions in retaining qualified nurse educators and/or clinical preceptors resulting in disorganization of the program and breakdown of supervision and teaching in the program;

(c) failure to ~~remain in substantial compliance with~~ maintain licensure requirements by the department of health; [licensure requirements for past two survey/resurveys; or suspension of licensure;]

(d) non-compliance with the medication aide pilot program's stated philosophy, objectives, policies, and curriculum resulting in unsatisfactory student achievement;

(e) failure to provide clinical experience and/or supervision necessary to achieve the objectives of the medication aide pilot program;

(f) substantial non-compliance with any portion of these rules.

(2) The medication aide pilot program shall be advised, in writing, of the board's decision regarding continuing par-

ticipation in the program.

[16.12.7.16 NMAC - N, 1-2-04; A, 6-01-04]

NEW MEXICO BOARD OF NURSING

This is an amendment to Section 16.12.8.10 NMAC, effective 6-01-04. This action amends this Section by removing unnecessary language and adding new language due to changes in the role in accordance with the current (NMAC) New Mexico Administrative Code Requirements.

16.12.8.10 STANDARDS OF FUNCTIONS FOR THE MEDICATION AIDE:

A. The purpose of this section is to establish standards for the supervision/direction of medication aides; to identify basic functions for the medication aide and to identify prohibited functions for the medication aide.

B. Authorized functions of the medication aide - medication aides who have been certified by the NM board of nursing may, under the supervision/direction of a registered nurse, administer routine medications with the exception of intramuscular, intravenous, ~~[or]~~ subcutaneous, or nasogastric medications.

(1) The medications must have been ordered by a person authorized in this state to prescribe them.

(2) The medications must be prepared by the person who will administer it.

(3) The medication must be removed from a previously dispensed, properly labeled container and verified with the physician's order.

(4) The student's identity must be verified before the medication is administered.

(5) The actual act of swallowing must be witnessed.

(6) The medication must be recorded in the student's chart or medication administration record including: the name of the drug, dose administered, date and time of administration, and any adverse effect of the drug. The person who administers the drug must affix their signature to the chart according to facility policies.

(7) Drug administration errors must immediately be reported to the registered nurse, by the medication aide.

(8) Adverse reactions must immediately be reported to the registered nurse, by the medication aide.

(9) Administer PRN medications only after receiving authorization from an SDE licensed registered nurse to administer the PRN medication. Authorization is required for each individual instance of PRN administration of a medication. In addition, to recording the information

required in Subsection B of paragraph (6) of 16.12.7.10 NMAC, the effectiveness of the drug must also be recorded.

C. Prohibited functions of the medication aide:

(1) shall not administer medication by intramuscular, intravenous or subcutaneous route;

(2) shall not take medication orders;

(3) shall not alter medication dosage as ordered by the prescriber;

(4) shall not perform any function or service for students for which a nursing license is required under the nurse practice act;

(5) shall not administer medication without the supervision/direction of an SDE licensed registered nurse.

D. Supervision/direction.

(1) An SDE licensed registered nurse shall periodically provide supervision/direction to certified medication aides administering medications as follows:

(a) instruction regarding medication, dose, time, route, method of administration, documentation, and resident observation;

(b) a registered nurse shall be available (on call) during school hours to supervise medication aides as needed;

(c) for the first six (6) months after a medication aide begins administering medications, observe at least six (6) separate medication passes for each medication aide, once per month, to ensure that medications are properly prepared and administered, and to verify that medication aides are performing within their scope of practice; after the first six (6) months, the SDE licensed registered nurse must observe each CMA at least once every three (3) months (quarterly); if a medication aide is not administering medications regularly, the nurse must determine an appropriate schedule for observation not to be less than every three (3) months;

(d) develop and institute a yearly performance evaluation of each CMA; the performance evaluation shall be based upon the standards listed in Paragraph 1 of Subsection A of 16.12.7.17 NMAC of these rules; the performance evaluation shall also include a review of the number of medication errors committed by the CMA; the performance evaluation process shall be reviewed and approved by the board.

