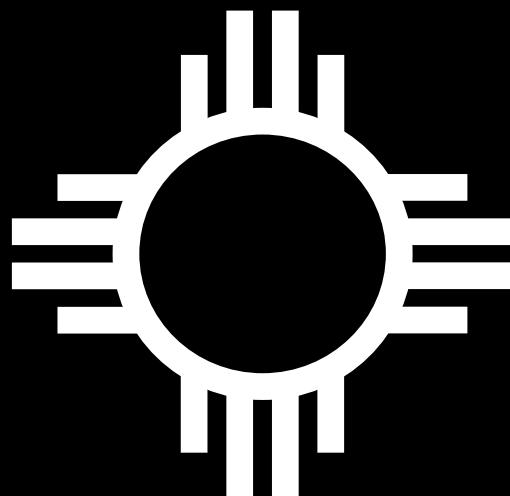


**NEW  
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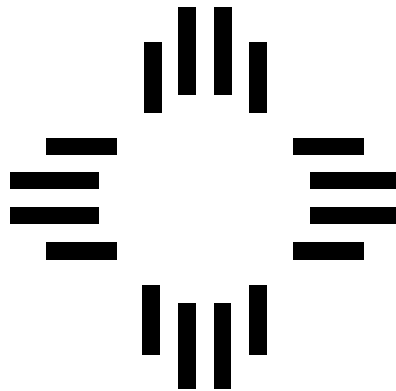


Volume XV  
Issue Number 14  
July 30, 2004



# **New Mexico Register**

**Volume XV, Issue Number 14**  
**July 30, 2004**



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

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Administrative Law Division  
Santa Fe, New Mexico  
2004

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# New Mexico Register

Volume XV, Number 14

July 30, 2004

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#### Effective Date and Validity of Rule Filings

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

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

#### PUBLIC RULE HEARING & REGULAR MEETING NOTICE

The New Mexico Board of Acupuncture and Oriental Medicine will convene a public rule hearing on Wednesday, September 8, 2004. The hearing will begin at 9 a.m. at the State Capitol Building, 3rd Floor, Room 303 in Santa Fe, New Mexico. The purpose of the rule hearing is to hear public testimony and comments regarding the proposed amendments and/or repeals and replacements to the rules and regulations: PART 1 General Provisions, PART 2 Scope of Practice, PART 3 Application for Licensure, PART 4 Examinations, PART 5 Temporary Licensing, PART 6 Reciprocal Licensing, PART 7 Approval of Educational Programs, PART 8 License Renewal, PART 9 Continuing Education, PART 10 Fees, PART 11 Licensee Business Offices and Administrative Requirements; PART 12 Grounds for Denial, Suspension or Revocation of License; PART 13 Complaint and Disciplinary Proceedings; PART 14 Externship Certification and new rule PART 15 Inactive Status; New PART 16 Auricular Detoxification and PART 17 Licensure by Endorsement.

A board meeting will follow the hearing. The board may go into executive session to discuss pending litigation, personnel or licensee matters. A final agenda for the board meeting will be available at the board office on September 7, 2004. Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m. on August 25, 2004, to the board office, P.O. Box 25101, Santa Fe, NM, 87504. Copies of the proposed rule changes are available on through the board office and on the Board's website which is [www.rld.state.nm.us/b&c/acupuncture](http://www.rld.state.nm.us/b&c/acupuncture) (click on the "News" link).

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the board administrator at 476-4627 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the board administrator if a summary or other type of accessible format is needed.

### NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

New Mexico Board of Examiners for  
Architects

PO Box 509  
Santa Fe, NM  
505-827-6375

#### Regular Meeting and Public Rules Hearing

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, August 6, 2004. The meeting will be held in the Conference Room of the Board office, Lamy Building, 491 Old Santa Fe Trail, beginning at 9:00 a.m. A public rules hearing will also be held to amend architectural rules. Content includes board responsibilities, ARE examination, continuing education, code of conduct and practice standards, and settlement agreements. Proposed rules are available on the board's web site [www.nmbea.org](http://www.nmbea.org) or at the Board office.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 827-6375 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

### THE NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### THE NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NOTICE OF PUBLIC HEARING — AIR QUALITY REGULATIONS

The New Mexico Environmental Improvement Board will hold a public hearing on October 5, 2004 beginning at 9:30 a.m. at the Dona Ana County Health Services Center, Room 1101, 1170 N. Solano, Las Cruces, New Mexico. Contact Geraldine Madrid-Chavez (505) 827-2425 for a copy of the proposed agenda, which will be available after September 24, 2004, at the Environment Improvement Board's

office, Room N-2153, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502.

The Board will hold a public hearing to consider proposed revisions to 20.2.73 NMAC - Notice of Intent and Emissions Inventory Requirements. The proposed revisions to Part 2.73 will allow the New Mexico Environment Department to meet U.S. Environmental Protection Agency (EPA) emissions inventory requirements under the Consolidated Emissions Reporting Rule and the National Emissions Inventory Input Format. In addition, the revisions will allow the Department to collect more specific data regarding Hazardous Air Pollutants, and will correct a typographical error. The proposed amendments can be found on the Department's web-site at [nmenv.state.nm.us/aqb/prop\\_regs.html](http://nmenv.state.nm.us/aqb/prop_regs.html). You may also contact Geraldine Madrid-Chavez (505) 827-2425 for a copy of the proposed regulations and concerning questions about this hearing.

The hearing will be conducted in accordance with the Environmental Improvement Board's Rulemaking Procedures, 20 NMAC 1.1, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, and other specific statutory procedures that may apply.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons desiring to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

Identify the party of whom the witnesses will testify;

Identify each technical witness the party intends to present and state the qualifications of that witness, including a description of their educational and work background;

Summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony;

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

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

The deadline for the notice of intent to present technical testimony is September 24,

2004. Notices of intent must be filed in the office of the Board and should state the date and title of the hearing, and the case number. Any person who wishes to submit a non-technical written statement in lieu of oral testimony may do so at or before the hearing without a prior filing.

The Board may reconvene a meeting at the end of the hearing to take action on the proposal.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Judy Bentley by September 24, 2004 at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-9872 (TDD or TDY users please access her number via the New Mexico Relay Network. Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

ss/ Ms. Gay Dillingham, Chair

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE CONVENIENCE STORE RULE IN TITLE 11, CHAPTER 5, PART 6 OF THE NEW MEXICO ADMINISTRATIVE CODE.

The New Mexico Environmental Improvement Board (Board) will hold a public hearing on September 7 and 8, 2004 at 9:30 a.m. at the New Mexico State Capitol Building, Room 317, at the corner of Don Gaspar and Paseo de Peralta, Santa Fe, New Mexico. The purpose of the hearing is to consider amendments to the Convenience Store rule in the Occupational Health and Safety Regulations, 11.5.6 NMAC. The New Mexico Environment Department is the proponent of these amendments. The Board will also consider lifting the stay of certain provisions of the current Convenience Store rule that it granted by order on June 11, 2004. The hearing will address only the proposed amendments to the Convenience Store rule, issues related to the proposed amendments raised by the general public, the related amendments to the Occupational Health and Safety rules described below, and the lifting of the partial stay. The Board will not take comments, testimony or evidence on other provisions of the Convenience Store rule or the

Occupational Health and Safety rules at this hearing.

The Department is proposing to amend the following provisions of the Convenience Store rule:

**11.5.6.7 (D) Definition of Convenience Store** – the Department proposes to amend the definition to exclude businesses that operate primarily as hotels, taverns, lodging facilities, restaurants, stores that sell prescription drugs, gasoline service stations, grocery stores, supermarkets, and businesses that have more than 10,000 square feet of retail floor space.

**11.5.6.7 (E) “Convenience goods”** – the Department proposes to add a definition of convenience goods to the rule.

**11.5.6.8 (B) Employee training** – the Department proposes to change employees’ periodic review of the written training curriculum and site-specific safety issues from every three months to every four months. In addition, employers will be allowed to keep employee training documentation outside of the store premises, but must make the documentation available within 48 hours of a Department representative’s request.

**11.5.6.8 (C) Late night security measures** – the rule currently requires stores operating between the hours of 5:00 p.m. and 5:00 a.m. to implement at least one of five late night security measures. The Department proposes to amend this provision so that the applicable late night security measures would only apply to stores operating between 11:00 p.m. and 5:00 a.m.

**11.5.6.8 (E) Security Surveillance System** – the Department proposes to remove from the rule provisions for exterior video surveillance. In addition, employers would be allowed to keep equipment maintenance documentation outside the store premises, but must make the documentation available within 48 hours of a Department representative’s request.

**11.5.6.8 (F) Security Alarm System** – the Department proposes to allow employers to keep equipment maintenance documentation outside the store premises, but make the documentation available within 48 hours of a Department representative’s request.

**11.5.6.8 (G) Depository or Time lock safe** – the Department proposes to allow employers to keep the required depository or time lock safe in an office adjacent to the service counter area, as well as in the service counter area. In addition, employers would be allowed to keep equipment maintenance documentation outside the store premises, but must make the documentation available within 48 hours of a Department representative’s request.

**11.5.6.8 (H) Cash Management** – the Department proposes to raise the cash limit

in cash registers from 50 dollars to 100 dollars.

**11.5.6.8 (I) Required Signs** – the Department proposes to change the requirement that stores have a sign stating there is no more than 50 dollars in the cash register to no more than 100 dollars in the cash register.

**11.5.6.8 (J) Pay Phones** – the Department propose to remove the pay phone provision entirely.

Additionally, the Department proposes to amend sections 11.5.1.7, 13, 14, 15, 18, 19, and 23 of the New Mexico Administrative Code, Occupational Health and Safety regulations, so that those provisions will include references to the new Part 6.

Please note, formatting changes to the regulations may occur. In addition, the Board may make other amendments as necessary to accomplish the purpose of providing safety and security for Convenience Store employees.

The proposed amendments and the Board’s order for a partial stay may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2150 Santa Fe, NM, 87505. Copies of the proposed amendments to the rule may be obtained by contacting Geraldine Madrid-Chavez at (505) 827-2425 or by email at [Geraldine\\_Chavez@nmenv.state.nm.us](mailto:Geraldine_Chavez@nmenv.state.nm.us). Please refer to Docket No. EIB 03-12. The proposed amendments to the rule can also be found on the New Mexico Environment Department website at <http://www.nmenv.state.nm.us> and at [http://www.nmenv.state.nm.us/Ohsb\\_Website/ohsb\\_home.htm](http://www.nmenv.state.nm.us/Ohsb_Website/ohsb_home.htm). Written comments regarding the new regulations may be addressed to Ms. Madrid-Chavez at the above address, and should reference docket number EIB 03-12.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, and other applicable procedures.

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

Persons wishing to present technical testi-



mony must file with the Board a written notice of intent to do so. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and
- attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on August 27, 2004, and should reference the name of the regulation, the date of the hearing, and docket number EIB 03-12. Notices of intent to present technical testimony should be submitted to:

Geraldine Madrid-Chavez  
Office of the Environmental Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr., Room N-2150  
Santa Fe, NM 87502

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by September 3, 2004. The Personnel Services Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-2844. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

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

**NEW MEXICO COMMISSION ON HIGHER EDUCATION**

**NOTICE OF PROPOSED RULEMAKING**

The New Mexico Commission on Higher Education ("Commission") will convene on Thursday, August 19, 2004. Final actions on the proposed rulemaking will be taken at the regular meeting of the Commission on Thursday, August 19, 2004, which will be held in Silver City, New Mexico at Western New Mexico University, Global Resource Center Auditorium. Information regarding the location of the meetings, the addition or change of meeting days, and the agenda for the meeting, will be available at least twenty-four hours prior to the meeting from the Commission staff at 505-476-6500. The Commission may consider the following items of rulemaking at the meeting:

Rule Number	Rule Name	Proposed Action
5.3.12.8 Subsection F NMAC	GEOGRAPHIC SERVICE AREA:	Amend rule
5.3.12.9 Subsection C NMAC	Boundaries of a campus: Service Areas - Enabled	Amend rule

A public hearing on the proposed rulemaking will be held on Thursday, August 19, 2004, in Silver City, New Mexico, at a time and place to be determined at least ten days before. Please contact the Commission at 505-476-6500 for additional information.

Copies of the proposed rule changes identified with (#) may be obtained from the Commission. Written comments concerning the rules identified with (#) should be submitted to Guy Jacobus, Research Analyst, 1068 Cerrillos Road, Santa Fe, NM 87505, by facsimile at (505) 476-6511, or via electronic mail at [gjacobus@che.state.nm.us](mailto:gjacobus@che.state.nm.us). Comments will be accepted until 5 p.m. on August 17, 2004; however, submission of written comments as soon as possible is encouraged.

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, please contact the Commission at (505) 476-6500 at least one week prior to the meeting, or as soon as possible.

Comments, questions, or requests for copies of the Agenda should be directed to the Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, NM 87505, Tel. 505-476-6500

**NEW MEXICO COMMISSION ON HIGHER EDUCATION**

**NOTICE OF PROPOSED RULEMAKING**

The New Mexico Commission on Higher Education ("Commission") will convene on Wednesday, August 18, 2004 and Thursday, August 19, 2004. Final actions on the proposed rulemaking will be taken at the regular meeting of the Commission on Thursday, August 19, 2004, which will be held in Silver City, New Mexico at New Mexico State University. Information regarding the location of the meetings, the addition or change of meeting days, and the agenda for the meeting, will be available at least twenty-four hours prior to the meeting from the Commission staff at 505-476-6500. The Commission may consider the following item of rulemaking at the meeting:

Rule Number	Rule Name	Proposed Action
5.3.13 NMAC	ALLOCATION AND DISTRIBUTION OF THE ADULT BASIC EDUCATION FUND ACT	Amend # 5.3.13

A public hearing on the proposed rulemaking will be held on Thursday, August 19, 2004, in Silver City, at a time and place to be determined at least ten days before. Please contact the Commission at 505-476-6500 for additional information.

Copies of the proposed rule changes identified with (# 5.3.13) may be obtained from the

Commission. Written comments concerning the rules identified with (# 5.3.13) should be submitted to Pamela Etre-Perez, State Director for Adult Basic Education, 1068 Cerrillos Road, Santa Fe, NM 87505, by facsimile at (505) 476-6511, or via electronic mail at pperez@che.state.nm.us. Comments will be accepted until 5 p.m. on August 17, 2004; however, submission of written comments as soon as possible is encouraged.

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, please contact the Commission at (505) 476-6500 at least one week prior to the meeting, or as soon as possible.

Comments, questions, or requests for copies of the Agenda should be directed to the Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, NM 87505, Tel. 505-476-6500.

**NEW MEXICO STATE PERSONNEL BOARD**

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Santa Fe, New Mexico on Friday September 10, 2004. The meeting will be held beginning at 9:00 a.m., located at the Leo Griego Auditorium in the Willie Ortiz Building (State Personnel Office) at 2600 Cerrillos Road, Santa Fe, New Mexico, 87503.