(2) An SDE licensed registered nurse shall monitor a school's medication aides, not less than once (1) every month to include the following:

(a) review the student's medication record;

(b) review all drug administration errors and incident reports filed since the SDE licensed registered nurse's last review;

(c) review the controlled substance record, if applicable;

(d) meet with each medication aide to review and discuss problems, difficulties, or irregularities in administering medications and to provide appropriate instruction;

(e) meet with the school administrator to report, review, and discuss problems or irregularities occurring in medication administration;

(f) prepare and submit to the school administrator, and the board of nursing, a written, signed report of findings, observations, problems, irregularities, and recommendations in medication administration;

(g) submit a written, signed report of medication errors and other safety violations to the board of nursing and the administrator of the agency;

(h) submit a work schedule for CMAs and the supervising nurse to the board of nursing as requested.

(3) The SDE licensed registered nurse assures the proper procurement, storage, labeling and returning of medication according to school/school district policies and the guidelines established in the New Mexico school health manual.

[16.12.8.10 NMAC - N, 1-2-04; A, 6-01-04]

**NEW MEXICO PUBLIC
REGULATION
DEPARTMENT
INSURANCE DIVISION**

This is an amendment to 13 NMAC 12.3, Sections 1, 5 and 17. This action also renumbers and reformats 13 NMAC 12.3 to 13.12.3 NMAC in accordance with the current New Mexico Administrative Code (NMAC) requirements, effective 5/14/04.

13.12.3.1 ISSUING AGENCY:
New Mexico [~~State Corporation Commission, Department of Insurance, Post Office Box 1269, Santa Fe, NM 87504-1269~~] Public Regulation Commission Insurance Division.
[7/1/97; 13.12.3.1 NMAC - Rn & A, 13 NMAC 12.3.1, 5/14/04]

13.12.3.5 EFFECTIVE DATE:
July 1, 1997, unless a later date is cited at the end of a section [~~or paragraph~~].
[7/1/97; 13.12.3.5 NMAC - Rn & A, 13 NMAC 12.3.5, 5/14/04]

13.12.3.17 CONDITIONS:
A. Policy provisions:
None of the insuring agreements, exclusions or conditions of the policy shall apply to the insurance afforded by this endorsement except the conditions "[*]",

"changes", "assignment", "cancellation" and "declarations".

B. Premium: If during the policy period the number of insured motor vehicles owned by the [*] or spouse or the number of dealer's license plates issued to the [*] changes, the insured shall notify the company during the policy period of any change and the premium shall be adjusted in accordance with the manuals in use by the company. If the earned premium thus computed exceeds the advance premium paid, the insured shall pay the excess to the company; if less, the company shall return to the insured the unearned portion paid by the insured.

C. Proof of claim:

(1) As soon as practicable, the insured or other person making claim shall give to the company written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable under the endorsement. The insured and every other person making a claim under the endorsement shall submit to examinations under oath by any person named by the company and subscribe the same, as often as may reasonably be required. Proof of claim shall be made upon forms furnished by the company unless the company shall have failed to furnish the forms within 15 days after receiving notice of claim.

(2) The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require and he, or in the event of his incapacity his legal representative, or in the event of his death his legal representative or the person or persons entitled to sue on his behalf, shall upon request from the company execute authorization to enable the company to obtain medical reports and copies of records.

(3) The insured or other person making claim for damage to property shall file proof of loss with the company within sixty days after the occurrence of loss, unless such time is extended in writing by the company, in the form of a sworn statement setting forth the interest of the insured and of all others in the property affected, any encumbrances thereon, the actual cash value thereof at time of loss, the amount, place, time and cause of such loss, and the description and amounts of all other insurance covering such property. Upon the company's request, the insured shall exhibit the damaged property to the company.

D. Assistance and cooperation of the insured: After notice of claim under this endorsement, the company may require the insured to take such action as may be necessary or appropriate to preserve his right to recover damages from any

person or organization alleged to be legally responsible for the bodily injury or property damage; and in any action against the company, the company may require the insured to join such person or organization as a party defendant.