The purpose of the Rule Hearing is to consider amending general furlough, reduction in force, reemployment, particularly involuntary or voluntary separation.

A final agenda for the board meeting will be available at the board office on Tuesday August 31, 2004.

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m. Monday, August 30, 2004 to the board office, PO Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico, 87503, attention, Sandra Perez. Copies of the proposed rules are available on request from the Board office at the address listed above, by phone (505) 476-7805, or on the Internet at [www.state.nm.us/spo/](http://www.state.nm.us/spo/) beginning July 31, 2004.

If you are an individual with a disability who is in need of a reader, ampli-

fier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please contact the Director at 2600 Cerrillos Road, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Director if a summary or other type of accessible format is needed.

**NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS**

**Legal Notice**

Notice is hereby given that the New Mexico Board of Psychologist Examiners will convene a Rule Hearing to adopt the following rules:

- \* Amend Part 1
- \* Reserved Part 14-19; and
- \* add the rules and regulations listed below:

Title 16, Chapter 22, Part 20 Psychologist With Conditional Prescription Certificate or Prescription Certificate - Health Care Practitioner Collaboration Guidelines.

Title 16, Chapter 22 Part 21 Limits of Practice

Title 16, Chapter 22 Part 22 Psychopharmacology Application Committee

Title 16, Chapter 22 Part 23 Requirements for Program For Education for Conditional Prescription Certificate

Title 16, Chapter 22 Part 24 Application Procedures and Prescribing Practices for Conditional Prescription certificate: Two Years Supervised Practice

Title 16, Chapter 22 Part 25 Application for Prescription Certificate: Peer Review

Title 16, Chapter 22 Part 26 Graduates Of the Department Of Defense Psychopharmacology Demonstration Project

Title 16, Chapter 22 Part 27 Formulary

Title 16, Chapter 22 Part 28 Complaint Procedures

Title 16, Chapter 22 Part 29 Continuing Professional Education and Certificate Renewal

The Rule Hearing will be held at the Las Cruces City Hall, Council Chambers, 200 N. Church, Las Cruces, New Mexico on September 10, 2004 at 9:00 a.m.

A second Rule Hearing will be held at the University of Phoenix, 7471 Pan American Freeway NE, Journal Center, Rooms 101 and 102, Albuquerque New Mexico at 9:00

a.m.

Immediately following the Rule Hearing the New Mexico Board of Psychologist Examiners will convene a regular meeting. The Board will consider adoption of the rules at that meeting.

Copies of the proposed rules are available on request from the Board office, P. O. Box 25101, Santa Fe, New Mexico, 87504-5101, telephone (505) 476-4657 or 476-4607 and the Board's website at [www.rld.state.nm.us](http://www.rld.state.nm.us).

Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by September 3, 2004 to allow time for distribution to the Board members.

Copies of the agenda will be available 24 hours in advance of the meeting from the Board office.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations for their disabilities should contact the Board office at (505) 476-4657, no later than September 3, 2004.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

<b>IN THE MATTER</b>	)	
<b>OF THE ADOPTION</b>	)	
<b>OF A RULE</b>	)	
<b>REGARDING</b>	)	<b>Docket No.</b>
<b>PIPELINE</b>	)	<b>04-00231-PL</b>
<b>SAFETY FEES</b>	)	

**NOTICE OF PROPOSED RULEMAKING AND PROCEDURAL ORDER**

**NOTICE IS HEREBY GIVEN** that the New Mexico Public Regulation Commission ("Commission") proposes to adopt a new rule regarding pipeline safety fees. Staff has prepared a comment draft of the proposed rule which is attached as Attachment "A". The Commission, having considered the attached draft rule, and being otherwise fully advised, **FINDS and CONCLUDES:**

1. NMSA 1978, Section 8-8-4(B)(10) authorizes the Commission to

"adopt such reasonable regulatory and procedural rule as may be necessary or appropriate to carry out its powers and duties."

2. NMSA 1978, Section 70-3-13(B) authorizes the Commission to "promulgate, amend, enforce and repeal reasonable regulations establishing minimum safety standards for the transportation of oil and gas, and for the design, installation, inspection, testing, construction, extension, operation, replacement and maintenance of oil or gas pipeline facilities."

3. Laws 2004, Chapter 80 Section 1(A) creates the Pipeline Safety Fund and authorizes the Commission to impose pipeline safety fees for the purpose of enhancing the staffing and training of the Commission's Pipeline Safety Bureau. The Commission proposes a new pipeline safety fees rule. The rule would implement Laws 2004, Chapter 80, Section 1(A), which allows the Commission to collect annual pipeline safety fees from persons subject to the Pipeline Safety Act for the duties relating to the inspection of intrastate pipelines.

5. The Commission finds that it should consider adopting a new pipeline safety fees rule.

6. The Commission will take written comments on the proposed rule from any person wishing to comment. Interested persons shall file their written comments no later than September 1, 2004. Any person wishing to respond to comments may do so by submitting written response comments no later than September 8, 2004. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be in legislative format. Copies of the proposed rule in electronic format may be obtained from the Commission's web site ([www.nmprc.state.nm.us](http://www.nmprc.state.nm.us)) to facilitate this requirement. Any proposed changes to Attachment "A" 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 2000 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 rule, shall bear the caption and docket number contained at the top of this Notice.

7. Comments on the proposed Pipeline Safety Fees rule shall be sent to Ms. Bettie Cordova at the address listed below. Additional copies of the proposed

rule may also be downloaded from the Commission's web site under "NMPRC Proceedings" or obtained from Ms. Bettie Cordova at the address listed below:

Bettie Cordova  
ATTN: Proposed Rule in Docket  
No. 04-00231-PL  
New Mexico Public Regulation  
Commission

PO Box 1269  
Santa Fe, NM 87504  
Telephone: (505) 827-4526

8. The Commission will review all timely submitted written comments and will hold a public hearing to take oral comments regarding the proposed rule. A public hearing will be held on Wednesday September 8, 2004, at 10:00 a.m. in the at the P.E.R.A. Building, 4th floor hearing room, 500 Old Santa Fe Trail, Santa Fe, New Mexico. Another public hearing will be held on Wednesday August 11, 2004 at 1:30 p.m. at the Vincent E. Griego Council Chambers, 1 Civic Plaza NW, Albuquerque, New Mexico. Also, a public hearing will be held on Tuesday August 3, 2004, at 4:30 p.m. in the Hobbs City Council Meeting Room A, 300 N. Turner, Hobbs, New Mexico. A public hearing also will be held on Monday August 2, 2004 at 4:30 p.m. in the Branigan Library, Dresp Conference Room, 200 E. Picacho, Las Cruces, New Mexico. Additional public hearings may be scheduled. Further notice will be issued regarding the time and location of any additional hearings that may be scheduled.

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

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

11. Copies of this notice shall be sent to all persons on the Pipeline List and to any other person requesting service, and shall be published in two newspapers of general circulation in the state and in the New Mexico Register.

#### **IT IS THEREFORE ORDERED:**

A. The pipeline safety fees rule attached to this notice as Attachment "A" is proposed for adoption as a permanent rule as provided by this Notice.

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

C. A public hearing shall be held as provided in this notice. Staff of the Transportation Division shall mail a copy of this notice to all persons on the Pipeline mailing list and to any other person requesting service. Staff shall cause this notice to be published, without Attachment "A", in

two newspapers of general circulation in New Mexico and in the New Mexico Register, and shall provide the notice by e-mail or by facsimile transmission to any persons who request it.

D. This notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 16th day of July 2004.

#### **NEW MEXICO PUBLIC REGULATION COMMISSION**

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**HERB H. HUGHES,**  
**CHAIRMAN**

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**DAVID W. KING,**  
**VICE-CHAIRMAN**

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**JEROME D. BLOCK,**  
**COMMISSIONER**

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**LYNDA M. LOVEJOY,**  
**COMMISSIONER**

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**E. SHIRLEY BACA,**  
**COMMISSIONER**

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### **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

#### **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

#### **NOTICE OF HEARING AND PROPOSED RULES**

The Department proposes to adopt the following regulations:

- 3.1.2.8 NMAC Section 9-11-6.2  
NMSA 1978 Taxation and Revenue  
Department Act  
*(Rulings - General)*
- 3.2.213.9 NMAC Section 7-9-55 NMSA  
1978 Gross Receipts and  
Compensating Tax Act  
*(Broadcasting and Related Advertising)*
- 3.6.5.33 NMAC Section 7-36-26 NMSA  
1978 Property Tax Code  
*(Special Method of Valuation -  
Manufactured Homes)*

The proposals were placed on file in the Office of the Secretary on July 9, 2004. Pursuant to Section 9-11-6.2 NMSA 1978

of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about September 30, 2004.

A public hearing will be held on the proposals on Thursday, September 2, 2004, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before September 2, 2004.

### 3.1.2.8 RULINGS - GENERAL:

A. Persons may request a ruling from the secretary for clarification of the consequences of a specified set of circumstances or interpretation of any statute the administration or enforcement of which is charges to the taxation and revenue department. The request must be in writing. The department may require the requester to state whether the requester is under audit by the department, has an outstanding assessment related to the subject matter of the request or is involved in a protest or litigation with the department over the subject matter of the request. The secretary's ruling will be in writing addressed to the requesting party with an assigned ruling number, signed by the secretary and by counsel to show that it has been reviewed by the attorney general or other legal counsel of the department.

B. In a proceeding pursuant to the Tax Administration Act, the department shall be estopped pursuant to Section 7-1-60 NMSA 1978 from obtaining or withholding the relief requested if it is shown by the party adverse to the department that the party's action or inaction subject to dispute was in accordance with any ruling addressed to the party by the secretary, unless the ruling had been rendered invalid or had been superseded by legislation, a court decision of the district court or appellate courts, by regulation or by another ruling addressed to the party at the time the asserted liability for tax arose.

C. A person or persons requesting a ruling from the secretary must be subject to the statute for which an interpretation is requested or to which the set of circumstances relate. In particular the requester must be a taxpayer as defined in Section 7-1-3 NMSA 1978 for taxes and tax

acts covered by the Tax Administration Act. A representative, such as an accountant or attorney, of the requester may request the ruling on behalf of the requester but must disclose the name of the requester. The secretary will not issue a ruling addressed to the requester's representative, whether or not the name of the requester is disclosed. A copy of a ruling addressed to the requester will be sent to a requester's representative when requested.

D. The secretary may modify or withdraw any previously issued ruling ~~[and shall withdraw or modify any ruling when subsequent legislation, regulations, final court decision or other rulings have invalidated a ruling or portions of a ruling]~~ at any time. The department is estopped for periods up to the date of the withdrawal or modification.

E. ~~[Although the secretary is not required by statute to issue a ruling even if the request is in proper form, every ruling request shall be given careful and diligent consideration.]~~ A change in the law or material facts automatically invalidates a previously issued ruling as of the date of the change. A change in law includes:

- (1) a change in the applicable statute or the enactment of subsequent legislation;
- (2) a final decision of the appellate court or of the supreme court;
- (3) the issuance or modification of regulations; or
- (4) the issuance of a letter ruling, notice, or other statement published by the department.

F. The secretary may not issue letter rulings in the following circumstances:

- (1) when the ruling request involves an issue under audit or in litigation;
- (2) whether a proposed transaction would subject a taxpayer to criminal penalties;
- (3) if the request involves the state tax consequences of proposed federal, state, local, municipal, or foreign legislation;
- (4) when the request is made by members of business, trade or industrial associations or by similar groups and concerns the application of state tax laws to the group or association. The department may issue letter rulings to groups or associations on their own tax status or liability;
- (5) when an issue is clearly and adequately addressed by statute, regulations or decisions of a court;
- (6) if the ruling request involves the state tax treatment on alternative plans or proposed transactions or hypothetical situations;
- (7) situations where the requested ruling deals with only part of an

integrated transaction or involves multi-part questions:

(8) if the ruling request involves the tax effect of any transaction to be consummated at some indefinite future time;

(9) when the nature of the problem involved is too fact specific;

(10) when the issue is frivolous;

or  
(11) when the request presents a substantial or predominate question of law other than the Tax Administration Act or those programs administered under the Tax Administration Act.

### 3.2.213.9 BROADCASTING AND RELATED ADVERTISING

A. **Microwave carriers:** The receipts of a microwave carrier from relaying television signals for another party for a fee from a point of origin outside this state to a point of destination within this state may be deducted from gross receipts even though a portion of those receipts is derived from relaying the signals between towers located within New Mexico.

B. **Satellite television and radio providers:** Notwithstanding Subsection A, the receipts from New Mexico subscribers to satellite television or radio services are receipts from the sale of a license and not receipts from the sale of an out-of-state service. Such receipts of a satellite television or radio provider are subject to gross receipts tax and are not deductible under Section 7-9-55 NMSA 1978.

~~[B-] C. Deduction available to broadcaster and advertising agency:~~ A New Mexico radio or television broadcaster may deduct from its gross receipts the receipts derived from the sale of broadcast time which is sold either directly to a national or regional seller or advertiser not having its principal place of business in or being incorporated under the laws of New Mexico, or to an advertising agency which purchases the broadcast time on behalf of, or for subsequent sale to, such national or regional seller or advertiser. No nontaxable transaction certificate is required. If the advertising agency subsequently sells the broadcast time to a New Mexico seller or advertiser, however, compensating tax will be due on the value of the broadcast time.

~~[C-] D. Sales of broadcast time:~~ Receipts from sales of broadcast time by New Mexico radio and television broadcasters to advertising agencies are subject to gross receipts tax, but may be deductible under Section 7-9-48 NMSA 1978 or Section 7-9-55 NMSA 1978.

~~[D-] E. Cable television systems:~~ Cable television systems are eligible for the deduction provided by Section 7-9-55 NMSA 1978 for receipts from the sale of broadcast time to a national or regional

advertiser.

**3.6.5.33 SPECIAL METHOD OF VALUATION - MANUFACTURED HOMES**

**A. MANUFACTURED HOMES - REPORTING FORM:**

(1) The information specified below is required to be furnished by manufactured home owners in reporting manufactured homes pursuant to Section 7-36-26 NMSA 1978.

(a) owner's name and mailing address;

(b) location of manufactured home, including the county and school district;

(c) name of the manufacturer;

(d) model, year and serial number of the manufacturer;

(e) size and number of axles of manufactured home;

(f) state registration number;

(g) number, if any, assigned for property tax purposes;

(h) date of purchase;

(i) price paid;

(j) whether the manufactured home acquired was new or used;

(k) whether the manufactured home is occupied by the owner or a tenant;

(l) if rented, the amount of the monthly rent.

(2) The report must be signed by the owner or the owner's authorized representative. Forms containing this information and approved by the director may be used.

**B. MANUFACTURED HOMES - VALUATION METHOD:** The phrase "initial costs" refers to the fair market value at the time of acquisition of a used manufactured home or the acquisition cost of a new manufactured home. Manufactured homes are classified and valued in accordance with the division's most current manufactured home valuation manual or any generally accepted appraisal method or technique approved by the director.

**C. MANUFACTURED HOMES - VALUATION FOR PURPOSES OF MOVEMENT PERMITS:** If certificates are requested pursuant to Subsection G of Section 66-7-413 NMSA 1978 for the current tax year and if tax rates have not yet been set or tax bills have not yet been mailed, assessors shall proceed pursuant to Section 7-38-44 NMSA 1978. If tax rates have not been set, payment of taxes determined on the basis of the prior year's tax rates constitutes full payment of the taxes on the manufactured home for the current tax year.

**D. MANUFACTURED HOMES - WHEN VALUED AS REAL PROPERTY**

(1) A manufactured home becomes a housing structure that is to be valued and taxed for property taxation purposes as real property when:

(a) the valuation authority has received a request from the owner of a manufactured home that it be taxed as real property;

(b) the tongue and axle have been removed from the manufactured home and the manufactured home has been affixed to a permanent foundation in accordance with Part 14.12.2 NMAC;

(c) the owner of the manufactured home owns the real estate to which the manufactured home has been affixed; and

(d) title to the manufactured home, issued pursuant to the provisions of the Motor Vehicle Code, is deactivated in accordance with Section ~~[18.19.3.18]~~ 18.19.3.16 NMAC and evidence of the deactivation has been provided to the valuation authority.

(2) A housing structure described in Paragraph (1) of this subsection is to be valued in accordance with the applicable provisions of the Property Tax Code and regulation and instructions of the department for valuing real property and not in accordance with the special method of valuation provided in Section 7-36-26 NMSA 1978. If the title to the housing structure as a manufactured home is reactivated in accordance with Section ~~[18.19.3.19]~~ 18.19.3.18 NMAC and not subsequently deactivated by the time property is to be valued for property taxation purposes, the housing structure shall be valued in accordance with the special method of valuation provided in Section 7-36-26 NMSA 1978.

(3) For the first property tax year in which the housing structure is to be valued as real property at a site, the owner must report to the valuation authority the information required to be reported by Subsection A of Section 3.6.5.33 NMAC.

(4) Subsection D of Section 3.6.5.33 NMAC is applicable to valuations made on or after January 1, 1998.

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is the addition of 16.60.1.11 NMAC as a new section, effective 07-30-2004.

**16.60.1.11      P R E S C R I B E D  
FORMS:** All requests for licensure trans-  
actions and all documentation for licensure  
purposes must be made on prescribed  
forms.

(1) PAB 1 - Application for a New  
Mexico CPA Certificate by Examination

(2) PAB 2 - Application for a New  
Mexico CPA Certificate by Grade Transfer

(3) PAB 3 - Application for a New  
Mexico CPA Certificate by Reciprocity

(4) PAB 4 - Application for  
Renewal of a Current New Mexico CPA  
Certificate

(5) PAB 5 - Application for  
Reinstatement of a Cancelled New Mexico  
CPA Certificate

(6) PAB 6 - Application for  
Change of Certificate Status

(7) PAB 7 - Application for Firm  
Permit

(8) PAB 8 - Firm Permit Renewal  
Application

(9) PAB 9 - Application for  
Reinstatement of an Expired Firm Permit

(10) PAB 10 - Notification of the  
Intent to Practice in the State of New  
Mexico Under the Provisions of Substantial  
Equivalency

(11) PAB 11 - Interstate Exchange  
of Information Form

(12) PAB 12 - Work Experience  
Verification Form

(13) PAB 13 - Interstate  
Verification of Supervisor's Certification

(14) PAB 14 - Report of  
Continuing Professional Education

[16.60.1.11 NMAC - N, 07-30-2004]

### NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.2.13 NMAC, effective 07-30-2004.

**16.60.2.13      T R A N S I T I O N I N G  
POLICY FOR CONDITIONAL CRED-  
IT**

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

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

tion;

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

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

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

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

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

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

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

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

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

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

the end of the transition period.

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

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

**L.** Provisional scores shall be released to the candidate following each testing window in 2004 and within three weeks following the administration of each examination section thereafter. All examination scores shall be considered provisional until approved by the board at a regularly scheduled meeting. Scores must be approved by the board prior to the issuance of certificates requiring such scores.

[16.60.2.13 NMAC - N, 01-15-2004; A, 07-30-2004]

### NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.3.14 NMAC and 16.60.3.15 NMAC, effective 07-30-2004.

**16.60.3.14      S U B S T A N T I A L  
EQUIVALENCY/INTENT TO PRACTICE  
REQUIREMENTS:**

Pursuant to Section 26 of the act, a person whose principal place of business is not New Mexico and who has a valid certificate/license as a certified public accountant from a state that the board-approved qualification service has verified to be in substantial equivalence with the certified public accountant requirements of the act shall be presumed to have qualifications substantially equivalent to New Mexico's requirements.

**A.** The board may rely on NASBA, AICPA, or other professional bodies approved as acceptable to the board to provide qualification appraisal in determining whether an applicant's qualifications are substantially equivalent to New Mexico's requirements.

**B.** A person whose qualifications are deemed substantially equivalent may apply for and obtain intent to practice privileges. Application shall be made on board-prescribed forms and include related

fees. The board may grant practice privileges in New Mexico under substantial equivalency provisions for a period not to exceed 1 year. Upon approval, a person afforded the privilege of practicing in New Mexico under substantial equivalency provisions shall, as a condition of the granting of this privilege:

(1) provide written notice to the board in advance of any practice of public accountancy within New Mexico each time the person intends to enter the state to practice;

(2) consent to personal and subject matter jurisdiction of the board;

(3) agree to full compliance with the act and related board rules; and

(4) consent to appointment of the state board of the state of their principal place of business as their agent, upon whom process may be served in an action or proceeding by the New Mexico public accountancy board against it.

**C.** Individuals may re-apply for practice privileges under this provision at the end of each approved practice period. However, persons practicing in New Mexico under substantial equivalency provisions for a period of greater than 60 days within a 1 calendar year period shall not be permitted to re-apply for intent to practice under substantial equivalency provisions.

**D.** Individuals exceeding 60 days practice within a 1 calendar year period under substantial equivalency/intent to practice provisions shall be required to apply for and obtain a New Mexico certificate/license under reciprocity requirements and apply for and obtain a New Mexico firm permit as prescribed in board rules.

**E.** Pursuant to the Uniform Accountancy Act, an individual entering into an engagement to provide professional services via a web site pursuant to Section 23 shall disclose, via any such web site, the individual's principal state of licensure, license number, and an address as a means for regulators and the public to contact the individual regarding complaints, questions, or regulatory compliance.

[16.60.3.14 NMAC - N, 02-14-2002; A, 07-30-2004]

### **16.60.3.15 CONTINUING PROFESSIONAL EDUCATION (CPE) REQUIRED TO OBTAIN OR MAINTAIN AN "ACTIVE" CPA LICENSE:**

**A.** The following requirements of continuing professional education apply to certificate/license renewals and reinstatements pursuant to Sections 9E and 12A of the act. An applicant for certificate/license renewal shall show completion of no less than 120 clock hours of CPE, complying with these rules during the 36-month period preceding the first day of the

certificate/license holder's birth month.

(1) Any applicant seeking a license/certificate or renewal of an existing license shall demonstrate participation in a program of learning meeting the standards set forth in the statement on standards for continuing professional education (CPE) programs jointly approved by NASBA and AICPA or standards deemed comparable by the board.

(2) Each person holding an active CPA certificate/license issued by the board shall show completion of no less than 120 hours of continuing professional education complying with these rules during the 3 calendar years preceding the first day of the certificate/license holder's CPA birth month, with a minimum of 20 hours completed in each year. Licensees shall report CPE completion on board prescribed forms including a signed statement indicating they have met the requirements for participation in the CPE program set forth in board rules.

(3) The board may, at its discretion, accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications in lieu of documented evidence of such. Reciprocity and reinstatement applications shall require documented evidence of compliance with CPE provisions.

(4) Deadline for receipt of license renewal applications and supporting CPE reports or affidavits is no later than the last day of the month prior to the certificate/license holder's birth month. Renewal applications and supporting CPE affidavits or reports shall be postmarked or hand-delivered no later than the renewal deadline date or the next business day if the deadline date falls on a weekend or holiday.

(5) In the event that a renewal applicant has not completed the requisite CPE by the renewal deadline, he shall provide a written explanation for failure to complete CPE; request an extension for completion of the required CPE; and shall provide a written plan of action to remediate the deficiency.

(a) The extension request and action plan shall accompany the renewal application.

(b) The provisions of the action plan shall be executed within 60 days of the expiration date of the license.

(c) The board reserves the right not to approve a plan of action or grant an extension.

(d) The board may assess a fine for late CPE of \$10.00 per day not to exceed \$1,000.

(e) The board may waive this fine for good cause.

(f) If all CPE requirements are not met within 90 days beyond the expiration date of the license, the license shall be cancelled.

~~(5)~~ (6) Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

~~(6)~~ (7) Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the CPE requirements of Sections 9E and 12A of the act and of these rules.

~~(7)~~ (8) Reinstatement applicants whose certificates/licenses have lapsed shall provide documented evidence of completion of 120 hours of CPE in the preceding 36 months before their application will be considered complete.

**B.** Exemption from CPE requirements through change of certificate/license status between inactive/retired and active status:

(1) Pursuant to Section 9E of the act, the board may grant an exception to CPE requirements for certificate holders who do not provide services to the public. Persons desiring exemption from CPE rules requirements may request to change from "active" to "inactive" or "retired" certificate/license status, provided that they:

(a) complete board-prescribed change-of-status forms and remit related fees;

(b) not practice public accountancy as defined in Section 3M of the act; and

(c) place the word "inactive" or "retired" adjacent to their CPA or RPA title on a business card, letterhead or other documents or devices, except for a board-issued certificate.

(2) Persons requesting to change from "inactive" or "retired" to "active" certificate/license status shall:

(a) provide documented evidence of compliance with all CPE requirements of this rule prior to request for certificate/license change of status to "active"; and

(b) complete board-prescribed change-of-status forms and remit related fees.

**C.** Hardship exceptions: The board may make exceptions to CPE requirements for reason of individual hardship including health, military service, foreign country residence, or other good cause. Requests for such exceptions shall be subject to board approval and presented in writing to the board. Requests shall include such supporting information and documentation as the board deems necessary to substantiate and evaluate the basis of the exception request.

**D.** Programs qualifying for CPE credit: A program qualifies as acceptable CPE for purposes of Sections 9E and 12A of the act and these rules if it is a learning program contributing to growth in professional knowledge and competence of a



licensee. The program must meet the minimum standards of quality of development, presentation, measurement, and reporting of credits set forth in the Statement on Standards for Continuing Professional Education Programs jointly approved by NASBA and AICPA, by accounting societies recognized by the board, or such other standards deemed acceptable to the board.

(1) The following standards will be used to measure the hours of credit to be given for acceptable CPE programs completed by individual applicants:

(a) an hour is considered to be a 50-minute period of instruction;

(b) a full 1-day program will be considered to equal 8 hours;

(c) only class hours or the equivalent (and not student hours devoted to preparation) will be counted.

(2) Service as a lecturer, discussion leader, or speaker at continuing education programs or as a university professor/instructor (graduate or undergraduate levels) will be counted to the extent that it contributes to the applicant's professional competence.

(3) Credit as a lecturer, discussion leader, speaker, or university professor/instructor may be allowed for any meeting or session provided that the session would meet the continuing education requirements of those attending.

(4) Credit allowed as a lecturer, discussion leader, speaker or university professor/instructor will be on the basis of 2 hours for subject preparation for each hour of teaching and 1 hour for each hour of presentation. Credit for subject preparation may only be claimed once for the same presentation.

(5) Credit may be allowed for published articles and books provided they contribute to the professional competence of the applicant. The board will determine the amount of credit awarded.

(6) Credit allowed under provisions for a lecturer, discussion leader, speaker at continuing education programs, or university professor/instructor or credit for published articles and books may not exceed one half of an individual's CPE requirement for a 3-year reporting period (shall not exceed 60 hours of CPE credit during a 3-year reporting period).

(7) For a continuing education program to qualify under this rule, the following standards must be met:

(a) an outline of the program is prepared in advance and preserved;

(b) the program is at least 1 hour in length;

(c) a qualified instructor conducts the program; and

(d) a record of registration or attendance is maintained.

(8) The following programs are

deemed to qualify, provided the above are met:

(a) professional development programs of recognized national and state accounting organizations;

(b) technical sessions at meetings of recognized national and state accounting organizations and their chapters; and

(c) no more than 4 hours CPE annually may be earned for board meeting attendance.

(9) University or college graduate-level courses taken for academic credit are accepted. Excluded are those courses used to qualify for taking the CPA exam. Each semester hour of credit shall equal 15 hours toward the requirement. A quarter hour credit shall equal 10 hours.

(10) Non-credit short courses - each class hour shall equal 1 hour toward the requirement and may include the following:

(a) formal, organized in-firm educational programs;

(b) programs of other accounting, industrial, and professional organizations recognized by the board in subject areas acceptable to the board;

(c) formal correspondence or other individual study programs which require registration and provide evidence of satisfactory completion will qualify with the amount of credit to be determined by the board.

(11) The board will allow up to a total of 24 hours of CPE credits for firm peer review program participation. Hours may be earned and allocated in the calendar year of the acceptance letter for the firm's CPAs participating in the peer review.

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

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

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

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

(12) The board may look to recognized state or national accounting organizations for assistance in interpreting the acceptability of the credit to be allowed for individual courses. The board will accept programs meeting the standards set forth in the NASBA CPE registry, AICPA guide-

lines, or such other programs deemed acceptable to the board.

(13) For each 3-year reporting period, at least 96 of the hours reported shall be courses, programs or seminars whose content is in technical subjects such as audit; attestation; financial reporting; tax, management consulting; financial advisory or consulting; and other areas acceptable to the board as directly related to the professional competence of the individual.

(14) For each 3-year reporting period, at least 24 of the hours reported shall be taken outside of the individual's firm, agency, company, organization or normal work setting in a public presentation environment, which is defined as a group program, classroom, live instructor setting in which at least 10 percent of the registered participants are not members, associates, clients, or employees of the firm, agency, company, organization or normal work environment.

(15) For each 3-year reporting period, credit will be allowed once for any single course, program or seminar unless the individual can demonstrate that the content of such course, program or seminar was subject to substantive technical changes during the reporting period.