E. Notice of legal action:

If, before the company makes payment of loss under the endorsement, the insured or his legal representative shall institute any legal action for bodily injury or property damage against any person or organization legally responsible for the use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to the company by the insured or his legal representative.

F. Limits of liability:

(1) The company's limit of bodily injury liability for all damages, including damages for care and loss of services, arising out of bodily injury sustained by one person in any one accident shall not exceed the amount specified for unknown motorist/uninsured motorist coverage as stated on the declarations page for bodily injury to one person in any one accident. Subject to this provision, the company's limit of liability for all such damages arising out of bodily injury sustained by two or more persons in any one accident shall not exceed the amount specified for unknown motorist/uninsured motorist coverage as stated on the declarations page for bodily injury to two or more persons in any one accident.

(2) The company's limit of property damage liability shall not exceed the amount specified for unknown motorist/uninsured motorist coverage as stated on the declarations page for all damages in excess of \$250 arising out of injury to or destruction of all property of one or more insureds as the result of any one accident.

(3) Any amount payable under this coverage because of bodily injury or property damage sustained in an accident by a person who is an insured under this coverage shall be reduced by:

(a) all sums paid on account of such bodily injury or property damage by or on behalf of the owner or operator of the uninsured motor vehicle and any other person or organization jointly or severally liable together with such owner or operator for such bodily injury or property damage including all sums paid under bodily injury liability;

(b) the amount paid and the present value of all amounts payable on account of such bodily injury under any worker's compensation law, disability benefits law or any similar law;

(c) the amount paid or payable to such an insured under any policy of property insurance.

(4) Any payment made under this endorsement to or for any insured shall be applied in reduction of the amount of damages which he may be entitled to recover from any person insured under the bodily injury liability coverage of the policy.

(5) The company shall not be obligated to pay under this coverage that part of the damages which the insured may be entitled to recover from the owner or operator of an uninsured motor vehicle which represents expenses for medical services paid or payable under the medical payments coverage of the policy.

G. Other insurance:

(1) With respect to bodily injury to an insured while occupying a motor vehicle not owned by the [*], the insurance under this endorsement shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such automobile as primary insurance, and this insurance shall then apply only in the amount by which the limit of liability for this coverage exceeds the applicable limit of liability of the other insurance.

(2) Except as provided in Paragraph (1) of Subsection G of 13.12.3.17 NMAC, if the insured has other similar bodily injury insurance available to him and applicable to the accident, the damages for bodily injury shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and the company shall not be liable for a greater proportion of any loss to which this coverage applies than the limit of liability under this endorsement bears to the sum of the applicable limits of liability of this insurance and the other insurance.

(3) With respect to property damage, the insurance afforded under this endorsement shall be excess insurance over any other valid and collectible insurance against the property damage.

H. Arbitration:

~~(1) Mandatory arbitration: If any person making a claim under this endorsement and the company do not agree that the person is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of bodily injury to the insured or property damage, or do not agree as to the amount payable under the endorsement, then each party shall, upon written demand of either, select a competent and disinterested arbitrator. The two arbitrators so named shall select a third arbitrator, or if unable to agree thereon within 30 days, then upon request of the insured or the company such third arbitrator shall be selected by a judge of a court of~~

~~record in the county and state in which such arbitration is pending. The arbitrators shall then hear and determine the question or questions so in dispute, and the decision in writing of any two arbitrators shall be binding upon the insured and the company, each of whom shall pay his or its chosen arbitrator and shall bear equally the expense of the third arbitrator and all other expenses of the arbitration, provided that attorney fees and fees paid to medical and other expert witnesses are not deemed to be expenses of arbitration but are to be borne by the party incurring them. Unless the parties otherwise agree, the arbitration shall be conducted in the county and state in which the insured resides and in accordance with the usual rules governing procedure and admission of evidence in courts of law.~~

~~(2) Optional arbitration: Upon written demand of the insured, the parties involved may agree to arbitrate any disputed claim in accordance with the rules and regulations now in effect or amended of the American arbitration association. Any rule or regulation of the American arbitration association utilized in any such arbitration must have the prior approval of the superintendent of insurance.]~~

The insured and the company may agree to arbitrate any claim or dispute arising under this endorsement. The arbitration shall comply with applicable law, including Sections 66-5-301 through -303 NMSA 1978 regarding uninsured motorist's insurance and the Uniform Arbitration Act, Sections 44-7A-1 through 44-7A-32 NMSA 1978.

I. Trust agreement:

In the event of payment to any person under this endorsement:

(1) the company shall be entitled to the extent of the payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the person against any person or organization legally responsible for the bodily injury or property damage because of which the payment is made;

(2) the person shall hold in trust for the benefit of the company all rights of recovery which he shall have against such other person or organization because of the damages which are the subject of a claim made under this endorsement;

(3) the person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;

(4) if requested in writing by the company, the person shall take, through any representative designated by the company, action as may be necessary or appropriate to recover the payment as damages from the other person or organization, the action to be taken in the name of the person; in the event of a recovery, the company shall be

reimbursed out of the recovery for expenses, costs and attorneys' fees incurred by it in connection therewith;

(5) the person shall execute and deliver to the company instruments and papers as may be appropriate to secure the rights and obligations of the person and the company established by this provision.

J. Payment of loss by the company: A amount due under this endorsement is payable: (a) to the insured; or (b) if the insured be a minor to his parent or guardian; or (c) if the insured be deceased to his surviving spouse; otherwise (d) to a person authorized by law to receive the payment or to a person legally entitled to recover the damages which the payment represents; provided, the company may at its option pay any amount due under this endorsement in accordance with division (d).

K. Action against company. No action shall lie against the company unless, as a condition precedent thereto, the insured or his legal representative has fully complied with all the terms of this endorsement.

L. Conformity with state statutes. Any provision of this endorsement which on its effective date is in conflict with the statutes of the state of New Mexico is hereby amended to conform to the minimum requirements of the statutes.

[7/1/97; 13.12.3.17 NMAC - Rn & A, 13 NMAC 12.3.17, 5/14/04]

NEW MEXICO RETIREE HEALTH CARE AUTHORITY

This is an amendment to 2.81.6 NMAC, Section 8, effective May 14, 2004.

2.81.6.8 REQUIREMENTS FOR ENROLLMENT IN COVER-

AGES: An eligible retiree, spouse or dependent shall be enrolled pursuant to his/her actual status at the time of enrollment or at any time thereafter when a change in status occurs. A retiree may add eligible dependents at the time of acquiring them. A retiree may enroll himself/herself only, and any eligible dependents, or no eligible dependents. Each such enrollee's status must be the same for all lines of coverage (i.e. single, two party or family). An eligible spouse or dependent of a retiree may not be enrolled unless the eligible retiree is enrolled ~~[provided, however, a]~~, except as otherwise provided by court order pursuant to the Mandatory Medical Support Act (MMSA). A spouse or dependent of a deceased eligible retiree receiving a survivor's pension benefit may enroll separately. Any eligible retiree, spouse or dependent

desiring to enroll for coverages shall meet the following requirements:

A. Spouse and Dependent Enrollment/ Medical Insurability: An eligible retiree, spouse or dependent may enroll without evidence of medical insurability only during an established open enrollment.

B. Eligible Retiree, Spouse, Dependent Change in Status/Enrollment: Where an eligible retiree, spouse or dependent was receiving or eligible to receive group health benefit coverages through a third party and because of a change in status they lose the coverage and become ineligible for the coverage the eligible retiree, spouse or dependent may be enrolled without evidence of medical insurability if enrolled during an established open enrollment period. If the loss of coverage due to the change in status was not caused by any neglect or wrong doing by the eligible retiree, spouse or dependent, they may enroll at any time so long as they do so within 31 calendar days of the change of status. If an eligible retiree is employed by an employer offering its employees a basic plan of benefits, the coverage provided by the NMRHCA plan shall be secondary regardless of whether the retiree enrolls in his employer's plan.