**E.** Programs not qualifying for CPE:

(1) CPA examination review or "cram" courses;

(2) industrial development, community enhancement, political study groups or similar courses, programs or seminars;

(3) courses, programs or seminars that are generally for the purpose of learning a foreign language;

(4) partner, shareholder or member meetings, business meetings, committee service, and social functions unless they are structured as formal programs of learning adhering to the standards prescribed in this rule.

**F.** Continuing professional education records requirements: When applications to the board require evidence of CPE, the applicants shall maintain such records necessary to demonstrate evidence of compliance with requirements of this rule.

(1) Reinstatement and reciprocity applicants shall file with their applications a signed report form and statement of the CPE credit claimed. For each course claimed, the report shall show the sponsoring organization, location of program, title of program or description of content, the dates attended, and the hours claimed.

(2) Responsibility for documenting program acceptability and validity of credits rests with the licensee and CPE sponsor. Such documentation should be retained for a period of 5 years after program completion and at minimum shall con-

sist of the following:

(a) copy of the outline prepared by the course sponsor along with the information required for a program to qualify as acceptable CPE as specified in this rule; or

(b) for courses taken for scholastic credit in accredited universities and colleges, a transcript reflecting completion of the course. For non-credit courses taken, a statement of the hours of attendance, signed by the instructor, is required.

(3) Institutional documentation of completion is required for formal, individual self-study/correspondence programs.

(4) The board may verify CPE reporting information from applicants at its discretion. Certificate holders/licensees or prospective certificate holders/licensees are required to provide supporting documentation and/or access to such records and documentation as necessary to substantiate validity of CPE hours claimed. Certificate holders/licensees are required to maintain documentation to support CPE hours claimed for a period of 5 years after course completion/CPE reporting. Should the board exercise its discretion to accept an affidavit in lieu of a CPE report, the board shall audit certificate/license holder CPE rules compliance of no less than 10 percent of active CPA/RPA licensees annually.

(5) In cases where the board determines requirements have not been met, the board may grant an additional period of time in which CPE compliance deficiencies may be removed. Fraudulent reporting is a basis for disciplinary action.

(6) The sponsor of a continuing education program is required to maintain an outline of the program and attendance/registration records for a period of 5 years after program completion.

(7) The board may, at its discretion, examine certificate holder/licensee or CPE sponsor documentation to evaluate program compliance with board rules. Non-compliance with established standards may result in denial of CPE credit for non-compliant programs and may be a basis for disciplinary action by the board for fraudulent documentation and representation by a CPE sponsor or certificate holder/licensee of a knowingly non-compliant CPE program.

[16.60.3.15 NMAC - Rp 16 NMAC 60.6.6, 02-14-2002; A, 09-16-2002; A, 06-15-2004;

## NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

### PROTECTIVE SERVICES DIVISION

#### Notice of Repeal

8 NMAC 10.2, Protective Services Intake, is repealed effective 7/30/04 and replaced

by 8.10.2 NMAC, Protective Services Intake, effective 7/30/04.

#### Notice of Repeal

8.8.2 NMAC, Protective Services Division General Policies, is repealed effective 7/30/04 and replaced by 8.8.2 NMAC, Protective Services General Policies, effective 7/30/04.

#### Notice of Repeal

8.10.3 NMAC, Child Protective Services Investigation, is repealed effective 7/30/04 and replaced by 8.10.3 NMAC, Child Protective Services Investigation, effective 7/30/04.

#### Notice of Repeal

8.26.2 NMAC, Adoption Services, is repealed effective 7/30/04 and replaced by 8.26.2 NMAC, Adoption Services, effective 7/30/04.

## NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

### PROTECTIVE SERVICES DIVISION

#### TITLE 8 SOCIAL SERVICES CHAPTER 8 CHILDREN, YOUTH AND FAMILIES GENERAL PROVI- SIONS PART 2 PROTECTIVE SER- VICES GENERAL POLICIES

**8.8.2.1 ISSUING AGENCY:** Children, Youth and Families Department, Protective Services.

[8.8.2.1 NMAC - Rp, 8.8.2.1 NMAC, 07/30/04]

**8.8.2.2 SCOPE:** Protective services staff and the general public.

[8.8.2.2 NMAC - Rp, 8.8.2.2 NMAC, 07/30/04]

#### **8.8.2.3 S T A T U T O R Y**

**AUTHORITY:** Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272; Adult Protective Services Act, Section 27-7-1 et seq., NMSA 1978; Authority to Conduct Social Services 9-8-13 A(3) NMSA 1978; New Mexico Children's Code 32A-4-1 et. Seq. NMSA 1978 (Repl. 1997); Children's Mental Health and Disabilities Code, 32A-6-1 NMSA 1978; Citizen Substitute Care Review Act, Section 32A-8-1 et seq., NMSA 1978; Emancipation of Minors Act, Section 28-6-2 et seq., NMSA 1978; Executive Order 93-001; Executive Order 95-04; Human Services Act, Section 9-8-1 NMSA 1978; Indian Child Welfare Act of 1978, P.L. 95-

608; Interstate Compact on Placement of Children, Section 32A-11-1 et seq., NMSA 1978; Mental health and Developmental Disabilities Code; Multiethnic Placement Act of 1994, P.L. 103-382; New Mexico Children's Court Rules SCRA 10-1 et seq.; Probate Code, Section 45-5-301 et seq., NMSA 1978; Residential Abuse and Neglect Act; Social Security Act.

[8.8.2.3 NMAC - Rp, 8.8.2.3 NMAC, 07/30/04]

**8.8.2.4 D U R A T I O N :** Permanent.

[8.8.2.4 NMAC - Rp, 8.8.2.4 NMAC, 07/30/04]

**8.8.2.5 EFFECTIVE DATE:** July 30, 2004 unless a later date is cited at the end of a section.

[8.8.2.5 NMAC - Rp, 8.8.2.5 NMAC, 07/30/04]

**8.8.2.6 OBJECTIVE:** To establish policies for the administrative functioning of protective services.

[8.8.2.6 NMAC - Rp, 8.8.2.6 NMAC, 07/30/04]

#### **8.8.2.7 DEFINITIONS:**

**A.** An "**administrative hearing**" is a formal process, where the client has an opportunity to present evidence to an impartial hearing officer.

**B.** "**Administrative instructions**" are emergency regulations to clarify or modify existing policies.

**C.** An "**administrative review**" is an informal process, which may include an informal conference or may include only a record review. The administrative review does not create any substantive rights for the client.

**D.** For children, under the age of 14 years, in CYFD custody, the "**authorized representative**" is the individual who has the authority by court order to consent to and release results of AIDS/HIV testing. This is a specific court appointment and a task that does not necessarily fall to the Guardian Ad Litem or CYFD. An authorized representative is only required in the case of AIDS/HIV.

**E.** For income/resource certification purposes, the "**basic family unit**" is one or more adults and children, if any, who reside in the same household.

**F.** A "**client**" is a person who is receiving services from CYFD.

**G.** A "**communicable disease**" is any infectious disease that is both potentially communicable through common social or sexual contact and poses a significant health risk if contracted.

**H.** "**Courtesy homestay**" involves the assignment of a social and community services coordinator to

complete an out-of-county homestudy on an identified family.

**I. "Courtesy interviews"** involve the assignment of a social and community services coordinator to conduct an out-of-county interview as part of an adult protective services or child protective services case.

**J. "Courtesy supervision"** involves the assignment of social and community services coordinator duties and responsibilities for an out-of-county case, specific aspect of a case or a specific activity.

**K. "CYFD"** refers to the children, youth and families department.

**L.** For income/resource certification purposes, a **"family of one"** may be considered to be a child living with non-legally responsible relatives, an emancipated minor, or a child living under the care of an unrelated person.

**M.** An **"intermediate sanction"** is a corrective plan that specifies how a licensee can meet the licensure standards of CYFD.

**N. "Need to know"** standard is the standard by which individual(s) are identified as required to receive confidential information, based upon risk of transmission of a specific disease.

**O. "Protective services"** refers to the organizational unit within CYFD that provides child and adult protective services.

**P. "Regulations"** are those rules which govern CYFD activities and have the force of law.

**Q. "Secretary"** means the secretary of CYFD.

**R.** For income/resource certification purposes, a **"separate family unit"** is related adults other than spouses or unrelated adults residing together.

**S. "Universal precautions"** are the standardized protocol for the prevention of communicable disease. [8.8.2.7 NMAC - Rp, 8.8.2.7 NMAC, 07/30/04]

**8.8.2.8 PROTECTIVE SERVICES:** Protective services is responsible for providing adult and child protective services to individuals and families within the state of New Mexico.

**A.** Mission statement: Protective services is dedicated to enhancing the safety, dignity and well being of children, youth and families in New Mexico. Protective services strives to protect children and adults from abuse, neglect and exploitation and to support healthy families.

**B.** Child protective services (CPS) goals: The goal of child protective services is to protect children from intra-familial abuse and/or neglect and provide

treatment.

**C.** Adult protective services (APS) goals: The goal of adult protective services is to protect vulnerable adults from abuse, neglect and/or exploitation.

**D.** Access to protective services: Protective services provides community based services and maintains a toll free number that is posted in Protective services offices.

[8.8.2.8 NMAC - Rp, 8.8.2.8 NMAC, 07/30/04]

**8.8.2.9 INTER AGENCY RELATIONSHIPS:** The protective services works with the other service areas within CYFD and other state agencies to enhance the provision of services to clients. [8.8.2.9 NMAC - Rp, 8.8.2.9 NMAC, 07/30/04]

**8.8.2.10 LEGAL AUTHORITY AND GUIDELINES:** All services and licenses are provided in accordance with federal and state constitutional, statutory and regulatory requirements. Except as otherwise stated, CYFD and any contractor, provide services and licenses without regard to age, gender, race, religion, disability, marital status, or tribal affiliation in accordance with law. [8.8.2.10 NMAC - Rp, 8.8.2.10 NMAC, 07/30/04]

**8.8.2.11 POLICY AND PROCEDURES DEVELOPMENT AND REVIEW**

**A.** Protective services holds a public hearing prior to the adoption, inclusion, amendment or repeal of any portion of the New Mexico administrative code in accordance with the State Rules Act.

**B.** Protective services files policy and regulations with the New Mexico state records center and archives.

**C.** Emergency regulations: For good cause, protective services may issue regulations on an emergency basis without notice or hearing if the secretary determines that the immediate action is in the public's best interest. An emergency regulation is effective for no longer than 30 days unless protective services, within seven days of the issuance of the emergency regulation, complies with the public hearing notice requirements of this section.

**D.** Administrative instructions: The use of administrative instructions is not encouraged. If an administrative instruction is necessary, protective services takes steps to hold a public hearing within 90 days to amend the policy.

**E.** Protective services considers requests for revisions to policies and procedures by any individual.

**F.** Maintenance of the manual: The protective services policy and

procedures bureau annually reviews policies and procedures and makes revisions as necessary to reflect changes in practice to comply with federal and state laws as well as changes in CYFD philosophy and standards of practice. Revisions to policies and procedures will be made as provided by statute and regulations.

[8.8.2.11 NMAC - Rp, 8.8.2.11 NMAC, 07/30/04]

**8.8.2.12 PARENTAL RIGHTS AND RESPONSIBILITIES:** In addition to the procedural protections provided in the Children's Code, any parent of a child in the custody of CYFD retains all residual rights and responsibilities in accordance with law concerning that child unless and until modified by court order.

[8.8.2.12 NMAC - Rp, 8.8.2.12 NMAC, 07/30/04]

**8.8.2.13 ADULT RIGHTS:** In addition to the procedural protections provided in the Adult Protective Services Act and the Probate Code, adults receiving services from CYFD retain all of their rights unless and until modified by court order. CYFD does not take adults into legal custody.

[8.8.2.13 NMAC - Rp, 8.8.2.13 NMAC, 07/30/04]

**8.8.2.14 PROVISION OF SERVICES:**

**A.** Provision of services is based upon the assessment of risk to and needs and strengths of the individual and/or family and the availability of services.

**B.** Services are provided in a setting most consistent with the least restrictive alternatives and the treatment plan developed.

**C.** Protective services does not provide services or confirm abuse, neglect and/or exploitation solely on the basis of poverty or homelessness.

**D.** If a person seeking services has a disability that prevents the person from access to CYFD facilities or services, CYFD will take steps to ensure accessibility, in accordance with the Americans with Disabilities Act (ADA).

**E.** Protective services makes reasonable efforts to protect vulnerable individuals from abuse, neglect and/or exploitation, and when safely possible, to preserve the integrity of the family unit.

**F.** Basic family unit, separate family unit and family of one as defined in these policies are utilized for income/resource certification for service provision and are not used for treatment planning purposes.

**G.** Provision of services is not dependent upon income certification or recertification for persons receiving the fol-

lowing services:

- (1) child protective services
- (2) adult protective services
- (3) family services
- (4) domestic violence services
- (5) child protective services child

care

- (6) adoption services for children

**H.** There are no residency or citizenship requirements for the provision of emergency protective services.

[8.8.2.14 NMAC - Rp, 8.8.2.14 NMAC, 07/30/04]

#### 8.8.2.15 COMMUNICABLE

**DISEASES:** Protective services provides services to individuals at risk of being, or who are determined to be, abused, neglected and/or exploited who are also infected with a communicable disease.

##### A. Decision to release information regarding HIV positive/AIDS

(1) For children under the age of 14 years in CYFD's custody, an authorized representative is required to consent to and release results of AIDS/HIV testing. CYFD requests to be the authorized representative for children in CYFD's custody through an application to the court.

(2) Protective services promptly provides testing results to the child's foster parents, and/or prospective foster parents, and adoptive parents.

(3) Protective services provides testing results to the individual responsible for the child's medical care when the child is placed in an institution such as correctional, treatment or shelter facilities.

(4) For children under the age of 14 when CYFD is the authorized representative, the social and community services coordinator in consultation with the supervisor decides which individuals, based upon the "need to know" standard, are provided with confidential information.

(5) For children under the age of 14 when CYFD is not the authorized representative, the court-appointed authorized representative decides which individuals, based upon the "need to know" standard, are provided with confidential information.

(6) Children 14 years old and older decide which individuals are provided with confidential information.

##### B. Decision to release information regarding other communicable diseases.

Protective services informs foster parents, adoptive parents, and other direct care providers of any diagnosed communicable disease present in the child. Others may be informed based upon the public health risks associated with transmission of that particular disease.

##### C. Testing for HIV/AIDS

(1) An adult may be required to be tested for the presence of HIV/AIDS pur-

suant to the Health and Safety Code, Section 24-2B-1.

(2) A child 14 years old and older in CYFD's custody may be tested for the presence of HIV/AIDS when testing is medically indicated and the child consents.

(3) A child under the age of 14 in CYFD's custody may be tested for the presence of HIV/AIDS when the testing is medically indicated and the authorized representative consents.