C. Prohibition Against Duplicate Coverage: An eligible retiree, spouse or dependent is prohibited from having duplicate coverage from the NMRHCA for any line of coverage. An eligible retiree, spouse or dependent is also prohibited from having retiree coverage and dependent coverage at the same time from the NMRHCA for any line of coverage.

D. More than One Eligible Retiree in a Family: Where an eligible retiree, spouse or dependent are all three or two of them eligible retirees, either may enroll into coverage as the eligible retiree and the other be treated as an eligible spouse or dependent.

E. Participation Requirements for Eligible Retiree, Spouse or Dependent Enrollment: An eligible retiree, spouse or dependent is not permitted to enroll for a particular line of coverage unless the minimum participation level as determined by the NMRHCA is met.

F. Switching Coverage: The eligible retiree, spouse or dependent shall all select the same line or lines of coverage and shall only be permitted to switch, add or delete coverages during established switch enrollment periods.

G. Dropping Coverage: An eligible retiree, spouse or dependent (except for dental or vision coverages) may drop any line of coverage at any time at their discretion. If they drop a line of cover-

age, they cannot re-enroll except as this rule permits. Members of the same family shall not be allowed to carry different lines of coverage.

H. Dental or Vision/Dropping Coverage: Once enrolled in dental or vision coverages an eligible retiree, spouse or dependent may drop such coverages any time after enrollment. However, once a NMRHCA participant drops dental or vision coverage, that individual may not reenroll in that line of coverage for four years. The four year waiting period does not apply to an involuntary loss of coverage.

I. Proper Documentation: Proper documentation, including evidence of medical insurability where required, must be provided by the eligible retiree, spouse or dependent seeking coverage within thirty-one days of the application for coverage. Coverage may be rejected where adequate proof and documentation satisfactory to the NMRHCA is not submitted in a timely manner. In the event such documentation is not timely submitted, the coverage shall not be effective and any contribution paid by the retiree, spouse or dependent shall be returned without interest.

J. Eligible Spouse Dependent/Open Enrollment: During an established period of open enrollment, eligible spouses and dependents may be enrolled without evidence of medical insurability. A new spouse or newborn dependent of an eligible retiree is eligible for coverage from date of birth or the date of marriage without providing evidence of medical insurability if the eligible retiree or spouse submits the required contribution and proper documentation within 31 calendar days of the birth or marriage. Newly eligible dependents are also eligible for coverage from the date that a court order establishes their dependent status without providing evidence of medical insurability, if the eligible retiree submits the required contribution and proper documentation within 31 calendar days of the court order. In the event they fail to enroll within this period of time, they may not do so without providing evidence of medical insurability unless they subsequently enroll during an established period of open enrollment. Those persons considered to be a new eligible spouse or dependent are persons becoming related to the eligible retiree by marriage, a newborn child, legal guardianship and other similar situations where the spouse or dependent becomes a new family member and is otherwise an eligible spouse or dependent under these rules.

K. Eligible Retiree, Dependent or Spouse/Same Coverage as Eligible Retiree: The eligible spouse or

dependent has no greater coverage than the eligible retiree participant and the eligible spouse or dependent can maintain coverage only to the extent that the eligible retiree participant maintains his/her coverage.

L. Re-enrollment of Eligible Dependent Student: In those situations in which the eligible retiree maintains dependent coverage on an eligible dependent child under Section 4.F.3. of the Act and the child student loses coverage because the child no longer qualifies as a full time student and at some later time the child again becomes a full time student and the student otherwise qualifies as an eligible dependent, the child may re-enroll at a time other than during an established period of open enrollment as an eligible dependent, without evidence of medical insurability if notification and proper documentation is provided within 31 days of the change in status.

M. Certificate of Eligibility: On certification by the executive director of the public schools insurance authority, the executive director the public employees retirement association, the executive director of the educational retirement association or the certifying official designated by board rule of an independent public employer or other public entity, eligible retirees, spouses and dependents will be permitted to enroll in coverages within 31 days without proof of medical insurability. Certification shall be on a form approved by the executive director of the NMRHCA.

N. Retirement Documentation: Employees contemplating retirement are responsible for submitting documentation prior to retirement so as to assure no break in coverage occurs.

O. Prohibition of Split Coverages: Retirees who have spouses who are employed by employers who offer or provide an employer benefits plan may choose to be covered by the spouses employers' plan of benefits or the retiree may choose to be covered by the plan of benefits offered by the NMRHCA. Provided, however, the entire family shall be required to select to be covered under either the NMRHCA or the spouse employer. Any responsibility for continued coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) shall be the responsibility of either the NMRHCA or the spouse employer coverage selected.

P. Coverage After Marriage Dissolution: Where there is a dissolution of a marriage by decree which results in either the former spouse no longer being eligible for coverage, the spouse shall be eligible only for such continuation of coverage as is required by COBRA.

[6-15-98; 2.81.6.8 NMAC - Rn, 2 NMAC

81.6.8, 12-30-02; A, 05-14-04]

**NEW MEXICO RETIREE
HEALTH CARE
AUTHORITY**

This is an amendment to 2.81.8 NMAC, Sections 5, 10, & 11, effective May 14, 2004. This regulation was also renumbered and reformatted to comply with current NMAC requirements.

2.81.8.5 EFFECTIVE DATE:
June 15, 1998, [~~unless a different date is cited at the end of a paragraph~~] unless a later date is cited at the end of a section.
[12-31-96, 6-15-98; 2.81.8.5 NMAC - Rn & A, 2 NMAC 81.8.5, 05-14-04]

2.81.8.10 INDEPENDENT PUBLIC EMPLOYERS PETITIONING AFTER DECEMBER 31, 1997, REQUIRED TO MAKE SIX MONTHS OF APPROPRIATE EMPLOYER/EMPLOYEE CONTRIBUTIONS BEFORE ELIGIBLE FOR NMRHCA PARTICIPATION: An independent public employer that chooses to become a participating employer after December 31, 1997, shall submit their opt-in ordinance or opt-in resolution to the NMRHCA board prior to the board's [~~annual~~] semi-annual review meeting. Following acceptance by the NMRHCA board, the employer shall begin making employer and employee contributions to the fund in an amount determined to be appropriate by the NMRHCA board on the January 1 or July 1, immediately following the adoption of the ordinance or resolution. On the following January 1 or July 1, eligible retirees of those participating employers and their eligible dependents shall be eligible to receive group health insurance coverage pursuant to the provisions of the Retiree Health Care Act.

[6-5-90, 12-31-96, 6-15-98; 2.81.8.10 NMAC - Rn & A, 2 NMAC 81.8.10, 05-14-04]

2.81.8.11 NMRHCA BOARD ANNUAL REVIEW MEETING: [~~Once~~] Twice a year, at the NMRHCA board's regularly-scheduled June [~~meeting~~] and December meetings the board will review the ordinances and resolutions of eligible employers who are seeking NMRHCA participation and accept those employers who have met the requirements of the Retiree Health Care Act and the NMRHCA board's rules and regulations. The board in its discretion may reschedule [~~this meeting~~] these meetings.

12-31-96; 2.81.8.11 NMAC - Rn & A, 2 NMAC 81.8.11, 05-14-04]

End of Adopted Rules Section

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Other Material Related to Administrative Law

**NEW MEXICO
COMMISSION OF
PUBLIC RECORDS
HISTORICAL RECORDS
ADVISORY BOARD****NOTICE OF REGULAR MEETING**

“A regular meeting of the New Mexico Historical Records Advisory Board has been scheduled for Friday, May 21, 2004 at 9:00 A.M. The meeting will be held at the New Mexico State Records Center & Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Darlene Torres at the State Records Center and Archives at least one week prior to the meeting, or as soon as possible. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact Darlene Torres at the State Records Center and Archives if a summary or other type of accessible format is needed.

A copy of the proposed agenda may be obtained at the State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505.

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2004

Volume XV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 30
Issue Number 3	February 2	February 13
Issue Number 4	February 16	February 27
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	August 2	August 13
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 14
Issue Number 20	October 15	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 30

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. 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. For further subscription information, call 505-476-7907.