(4) If CYFD is unable to obtain required consent for testing a child, and testing is medically indicated, CYFD may seek an order from the children's court to conduct testing.

(5) Children adjudicated delinquent based on offenses involving high risk sexual contact are tested in accordance with Health and Safety Code, Section 24-2B-5.1(E).

**D.** Protective services staff and/or providers use universal precautions. [8.8.2.15 NMAC - Rp, 8.8.2.15 NMAC, 07/30/04]

#### 8.8.2.16 WITHDRAWING

**FROM SERVICES:** Individuals and families can withdraw from voluntary services or involuntary services. CYFD may take other actions to ensure the safety of children if safety is a concern as a result of the family's withdraw from services.

[8.8.2.16 NMAC - Rp, 8.8.2.16 NMAC, 07/30/04]

#### 8.8.2.17 WAITING LISTS:

CYFD may establish waiting lists for certain services.

[8.8.2.17 NMAC - Rp, 8.8.2.17 NMAC, 07/30/04]

#### 8.8.2.18 ADMINISTRATIVE

**APPEALS:** CYFD, as appropriate, provides a client with either an administrative review or an administrative hearing to appeal a CYFD decision. The outcome of an administrative appeal is final, except as otherwise provided by law. The requestor must request the appeal for a review or hearing either orally or in writing to CYFD within 10 days of the notice of the contemplated action. The outcome of an administrative review or hearing is final except as otherwise provided by law.

**A.** The administrative review process is used in the following instances, upon request:

- (1) removal of foster children when the children have been in placement with the family for longer than six months;
- (2) removal of adoptive children prior to finalization;
- (3) denial of adoption or foster home application;
- (4) denial of semi-independent living services;

(5) denial of attendant care services or home care services;

(6) denial of adult protective services;

(7) the substantiation of an abuse, neglect, or exploitation referral unless the issue is subject of a pending legal case; or

(8) a substantiated referral revealed by a central clearance check.

**B.** The administrative hearing process is used in the following instances, upon request:

(1) the revocation, suspension, or non-renewal of a foster home license;

(2) the denial, revocation, suspension, or non-renewal of a child placement agency license;

(3) the termination, or modification of home care services; or

(4) the termination, or modification of attendant care services.

[8.8.2.18 NMAC - Rp, 8.8.2.18 NMAC, 07/30/04]

#### 8.8.2.19 CONFIDENTIALITY:

All CYFD staff and contractors maintain confidentiality of information in accordance with the laws and regulations that apply to specific services.

**A.** Any information concerning a person who is involved in an abuse, neglect or exploitation case is confidential and may only be released as allowed by law.

**B.** All records in the custody or under the control of CYFD, including but not limited to client records and foster parent records (including applications), are confidential and may only be released as allowed by law.

**C.** CYFD may release the identity of the reporting party only with the reporting party's consent or as provided for by law.

[8.8.2.19 NMAC - Rp, 8.8.2.19 NMAC, 07/30/04]

#### 8.8.2.20 INTEROFFICE

##### COLLABORATION AND COOPERATION:

As the provision of adequate and relevant services to the individual and/or family is the first priority, the local county offices work together to provide one another with mutual support and assistance through courtesy interviews, courtesy home studies and courtesy supervision.

[8.8.2.20 NMAC - Rp, 8.8.2.20 NMAC, 07/30/04]

#### 8.8.2.21 CONFLICT OF

**INTEREST:** CYFD employees do not have primary responsibility for cases in which the employee has a close personal relationship with the client or a principal in the case or in which the client is a relative. In the event of the above the employee will report the relationship to the supervisor and

another party will be assigned to the case.  
[8.8.2.21 NMAC - Rp, 8.8.2.21 NMAC, 07/30/04]

**8.8.2.22 SOCIAL SECURITY NUMBERS AND/OR TAX IDENTIFICATION NUMBERS:** CYFD collects social security and/or tax identification numbers for all vendors and clients.  
[8.8.2.22 NMAC - Rp, 8.8.2.22 NMAC, 07/30/04]

**8.8.2.23 RECOVERY:** CYFD seeks recovery of all overpayments made.  
[8.8.2.23 NMAC - Rp, 8.8.2.23 NMAC, 07/30/04]

**8.8.2.24 PAYMENT TIME FRAMES:** Any demands for payments must be submitted within 45 days of the service delivery or the date the charges were incurred, or else payment is denied.  
[8.8.2.24 NMAC - Rp, 8.8.2.24 NMAC, 07/30/04]

**8.8.2.25 CRITICAL SELF ANALYSIS:** CYFD may conduct an internal review of any critical situation in which self-analysis is determined to be appropriate.

**A.** Critical self-analysis is confidential and privileged and not for publication or release.

**B.** The intent of the critical self-analysis is to evaluate CYFD's internal decision-making process and to make improvements to protect other clients. The analysis/recommendation section is confidential to encourage and foster candid expression of recommendations and advice from personnel who would otherwise temper their remarks because of concern for their own personal interest, safety or reputation.  
[8.8.2.25 NMAC - Rp, 8.8.2.25 NMAC, 07/30/04]

**8.8.2.26 EMPLOYEE SAFETY**

**A.** Workers are encouraged to report to their supervisors any situations and/or circumstances that they believe are unsafe. The supervisor assists the social and community services coordinator in structuring the situation to enhance the safety of the worker.

**B.** A worker follows these standards when providing services:

(1) requests law enforcement to accompany the worker to the home of any client when there is information that indicates a potential for violence;

(2) stands to the side of the entrance when waiting for someone to come to the door;

(3) after entering a home, does not permit the door to be locked and posi-

tions himself/herself near an exit;

(4) leaves the situation or terminates contact when the potential for violence appears imminent; the worker notifies his/her supervisor immediately and law enforcement is contacted to provide any protection required; and

(5) notifies law enforcement and his/her supervisor if threatened or physically assaulted.  
[8.8.2.26 NMAC - Rp, 8.8.2.26 NMAC, 07/30/04]

**8.8.2.27 QUALIFICATIONS AND TRAINING OF STAFF:** Protective services staff meets minimum qualifications as determined by their positions and job functions, and participate in formal pre-service and annual training as required by CYFD.

**A.** Protective services supervisors and county office managers receive training in supervision within three (3) months of commencing supervision or employment as a supervisor or county office manager.

**B.** After the first year, protective services supervisors and county office managers participate in annual training.

**C.** Within one month of hire, all child protective services social and community services coordinators commence formal pre-service training. Social and community services coordinators must have child protective services legal training prior to assuming responsibility for a case.

**D.** Within three months of hire, all adult protective services social and community services coordinators commence formal pre-service training. Social and community services coordinators must have adult protective services legal training prior to assuming responsibility for an adult protective services case.

**E.** After the first year, social and community services coordinators will participate in annual training.  
[8.8.2.27 NMAC - Rp, 8.8.2.27 NMAC, 07/30/04]

**8.8.2.28 ACCESS TO POLICIES AND RECORDS**

**A.** Copies of policies and procedures are available for public inspection in county offices. Reasonable copying charges are assessed for duplication.

**B.** All records in the custody or under the control of protective services may only be released in accordance with law or regulation. Requests for records must be made in writing to the county office manager and reasonable copying charges are assessed for duplication.  
[8.8.2.28 NMAC - Rp, 8.8.2.28 NMAC, 07/30/04]

## NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PROTECTIVE SERVICES DIVISION

**TITLE 8 SOCIAL SERVICES  
CHAPTER 10 CHILD PROTECTIVE SERVICES  
PART 2 PROTECTIVE SERVICES INTAKE**

**8.10.2.1 ISSUING AGENCY:** Children, Youth and Families Department, Protective Services Division.  
[8.10.2.1 NMAC - Rp, 8 NMAC 10.2.1 NMAC, 07/30/04]

**8.10.2.2 SCOPE:** Protective services division employees and the general public.  
[8.10.2.2 NMAC - Rp, 8 NMAC 10.2.2, 07/30/04]

**8.10.2.3 STATUTORY AUTHORITY:** New Mexico Children's Code 32A-4-1 et seq. NMSA 1978 (Repl. 1999); Adult Protective Services Act, Section 27-7-1 et seq., NMSA 1978 (Repl. 1997).  
[8.10.2.3 NMAC - Rp, 8 NMAC 10.2.3, 07/30/04]

**8.10.2.4 DURATION:** Permanent.  
[8.10.2.4 NMAC - Rp, 8 NMAC 10.2.4, 07/30/04]

**8.10.2.5 EFFECTIVE DATE:** July 30, 2004, unless a later date is cited at the end of a section.  
[8.10.2.5 NMAC - Rp, 8 NMAC 10.2.5, 07/30/04]

**8.10.2.6 OBJECTIVE:** To establish provisions for accepting reports of alleged child and/or adult abuse, neglect and/or exploitation.  
[8.10.2.6 NMAC - Rp, 8 NMAC 10.2.6, 07/30/04]

**8.10.2.7 DEFINITIONS**  
**A.** "Abuse and neglect check" is the review of the management information system to determine if there has been any previous involvement with CYFD's protective services.

**B.** An "appropriate report" is an allegation made to CYFD of child or adult abuse, neglect, maltreatment, and/or exploitation that falls within CYFD's mandate to investigate.

**C.** "At risk" is a determination that there exists a high probability that a child will suffer maltreatment in the future.

**D.** A "child in the cus-

**to**dy of CYFD” means any child in the custody of CYFD pursuant to Article 4 of the Children’s Code.

**E.** A “**collateral contact**” is an individual who may possess pertinent information concerning the alleged victim, the alleged perpetrator or may be able to provide information concerning the alleged abuse, neglect or exploitation that would be helpful in making an accurate investigative decision and deposition.

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

**G.** “**Division**” means the protective services division of CYFD.

**H.** An “**emergency report**” is an appropriate report for which an investigation is initiated within 3 hours from receipt of a report by SCI.

**I.** An “**enhanced intake**” is the collection of additional information from collateral contacts by SCI staff so as to make an informed intake decision.

**J.** An “**Indian child**” is any unmarried person under age 18 and either (1) is a member of an Indian tribe or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

**K.** “**Initiation**” is a face-to-face contact by the investigation worker with the alleged victim.

**L.** A “**placement**” is an out of home residential arrangement for the care of children in the custody of the CYFD, including: family foster care, relative foster care and treatment foster care, or a facility such as residential treatment center, group home, or emergency shelter.

**M.** “**Prioritization**” is the assignment of a time frame for CYFD to initiate an investigation based upon an indication or report of immediate danger to the child or vulnerable adult and mitigating protective factors identified in the report.

**N.** A “**priority one report**” is an appropriate report for which an investigation is initiated within 24 hours from receipt of the report by SCI.

**O.** A “**priority two report**” is an appropriate report for which an investigation is initiated within 5 calendar days from receipt of the report by SCI.

**P.** A “**provider**” is any person or agency contracted by CYFD to provide placement or child care services.

**Q.** A “**report**” is a verbal or written presentation of information concerning alleged child and/or adult maltreatment that is received by CYFD.

**R.** A “**reporter**” is any individual who has contacted CYFD to make a report of alleged child or adult maltreatment.

**S.** “**SCI**”, or statewide central intake, is CYFD’s operation respon-

sible for receiving and screening reports of alleged child and/or adult maltreatment and assigning accepted reports to the appropriate county office for investigation.

**T.** A “**screened in report**” is a report that has met CYFD’s criteria for acceptance for investigation.

**U.** A “**screened out report**” is a report that has not met CYFD’s criteria for acceptance for investigation.

**V.** “**Vulnerable adult**” is any person who demonstrates over time, or is at risk of, either partial or complete functional impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs or chronic intoxication.

[8.10.2.7 NMAC - Rp, 8 NMAC 10.2.7, 07/30/04]

**8.10.2.8 PURPOSE OF CHILD AND ADULT PROTECTIVE SERVICES INTAKE:** The purpose of protective services intake is to collect sufficient information to determine if the situation reported rises to the level of abuse, neglect, and/or exploitation as defined by statute, and if the alleged perpetrator is a parent or caretaker so as to determine whether an investigation by CYFD and/or referral to another agency is warranted.

[8.10.2.8 NMAC - Rp, 8 NMAC 10.2.8, 07/30/04]

#### **8.10.2.9 ELIGIBILITY**

**A.** Any child, birth up to age 18, and any vulnerable adult is eligible for protective services intake without regard to income.

**B.** All individuals are required by law to report child abuse and/or neglect if he/she knows or has a reasonable suspicion that a child has been abused and/or neglected.

[8.10.2.9 NMAC - Rp, 8 NMAC 10.2.9, 07/30/04]

#### **8.10.2.10 PROVISION OF INTAKE SERVICES**

**A.** CYFD receives reports of suspected child and adult abuse and/or neglect 24 hours a day, seven days a week.

**B.** Intake services are conducted by individuals classified as a social and community services coordinator or caseworker, or higher.

**C.** CYFD accepts reports from individuals wishing to remain anonymous.

[8.10.2.10 NMAC - Rp, 8 NMAC 10.2.10, 07/30/04]

**8.10.2.11 PROTECTION OF THE IDENTITY OF REFERRAL SOURCES:** CYFD protects the identity of reporting sources to the fullest extent allowed by law.

[8.10.2.11 NMAC - Rp, 8 NMAC 10.2.11, 07/30/04]

#### **8.10.2.12 INTAKE DECISION**

**A.** CYFD makes intake decisions on all reports received.

**B.** CYFD uses information received from the reporting source, information from collateral contacts as available, and results of the abuse and neglect check to assist in making the intake decision.

[8.10.2.12 NMAC - Rp, 8 NMAC 10.2.12, 07/30/04]

#### **8.10.2.13 PRIORITIZATION:** CYFD prioritizes all appropriate reports.

[8.10.2.13 NMAC - Rp, 8 NMAC 10.2.13, 07/30/04]

#### **8.10.2.14 REPORTING REQUIREMENTS**

**A.** When it is the professional opinion of CYFD staff that there is a reasonable suspicion of child/adult abuse or neglect, a report is made to local law enforcement in writing within 48 hours of the receipt of the report.

**B.** CYFD refers all screened out reports to other agencies as resources exist or as required by law.

**C.** When the alleged perpetrator of abuse or neglect is not a caretaker or household member, e.g. a coach, school teacher, or neighbor, CYFD receives the information from the reporting source and informs the reporter that the allegation will be forwarded within 48 hours for investigation to law enforcement.

**D.** When the report received involves an Indian child on the reservation or pueblo, CYFD immediately transmits the information to Tribal law enforcement or Tribal social services.

[8.10.2.14 NMAC - Rp, 8 NMAC 10.2.14, 07/30/04]

#### **8.10.2.15 DOCUMENTATION REQUIREMENTS FOR INTAKE**

**A.** CYFD makes a record of all reports.

**B.** CYFD maintains records of all reports as follows:

(1) Screened out reports with no further contact with CYFD are maintained for six months.

(2) Screened out reports having additional contact with or reports to CYFD are maintained on a schedule based upon the most recent contact with CYFD.

(3) Appropriate reports are maintained on the schedule based upon the results of the investigation and disposition of any subsequent case arising from the referral.

[8.10.2.15 NMAC - Rp, 8 NMAC 10.2.15, 07/30/04]

**NEW MEXICO CHILDREN,  
YOUTH AND FAMILIES  
DEPARTMENT**

**PROTECTIVE SERVICES DIVISION**

**TITLE 8 SOCIAL SERVICES  
CHAPTER 10 CHILD PROTECTIVE SERVICES  
PART 3 CHILD PROTECTIVE SERVICES INVESTIGATION**

**8.10.3.1 ISSUING AGENCY:** Children, Youth and Families Department, Protective Services Division.  
[8.10.3.1 NMAC - Rp, 8.10.3.1 NMAC, 07/30/04]

**8.10.3.2 SCOPE:** Protective services division employees and the general public.  
[8.10.3.2 NMAC - Rp, 8.10.3.2 NMAC, 07/30/04]

**8.10.3.3 STATUTORY AUTHORITY:** New Mexico Children's Code 32A-4-1 et. seq. NMSA 1978 (Repl. 1999).  
[8.10.3.3 NMAC - Rp, 8.10.3.3 NMAC, 07/30/04]

**8.10.3.4 DURATION:** Permanent.  
[8.10.3.4 NMAC - Rp, 8.10.3.4 NMAC, 07/30/04]

**8.10.3.5 EFFECTIVE DATE:** July 30, 2004, unless a later date is cited at the end of a section.  
[8.10.3.5 NMAC - Rp, 8.10.3.5 NMAC, 07/30/04]

**8.10.3.6 OBJECTIVE:** To establish guidelines for the investigation of alleged abuse and/or neglect of children by their parent, guardian, caretaker, other household member, or foster care provider, and to determine the disposition of the case.  
[8.10.3.6 NMAC - Rp, 8.10.3.6 NMAC, 07/30/04]

**8.10.3.7 DEFINITIONS:**  
**A.** An **"administrative review"** is an informal process. It may include an informal conference or may include only a record review. The administrative review process does not create any substantive rights for the client.

**B.** An **"appropriate report"** is a report of child abuse and/or neglect received by CYFD which falls within CYFD's mandate to investigate.

**C.** **"At risk"** is a determination that there exists a high probability that a child will suffer maltreatment in the future.

**D.** A **"child in the cus-**

**tody of CYFD"** means any child in the custody of the children, youth and families department pursuant to Article 4 of the Children's Code.

**E.** A **"collateral contact"** is an individual who may possess pertinent information concerning the alleged victim, the alleged perpetrator or may be able to provide information concerning the alleged abuse, neglect or exploitation that would be helpful in making an accurate investigative decision and deposition.

**F.** **"CYFD"** means the New Mexico children, youth and families department.

**G.** An **"emergency report"** is an appropriate report for which an investigation is initiated within 3 hours from receipt of a report by SCI.

**H.** **"Emotional maltreatment"** is an observable behavior, activity, and/or words to intimidate, threaten, deride or degrade the child that causes substantial impairment of the child's mental or psychological ability to function.

**I.** An **"Indian child"** is any unmarried person under age 18 and either (1) is a member of an Indian tribe or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

**J.** **"Initiation"** of an investigation is a face to face contact by the investigation worker with the alleged victim or documented diligent efforts to establish face to fact contact with the victim.

**K.** The **"decision"** is the determination of whether a child has suffered physical abuse, emotional abuse or psychological abuse as defined b 32A-4-2 NMSA 1978, as amended.

**L.** The **"investigation disposition"** is the determination of the level of involvement, if any, of CYFD with the family based upon an assessment of ongoing risk to the child, the needs and strengths of the family and the safety of the child.

**M.** **"Physical abuse"** is defined by 32A-4-2, NMSA 1978, as amended, and includes the non-accidental injury to a child which, regardless of motive, is inflicted or allowed to be inflicted upon a child.

**N.** **"Physical neglect"** is defined by 32A-4-2, NMSA 1978, as amended, and includes the failure, whether intentional or not, of the person responsible for the child's care to provide and maintain adequate food, clothing, medical care, supervision, and/or education.

**O.** A **"placement"** is an out of home residential arrangement for the care of children in the custody of CYFD, including: family foster care, relative foster care and treatment foster care, or a facility such as residential treatment center, group home, or emergency shelter.

**P.** A **"priority one report"** is a report for which an investigation is initiated of within 24 hours from receipt of the report by SCI.

**Q.** A **"priority two report"** is a report for which an investigation is initiated within 5 calendar days from receipt of the report by SCI.

**R.** A **"provider"** is any person or agency contracted by CYFD to provide placement or child care services.

**S.** **"Reasonable efforts"** are the provision of services or other interventions in an attempt to address the safety and/or risk(s) factors to prevent the removal of the child from the home of the parent, guardian, or provider, return the child if removal was required, and/or finalize an alternative permanency plan if reunification is not an option.

**T.** **"Reunification"** is a permanency plan with the goal to safely return a child to the legal and physical custody of a parent or guardian.

**U.** **"Sexual abuse"** is defined by 32A-4-2, NMSA 1978, as amended, and includes any incident of sexual contact involving a child which is inflicted by the person responsible for the child's care.

**V.** A finding of **"substantiation"** in a child abuse and/or neglect investigation means the victim(s) is under the age of 18, a caretaker/provider has been identified as the perpetrator and/or identified as failing to protect, and credible evidence exists to support the conclusion by the investigation worker that the child has been abused and/or neglected as defined by the New Mexico Children's Code. Credible evidence upon which to base a finding of substantiation includes:

- (1) caretaker admission;
- (2) physical facts/evidence;
- (3) collateral and/or witness statements/observations;
- (4) child disclosure; and/or
- (5) investigation worker observation.

**W.** To **"unsubstantiated"** means that the information collected during the investigation does not support a finding that the child was abused and/or neglected.

**X.** **"Notice of privacy practices"** means the written or electronic notice CYFD uses and disclosures of protected health information of the individual's rights and CYFD's legal duties with respect to protected health information.

**Y.** **"Protected health information"** means individually identifiable health information maintained by protective services for purposes of providing case management services.

[8.10.3.7 NMAC - Rp, 8.10.3.7 NMAC, 07/30/04]

### 8.10.3.8 PURPOSE OF CHILD PROTECTIVE SERVICES INVESTIGATION:

The purpose of child protective services investigation is to assess safety of children who are the subjects of reports of alleged abuse or neglect. The purpose of the investigation is to collect and assess information to determine whether the incident of child abuse or neglect occurred, whether any child in the home remains at risk for continuing abuse and neglect, and to assess the need for additional protective services. Investigations will be conducted for children in the custody of their biological parents, adoptive parents, other relatives or guardians, or who are in CYFD custody. [8.10.3.8 NMAC - Rp, 8.10.3.8 NMAC, 07/30/04]

### 8.10.3.9 SAFETY OF THE CHILD

**A.** The safety of the child is the overriding concern throughout the casework relationship with the family. If the safety of the child is ever in conflict with the treatment or preservation of a family unit, the child's need for protection always takes precedence.

**B.** CYFD requests immediate assistance from law enforcement if necessary to assess and/or secure the safety of the child. [8.10.3.9 NMAC - Rp, 8.10.3.9 NMAC, 07/30/04]

### 8.10.3.10 ASSIGNMENT

**A.** Every accepted report is assigned to an investigation worker for investigation.

**B.** Emergency and priority one reports are assigned for investigation immediately upon receipt of the report in the county field office.

**C.** Priority two reports are assigned for investigation no later than 24 hours from receipt of the report in the county field office. [8.10.3.10 NMAC - Rp, 8.10.3.10 NMAC, 07/30/04]

**8.10.3.11 INITIATION:** The investigation worker initiates the investigation within the time frames established by CYFD as follows:

**A.** Emergency reports are initiated within 3 hours of receipt of the report from the reporting source.

**B.** Priority one reports are initiated within 24 hours of receipt of report from the reporting source.

**C.** Priority two reports are initiated within 5 calendar days of receipt of report from the reporting source. [8.10.3.11 NMAC - Rp, 8.10.3.11 NMAC, 07/30/04]

### 8.10.3.12 CONDUCTING

### INVESTIGATIONS

**A.** CYFD gathers the information required to determine the immediate safety and ongoing risks of harm to the child.

**B.** C Y F D interviews/observes the alleged child victim and all other children in the household during the investigation.

**C.** If CYFD interviews a child without the permission of the parents/guardians, CYFD notifies them of the interview within 24 hours.

**D.** CYFD identifies all caretakers of the child.

**E.** CYFD interviews the parents/guardians, or the care provider, during the investigation.

**(1)** CYFD informs the parents/guardians, or the care provider, of the following:

**(a)** that prior to any legal proceeding, any interaction with the parents/guardians, or the care provider, is voluntary;

**(b)** that only law enforcement can remove a child who is not in the custody of CYFD, if necessary to protect the child's health and safety, unless the district court issues an ex parte order allowing CYFD to remove the child;

**(c)** that CYFD will work confidentially with them except when it becomes necessary to work with law enforcement, the district attorney or relevant agencies. If the alleged perpetrator is licensed by CYFD or any other agency, the licensor will be notified of the allegations and the final disposition of the investigation;

**(d)** that information concerning the report and investigation has been entered into CYFD files; and

**(e)** that other people may be interviewed in order to complete this investigation.

**(2)** CYFD provides the notice of privacy practices to the parents or guardians no later than the first contact or, in the event of an emergency, as soon as reasonably practicable after the emergency. CYFD makes a good faith effort to document acknowledgement of receipt of the notice and documents the reasons why the acknowledgement was not obtained.

**F.** CYFD interviews collateral contacts during the investigation.

**G.** CYFD visits the home during an investigation. This requirement may be waived in specific circumstances which include but are not limited to:

**(1)** the parent/guardian refuses;

**(2)** the home has been determined to be unsafe by law enforcement and/or public health; and/or

**(3)** the family is homeless.

**H.** CYFD arranges for evaluations/examinations as required dur-

ing the investigation.

**I.** The investigation worker completes the investigation within 30 days of the report, unless an extension is secured from the supervisor. No extension may be granted unless the reasons for the extension are documented in FACTS. Extensions are not to exceed an additional 30 days after the original 30 days.

**J.** The investigation worker completes the safety assessment, risk assessment and family strengths and needs assessments tools in all investigations.

[8.10.3.12 NMAC - Rp, 8.10.3.12 NMAC, 07/30/04]

### 8.10.3.13 ALLEGATION OF ABUSE/NEGLECT IN FACILITIES

**A.** If requested by law enforcement, CYFD assists law enforcement in conducting investigations of child abuse and/or neglect in schools, facilities, or childcare homes/centers.

**B.** CYFD conducts a safety assessment of any child in CYFD custody placed in a facility or child care home/center where abuse and neglect has been reported regarding a child in CYFD custody and refers to law enforcement for investigation. [8.10.3.13 NMAC - Rp, 8.10.3.13 NMAC, 07/30/04]

### 8.10.3.14 ALLEGATION OF ABUSE/NEGLECT IN FOSTER HOMES, TREATMENT FOSTER HOMES, AND PRE-ADOPTIVE HOMES

**A.** CYFD investigates abuse/neglect reports pertaining to children placed in a CYFD licensed foster home, treatment foster home, or preadoptive home.

**B.** CYFD notifies law enforcement and coordinates the investigation if requested.

[8.10.3.14 NMAC - Rp, 8.10.3.14 NMAC, 07/30/04]

### 8.10.3.15 INVESTIGATIONS INVOLVING INDIAN CHILDREN

**A.** CYFD is responsible for investigating child abuse and/or neglect reports involving Indian children who reside off the reservation or pueblo.

**B.** CYFD assists in the investigation of child abuse and/or neglect reports of children on the reservation or pueblo if requested by the Indian tribal government.

**C.** CYFD makes efforts to determine if the child who is subject of an investigation is an Indian child.

**D.** CYFD notifies the tribe of any investigations involving Indian children as required by the Indian Child Welfare Act.

[8.10.3.15 NMAC - Rp, 8.10.3.15 NMAC,



07/30/04]

**8.10.3.16 SEEKING OR ACCEPTING CUSTODY OF CHILDREN, INCLUDING INDIAN CHILDREN**

**A.** CYFD makes reasonable efforts to maintain the family unit and prevent the removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternative permanency plans in a timely manner when reunification is not appropriate or possible. The investigation worker documents this in the case record as well as in the affidavit for custody. In circumstances where reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family, the investigation worker documents reasons why such reasonable efforts were not required in the case record as well as the affidavit for custody.

**B.** CYFD seeks custody of Indian children who are domiciled or residing off-reservation when continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

**C.** An Indian child who is domiciled on the reservation but temporarily located off the reservation may be removed by law enforcement from his parent or Indian custodian in order to prevent imminent physical damage or harm to the child. CYFD notifies the tribe as soon as possible and facilitates a transfer of the case to the tribe.

**D.** CYFD notifies parents/guardians that their child is in custody within 24 hours of the child being taken into custody.

**E.** CYFD makes every effort to identify and locate fit and willing relatives for consideration of placement of a child in custody who requires out of home placement.

[8.10.3.16 NMAC - Rp, 8.10.3.16 NMAC, 07/30/04]

**8.10.3.17 INVESTIGATION DECISION**

**A.** The investigation worker makes an investigation decision within 30 days of the report unless an extension is secured from the supervisor. No extension may be granted unless the reasons for the extension are documented in FACTS. Extensions are not to exceed an additional 30 days after the original 30 days.

**B.** The investigation decision includes a determination of substantiated or unsubstantiated on each of the allegations in the report.

**C.** The investigation decision is entered into FACTS by the worker after review and approval by the supervisor. [8.10.3.17 NMAC - Rp, 8.10.3.17 NMAC, 07/30/04]

**8.10.3.18 INVESTIGATION DISPOSITION**

**A.** CYFD makes an investigation disposition within 30 days of the receipt of the report in every investigation CYFD conducts unless an extension is secured from the supervisor. No extension may be granted unless the reasons for the extension are documented in FACTS. Extensions are not to exceed an additional 30 days after the original 30 days.

**B.** CYFD determines the investigation disposition of the investigation based upon the service delivery matrix which considers the assessment of the child's risk of future abuse and/or neglect, the needs and strengths of the family and the safety of the child. [8.10.3.18 NMAC - Rp, 8.10.3.18 NMAC, 07/30/04]

**8.10.3.19 DOCUMENTATION**

**A.** CYFD records all investigation assignments.

**B.** CYFD documents all investigations.

**C.** CYFD documents all investigation decisions.

**D.** All information obtained by CYFD in an investigation is confidential and is released only as allowed by law.

**E.** The investigation worker documents reasonable efforts made to avoid removal of the child from the home, efforts to reunify the child if removal was required and/or efforts to achieve an alternative permanency plan if reunification is not an option. Documentation is included in the case record and in the affidavit for custody.

**F.** CYFD documents acknowledgement of receipt of the notice of privacy practices or documents the good faith efforts made to attempt to obtain acknowledgement of receipt of the notice of privacy practices and the reasons why the acknowledgement was not obtained. [8.10.3.19 NMAC - Rp, 8.10.3.19 NMAC, 07/30/04]

**8.10.3.20 NOTIFICATION**

**A.** CYFD notifies the parents/guardians/providers and, if appropriate, law enforcement, regulatory agencies or others who have a right to know, of the results of the investigation.

**B.** The results of any substantiated investigation which is not the subject of a court action may be reviewed through CYFD's administrative review

process. [8.10.3.20 NMAC - Rp, 8.10.3.20 NMAC, 07/30/04]

**NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT**  
PROTECTIVE SERVICES DIVISION

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 26 ADOPTION**  
**PART 2 ADOPTION SERVICES**

**8.26.2.1 ISSUING AGENCY:** Children, Youth and Families Department, Protective Services Division. [8.26.2.1 NMAC - Rp, 8.26.2.1 NMAC, 07/30/04]

**8.26.2.2 SCOPE:** Protective services division employees and the general public. [8.26.2.2 NMAC - Rp, 8.26.2.2 NMAC, 07/30/04]

**8.26.2.3 STATUTORY AUTHORITY:** Children, Youth and Families Department Section 9-2A-7(D) NMSA; New Mexico Children's Code 32A-5-1 et. seq. NMSA (Rep. 1999). [8.26.2.3 NMAC - Rp, 8.26.2.3 NMAC, 07/30/04]

**8.26.2.4 DURATION:** Permanent. [8.26.2.4 NMAC - Rp, 8.26.2.4 NMAC, 07/30/04]

**8.26.2.5 EFFECTIVE DATE:** July 30, 2004, unless a later date is cited at the end of a section. [8.26.2.5 NMAC - Rp, 8.26.2.5 NMAC, 07/30/04]

**8.26.2.6 OBJECTIVE:** To establish standards for the provision of adoption services to children in the custody of CYFD and families seeking to adopt those children. [8.26.2.6 NMAC - Rp, 8.26.2.6 NMAC, 07/30/04]

**8.26.2.7 DEFINITIONS:**

**A.** An "abuse/neglect check" is a review of the information management system to determine if there has been any previous involvement with CYFD.

**B.** An "administrative hearing" is a formal process, where the client has an opportunity to present evidence to a impartial hearing officer appointed by the office of the secretary.

**C.** An "administrative review" is an informal process, which may include an informal conference or may

include only a record review. The administrative review process does not create any substantive rights for the client.

**D. "Adoptee"** means any person who is the subject of an adoption petition.

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

**F.** The **"applicant"** is an individual(s) applying to CYFD to be considered as an adoptive family for a child in CYFD custody.

**G.** A **"criminal records check (CRC)"** includes local, state and federal clearances.

**H.** A **"disruption"** is the removal of a child from an adoptive home after an adoptive placement agreement has been signed but prior to the finalization of the adoption.

**I. "Freed for adoption"** means all parental rights are terminated and all time for appeal is exhausted.

**J. "Full disclosure"** is mandatory and continuous disclosure by CYFD throughout the adoption proceedings of all known information specific to the child.

**K. "Non-recurring adoption expenses"** are reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs and which have not been reimbursed from other sources or funds. Such costs may include the adoption study, including health and psychological examination, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the placement or adoption process.

**L. "Subsidy"** is a third party payment program that may include medicaid eligibility, maintenance payments and/or payments for special events.

**M. "Fictive kin"** is a person not related by birth or marriage who has an emotionally significant relationship with the child.

**N. "Level 1 foster care"** is the basic level of foster care services; every child entering foster care is in level 1.

**O. "Level 2 foster care"** is for children requiring a higher level of care, structure or supervision than would be required for a child of similar age or development.

**P. "Level 3 foster care"** is for children requiring a significantly high level of care and is generally an alternative to institutional care.

**Q. "Individualized adoption plan (IAP)"** is an individualized and

specific recruitment plan developed by the adoption consultant and approved by the ART for children who have a plan of adoption.

**R. "Adoption resource team (ART)"** is a team of two people, one a CYFD employee and one under contract with CYFD, which reviews cases where adoption is or may become the plan, and which may approve the plan, or make or recommend changes to the plan, to ensure timely movement toward adoption and permanence.

**S. "Post placement services"** are services provided by the CYFD placement staff or contractors to children in CYFD custody and their adoptive families to assure the stability of the placement and help them meet the requirements to finalize the adoption within time frames set out in the Adoption Act Regulations (8 NMAC 26.3).

**T. "Post decree services"** are services provided by CYFD placement staff, contractors, or community providers to children and families who have finalized an adoption to help maintain the stability and functioning of the family.  
[8.26.2.7 NMAC - Rp, 8.26.2.7 NMAC, 07/30/04]

**8.26.2.8 PURPOSE OF ADOPTION SERVICES:** The purpose of adoption services is to provide appropriate and permanent adoptive homes for children in the custody of CYFD for whom a plan of adoption is appropriate.  
[8.26.2.8 NMAC - Rp, 8.26.2.8 NMAC, 07/30/04]

#### **8.26.2.9 ADOPTION REGULATIONS**

**A.** CYFD conforms to the Adoption Act Regulations (8 NMAC 26.3) in the provision of adoption services.

**B.** The definitions in the Adoption Act Regulations apply to these policies.  
[8.26.2.9 NMAC - Rp, 8.26.2.9 NMAC, 07/30/04]

**8.26.2.10 CHILD ELIGIBILITY CRITERIA:** A child is eligible for adoption services when a child's permanency plan or concurrent plan is adoption.  
[8.26.2.10 NMAC - Rp, 8.26.2.10 NMAC, 07/30/04]

#### **8.26.2.11 ADOPTIVE PARENT ELIGIBILITY**

**A.** Any adult age 18 years and older is eligible to adopt through CYFD once she/he has an approved pre-placement study.

**B.** A CYFD employee is not allowed to adopt any child with whom he/she is working in an official capacity.

**C.** CYFD conducts criminal records checks for all applicants. The applicant(s) shall provide finger print cards to CYFD for all adults residing in the applicant(s)' home, as well as a request for federal background checks. No person shall be approved as an adoptive parent who has current or past convictions records for crimes against children, including but not limited to sexual offense, neglect, and/or abuse or any other violent offense, including but not limited to domestic violence, assault, battery or rape.

**D.** No person shall be approved as an adoptive parent whose own children are in foster care or when there has been a substantiation of sexual abuse or severe physical abuse.  
[8.26.2.11 NMAC - Rp, 8.26.2.11 NMAC, 07/30/04]

#### **8.26.2.12 ELIGIBILITY FOR STUDY BY CYFD STAFF**

**A.** Applicants shall reside in the state of New Mexico as defined in the Adoption Act 32A-5-3(V) and be at least 18 years of age in order to have an adoptive study completed by CYFD.

**B.** An adoptive family may be a single parent, a married couple who have been cohabiting for two years or more or an unmarried couple who have been cohabiting for two years or more. In some cases, a shorter period of cohabitation may be acceptable if approved by the placement supervisor.

**C.** If the inquiring family has experienced the loss of a household member within the past year, the application shall be accepted after an assessment of the family's situation.

**D.** If an applicant family gains a full-time member, the application process shall be discontinued until CYFD reassesses the family and determines the family's ability to successfully integrate an adoptive child.  
[8.26.2.12 NMAC - Rp, 8.26.2.12 NMAC, 07/30/04]

#### **8.26.2.13 WAITING LIST**

**A.** There is no waiting list for eligible children.

**B.** When resources are limited, the prioritization for the study of adoptive applicants is as follows:

(1) fit and willing relatives of the child eligible for adoption, including fictive kin;

(2) home studies completed for a specific child only; and

(3) the current recruitment criteria that is set according to the population of children awaiting adoption.

[8.26.2.13 NMAC - Rp, 8.26.2.13 NMAC, 07/30/04]

**8.26.2.14 RECRUITMENT**

**A.** CYFD's recruitment efforts focus on developing a pool of potential adoptive homes willing and able to adopt the children needing placement. CYFD attempts to identify and locate fit and willing relatives for consideration as part of the pool of available adoptive parents.

**B.** CYFD recruits statewide for potential adoptive homes for children requiring placement.

**C.** CYFD's recruitment plan at a minimum addresses the following:

- (1) information about the characteristics and needs of available children;
- (2) the nature of the adoption process; and
- (3) supports available to adoptive families.

**D.** CYFD develops individual adoption plans to recruit for those children for whom an adoptive home has not been identified according to the requirements of the adoption resource team (ART) process.

[8.26.2.14 NMAC - Rp, 8.26.2.14 NMAC, 07/30/04]

**8.26.2.15 SUBSIDIZED ADOPTIONS**

**A.** CYFD makes information about subsidized adoption available to interested families.

**B.** Post decree subsidy services are available to a family who has adopted an eligible child through CYFD.

**C.** CYFD determines if a child is eligible to receive state or federal subsidy based upon federally and/or state established criteria that consider the special needs of the child, the child's birth family and/or economic status of the adoptive family.

**D.** Types of subsidy available:

(1) Legal: There shall be a one time only attorney fees subsidy for finalization of an adoption.

(2) Maintenance: Maintenance payments based on the maximum amount of maintenance payment the child is eligible for in foster care shall be utilized to meet the child's existing day-to-day needs.

(3) Medical: Medical subsidy shall cover only those pre-existing conditions that are not covered by the family's private/group medical insurance or medicaid.

**E.** For a private agency treatment foster home the adoption subsidy shall be negotiated in the same manner as any other subsidy.

**F.** In the case of the conversion to adoption of CYFD's level 3 foster homes, the subsidy may be negotiated up to the level 3 foster care rate and must be

approved by the division director or deputy secretary.

**G.** The adoptive parent receiving subsidy notifies CYFD within two weeks of any of the changes listed below.

- (1) the adoptive parent is no longer legally responsible for the child;
- (2) change of address;
- (3) change in the child's name;
- (4) change in family needs or circumstances; and/or
- (5) death of the child.

**H.** Failure to notify CYFD in a timely manner may result in suspension or termination of the monthly adoption subsidy payment and a request for repayment of funds.

**I.** If the child's worker has determined that the child is eligible for Title IV-E funding, the child is eligible for non-recurring adoption expenses as noted below.

(1) Time frames: The agreement for non-recurring expenses shall be signed prior to the final decree of adoption.

(2) Eligibility: There is no income eligibility requirement for adoptive parents in determining whether payments for non-recurring expenses of adoption shall be made. However, parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

(3) Separate reimbursement: In cases which siblings are placed and adopted, either separately or as a unit, each child shall be treated as an individual with separate reimbursement up to the maximum allowable for each child.

(4) Interstate placement: When the adoption of the child involves interstate placement, the state that enters into adoption subsidy agreement shall be responsible for paying the non-recurring adoption expenses of the child. In cases in which there is interstate placement but no agreement for adoption assistance, the state in which the final adoption decree is issued shall be responsible for reimbursement of non-recurring expenses if the child meets the requirements. Subsidy payments are paid to the adoptive parents regardless of the family's place of residence as long as the child is under age 18, or if the child has not yet graduated from high school and has not yet reached age 19, and there is verification of the family's financial need and the child's continued dependency.

**J.** Each Title IV-E subsidy agreement shall be completed and signed prior to adoptive finalization to be valid. The child shall not be eligible for Title IV-E subsidy after the adoption decree has been entered.

**K.** CYFD notifies the adoptive parent in writing when changes in

the adoption subsidy rate occur.

**L.** CYFD reviews each subsidy agreement annually to redetermine eligibility maintenance payments may increase or decrease based on current financial status report, that is, a current Tax Form 1040. The adoptive family shall be required to submit a current financial status report at least 45 days before the expiration of the agreement and verification that the child is in the home and/or the family is financially responsible for the child.

(1) Subsidy can be terminated based upon any of the following events:

- (a) fulfillment and completion of the terms of the agreement;
- (b) at the request of the adoptive parent;
- (c) when the child reaches 18 years of age;

(d) subsidy may continue beyond the child's 18th birthday if documentation from the child's school is submitted to the adoption subsidy specialist that the child will graduate before his/her 19th birthday;

- (e) upon the death of the child;
- (f) upon the cessation of legal responsibility of the adoptive parent for the adopted child;

(g) CYFD determines that the child is no longer receiving any support from the adoptive parent; or

(h) the family fails to participate in the renewal process for adoption assistance.

(2) The adoptive parent may request an administrative hearing of the decision to reduce, change, suspend or terminate adoption subsidy in accordance with CYFD policy.

[8.26.2.15 NMAC - Rp, 8.26.2.15 NMAC, 07/30/04]

**8.26.2.16 ADOPTION PRE-PLACEMENT STUDY PROCESS**

**A.** Consistent with requirements of 32A-4-14, CYFD completes a pre-placement homestudy to determine whether an applicant is an appropriate adoptive parent and the characteristics of the child suitable for the applicant. The process includes:

(1) Application: The applicants complete and sign the application provided by CYFD;

(2) Orientation and training: The applicants attend and participate in CYFD approved orientation and training;

(3) Criminal records checks: The applicant's completed federal, state and local criminal record checks shall be received and reviewed by CYFD to ensure the applicants meet federal and state requirements (see 8.8.3 NMAC);

(4) References: The applicants provide five references, all of which shall be contacted by CYFD. Additional refer-

ences shall be provided by any adult children, all of whom shall be contacted by CYFD; any exceptions must have supervisory approval;

(5) Verifications: The applicant provides verification of marriages, divorces, employment, military status and income;

(6) Interviews: The applicants and all other family members participate in group and individual interviews;

(7) Medicals: The applicants and each member of the household shall provide a medical report which is current within the last year; and

(8) Home visit: The applicants allow and participate in a visit to the applicant's address.

**B.** CYFD documents the information collected and the results of the study process in the pre-placement study.

**C.** An individual applying to CYFD to adopt and participating in the study process agrees to and acknowledges the following:

(1) If a person applies to adopt, she/he agrees not to concurrently apply with other adoption agencies.

(2) If a person decides to apply to other agencies, s/he shall notify the placement worker.

(3) If a person files an independent adoption action, the placement shall be terminated immediately.

(4) CYFD may require a psychiatric or medical evaluation or other therapeutic intervention for an applicant as part of the study process at the expense of the applicant.

(5) The applicant has the right to terminate the application process at any time.

(6) CYFD notifies the applicant in person and in writing of CYFD's decision to terminate the study process.

**D.** CYFD updates the pre-placement homestudy at minimum every six months.

**E.** CYFD will send the homestudy of the approved adoptive family to the family's attorney for a private adoption or to another licensed agency when:

(1) one year has elapsed since the approval of the study and there has not been an adoptive placement made by CYFD; and

(2) the family requests the CYFD study be sent to a licensed agency or a private adoption for a fee of \$1,500, unless the study is being requested for a special needs adoption.

[8.26.2.16 NMAC - Rp, 8.26.2.16 NMAC, 07/30/04]

#### **8.26.2.17 BEST INTEREST ADOPTION PLACEMENT**

**A.** Children are referred to an adoption consultant and may be referred

to the adoption resource team for the purposes of identifying a potential adoptive home.

**B.** The best interest of a child is paramount in identifying an adoptive family for a child.

**C.** A decision to separate siblings shall be based on a carefully documented and reviewed determination that such a separation would be beneficial to the siblings involved. If separation would benefit one or more siblings, but not all siblings, for social, emotional or developmental reasons, CYFD will consider the needs of each child separately. CYFD will not separate siblings solely because an adoptive placement is available for one or more children but not the entire group.

**D.** The final placement decision is the responsibility of CYFD.

**E.** The placement of a child shall not be delayed or denied on the basis of the race, color, or national origin of the adoptive parent or the child involved. The selected family should show an awareness of and sensitivity to the ethnic and cultural resources that may be available to them for the child placed in the home.

**F.** Consideration is given first to relatives for placement of a child in custody who needs out of home placement. [8.26.2.17 NMAC - Rp, 8.26.2.17 NMAC, 07/30/04]

#### **8.26.2.18 FOSTER HOME ADOPTIONS**

**A.** CYFD considers any foster parent who has provided foster care for six months as a potential adoptive home for a child in custody with a plan of adoption.

**B.** When a foster parent, including a treatment foster parent, has been selected as an adoptive parent for a child in CYFD custody, CYFD completes the pre-placement homestudy.

[8.26.2.18 NMAC - Rp, 8.26.2.18 NMAC, 07/30/04]

#### **8.26.2.19 FULL DISCLOSURE AND ADOPTIVE PLACEMENT**

**A.** CYFD provides full disclosure of information to the extent known regarding the adoptee to the adoptive family.

(1) The information provided includes all known information regarding the adoptee's:

- (a) physical health history;
- (b) psychological history;
- (c) mental and behavioral health history;

history;

- (d) hospitalization history;
- (e) medication history;
- (f) genetic history;
- (g) physical description;
- (h) social history;

- (i) placement history;
- (j) education history;
- (k) eligibility for subsidy; and
- (l) legal risk.

(2) The adoptive family is required to agree in writing to maintain confidentiality of all information provided in full disclosure.

(3) All records concerning applicants and adoptees are confidential and may only be released in accordance with law.

(4) Birth family identifying information may be deleted from the information/documents provided to the adoptive family during full disclosure as appropriate. Documents concerning the birth parents are not provided during full disclosure unless CYFD has secured a release of information from the birth parents.

(5) The potential adoptive family returns all information provided during full disclosure to CYFD if the placement of the adoptee does not occur.

**B.** CYFD may elect to discontinue the presentation at any time during the full disclosure.

**C.** The adoptive family waits to inform CYFD of a decision about the placement until at least 72 hours have elapsed from the time of full disclosure.

**D.** CYFD works with the adoptee and adoptive family to prepare each for placement. At a minimum, preparation pre-placement visitation occurs between the child and adoptive family.

**E.** CYFD and adoptive family reviews and signs the placement agreement at the time of actual placement.

[8.26.2.19 NMAC - Rp, 8.26.2.19 NMAC, 07/30/04]

#### **8.26.2.20 POST PLACEMENT ADOPTION SERVICES**

**A.** CYFD provides services to the child and adoptive family until the finalization of the adoption.

**B.** CYFD develops a treatment plan with all families adopting children in CYFD custody. A treatment plan may include any or all of the following:

(1) assessment of service needs for the family conducted by the placement worker based on interviews with the family, children and knowledge of the issues that require attention or resolution.

(2) collateral contacts and referrals necessary to insure successful integration of the family during the post placement period; and

(3) monitoring and arranging of psychological, medical, educational and therapeutic services.

**C.** CYFD assesses and documents the status of the placement until finalization of the adoption.

[8.26.2.20 NMAC - Rp, 8.26.2.20 NMAC, 07/30/04]

**8.26.2.21 ABUSE INVESTIGATIONS IN PRE-ADOPTIVE PLACEMENT**

**A.** Any CYFD employee suspecting child abuse and/or neglect in a preadoptive home makes a referral as per CYFD policy concerning child protective services intake.

**B.** Any referral of child abuse or neglect in a preadoptive placement accepted by CYFD is investigated as per CYFD policy concerning child protective services investigations.

**C.** Based upon the result of the investigation, CYFD may:

(1) proceed with the adoptive placement;

(2) terminate the adoptive placement; and/or

(3) determine the family no longer eligible to adopt children in CYFD custody.

**D.** CYFD notifies the adoptive family in person and in writing of the results of the investigations and CYFD actions.

[8.26.2.21 NMAC - Rp, 8.26.2.21 NMAC, 07/30/04]

**8.26.2.22 DISRUPTION AND CRISIS INTERVENTION**

**A.** CYFD may elect to develop and implement a crisis intervention plan to avert the disruption of an adoptive placement.

**B.** If a disruption is unavoidable, CYFD focuses efforts on minimizing the emotional stress to the child associated with the disruption.

**C.** After a disruption, CYFD assesses the permanency plan for the child, refers the child to the ART and develops an individualized adoption plan if adoption continues to be the most appropriate plan.

[8.26.2.22 NMAC - Rp, 8.26.2.22 NMAC, 07/30/04]

**8.26.2.23 FINALIZATION**

**A.** Finalization of adoption complies with state statutes in order to create permanence for the child and adoptive family.

**B.** CYFD establishes recommended time frames for finalization based on the age and needs of the child and in accordance with the adoption regulations at 8.26.3 NMAC.

**C.** During this period CYFD provides information to the adoptive family regarding requirements for legal finalization of the adoption including the family's selection of an attorney, agency provision of legal consents, name change of the child and required consent of the child over ten years of age.

**D.** If the adoptive family

and child move out of state prior to finalization, a referral through the interstate compact on the placement of children is initiated by CYFD to request appropriate post placement services and written reports. The family may file the adoption petition in their state of residence or in the New Mexico county of the child's origin.

[8.26.2.23 NMAC - Rp, 8.26.2.23 NMAC, 07/30/04]

**8.26.2.24 POST DECREE SERVICES:** CYFD may provide direct post decree services or make appropriate referrals to community based contract services for adoptive families and for the child to maintain the family unit.

[8.26.2.24 NMAC - Rp, 8.26.2.24 NMAC, 07/30/04]

**8.26.2.25 ADULT ADOPTEE REQUESTS:** CYFD provides information to an adult adoptee, sibling, or biological parent as allowed for by law.

[8.26.2.25 NMAC - Rp, 8.26.2.25 NMAC, 07/30/04]

**8.26.2.26 ADOPTION RESOURCE TEAMS:**

The adoption resource teams review cases with a plan change to adoption, with a goal of adoption for 12 months or more, whose adoptive placements disrupt or for whom the adoption has not been finalized within 12 months of the signed placement agreement, as well as certain other cases for which the plan should be, or may become, adoption. As applicable in specific circumstances, the adoption resource teams review, amend, and approve in an individualized adoption plan, specific recruitment steps to place the child in an adoptive or pre-adoptive home, as appropriate, or develop other steps intended to achieve adoptions more quickly for those children whose plan is adoption.

[8.26.2.26 NMAC - N, 07/30/04]

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## NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment to 19.8.1.7 of the NMAC, and was adjusted to conform to current NMAC requirements, effective 7-30-2004.

**19.8.1.7 Definitions**

**A.** Definitions beginning with the letter "A"

(1) **ACCELERATED EROSION** - means washing away or blowing away of overburden, spoil, soil or topdressing material in excess of normal erosion resulting from changes in the vegetative cover or ground conditions.

(2) **ACID DRAINAGE** - means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mining and reclamation operations or from an area affected by surface coal mining and reclamation operations.

(3) **ACID FORMING MATERIALS** - means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(4) **ACID-TEST RATIO** - means the relation of quick assets to current liabilities.

(5) **ACT** - is the state of New Mexico Surface Mining Act (Sections 69-25A-1 et. seq. NMSA 1978)

(6) **ADJACENT AREA** - means land located outside the affected area, permit area, or mine plan area, depending on the context in which adjacent area is used where air, surface or ground water, fish, wildlife, vegetation or other resources protected by the act may be adversely impacted by surface coal mining and reclamation operations.

(7) **AFFECTED AREA** - means, with respect to surface coal mining activities, any land or water upon or in which those activities are conducted or located. With respect to underground coal mining activities, affected area means:

(a) any water or surface land upon or in which those activities are conducted or located; and

(b) land or water which is located above underground mine workings.

(8) **AGRICULTURAL ACTIVITIES** - means with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors. These uses include, but are not limited to, the pasturing, grazing, or watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. These uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.

(9) **AGRICULTURAL USE** - means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation and harvesting of plants.

(10) **ALLUVIAL VALLEY FLOORS** - means the unconsolidated stream-laid deposits holding streams with water availability sufficient for subirriga-

tion or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass movement accumulations, and windblown deposits. Ephemeral or dry streams incapable of supporting agricultural activities by natural means, and without artificial means, are not alluvial valley floors.

**(11) ANTHRACITE** - means coal classified as anthracite in ASTM standard D 388-77. Coal classifications are published by the American society of testing and materials under the title, "standard specification for classification of coals by rank", ASTM D 388-77, on pages 220 through 224. Table 1 which classifies the coals by rank is presented on page 223. This publication is hereby incorporated by reference as it exists on the date of adoption of 19.8 NMAC Parts 1-35.

**(12) APPLICANT** - means any person seeking a permit from the director to conduct surface coal mining and reclamation operations or coal exploration pursuant to the act and 19.8 NMAC Parts 1-35.

**(13) APPLICATION** - means the documents and other information filed with the director under the act and 19.8 NMAC Parts 1-35 for the issuance of exploration approval or a permit as the context requires.

**(14) APPLICANT/VIOLATOR SYSTEM or AVS** - means the computer system maintained by OSM to identify ownership or control links involving permit applicants, permittees, and persons cited in violation notices.

**(15) APPROXIMATE ORIGINAL CONTOUR** - means the surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with all spoil piles and refuse piles eliminated. Highwalls will also be eliminated except as provided for in Paragraph (2) of Subsection A of 19.8.20.2055 NMAC. Permanent water impoundments may be permitted where the director has determined that they comply with 19.8.20.2017, 2024, and 2075 NMAC.

**(16) AQUIFER** - means a zone, stratum or group of strata that can store and transmit water in sufficient quantities for a specific use.

**(17) ARID AND SEMIARID AREA** - includes, in the context of alluvial valley floors, all coal fields in the state.

**(18) ASPECTION** - means the variability of blooming, fruiting, foliation

and defoliation of vegetation during the various seasons of the year.

**(19) AUGER MINING** - means a method of mining coal at a cliff or high-wall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

**(20) AUGMENTED SEEDING** - means seeding in excess of the normal husbandry practices approved in the director's *coal mine reclamation program vegetation standards*, or reseeding with fertilization or irrigation, or reseeding in response to unsuccessful revegetation in terms of adequate germination or establishment or permanence.

**B.** Definitions beginning with the letter "B"

**(1) BASAL AREA** - means that portion of the sampling unit covered by the crosssectional area of the individual plants taken at or near the ground surface for the herb and shrub strata and at "breast height" (1.3 m; 4.5 ft.) for tree species.

**(2) BEST TECHNOLOGY CURRENTLY AVAILABLE** - means equipment, devices, systems, methods or techniques which will:

**(a)** prevent to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state or federal laws; and

**(b)** minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of these resources where practicable; the term includes equipment, devices, systems, methods or techniques which are currently available anywhere as determined by the director, even if they are not in routine use; the term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 19.8.20 NMAC; within the constraints of the permanent program, the director shall have the discretion to determine the best technology currently available on a case-by-case basis as authorized by the act and 19.8 NMAC Parts 1-35.

**(3) BLASTER** - means a person directly responsible for the use of explosives in surface coal mining operations who is certified pursuant to these regulations.

**C.** Definitions beginning with the letter "C"

**(1) CEMETERY** - means a place dedicated to, used and maintained for the interment of the human dead.

**(2) COAL** - means combustible carbonaceous rock, classified as anthracite,

bituminous, subbituminous, or lignite by ASTM standard D 388-77, referred to and incorporated by reference in the definition of anthracite.

**(3) COAL EXPLORATION** - means the field gathering of:

**(a)** surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

**(b)** environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of the act and 19.8 NMAC Parts 1-35.

**(4) COAL MINING OPERATION** - means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.

**(5) COAL PREPARATION PLANT** - means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds; shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

**(6) COAL PROCESSING PLANT** - means (a) a collection of facilities where run-of-the-mine coal is subjected to chemical or physical processing and separated from its impurities. The processing plant may consist of, but need not be limited to, the following facilities: loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; roads, railroads and other transport facilities; or (b) underground development waste.

**(7) COAL PROCESSING WASTE** - means (a) earth materials which are combustible, physically unstable, or acid-forming or toxic-forming, which are wasted or otherwise separated from product coal, and slurried or otherwise transported from coal preparation plants, after physical or chemical processing, cleaning, or concentrating of coal, (b) underground development waste.

**(8) COAL PROCESSING WASTE BANK** - means a surface deposit of coal processing waste that does not impound water, slurry or other liquid or semi-liquid material.

**(9) COLLATERAL BOND** - means an indemnity agreement in a sum certain executed by the permittee as princi-

pal which is supported by the deposit with the state of New Mexico of one or more of the following:

(a) a cash account, which shall be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the state of New Mexico upon demand, or the deposit of cash directly with the director;

(b) negotiable bonds of the United States, a state, or a municipality, endorsed to the order of the state of New Mexico, and placed in the possession of, the director;

(c) negotiable certificates of deposit, made payable or assigned to the state of New Mexico and placed in its possession or held by a federally-insured bank;

(d) an irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the state of New Mexico upon presentation;

(e) a perfected, first-lien security interest in real property in favor of the state of New Mexico only; or

(f) other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of the state of New Mexico, and placed in the possession of, the director.

**(10) COMBUSTIBLE MATERIAL** - means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

**(11) COMMUNITY OR INSTITUTIONAL BUILDING** - means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

**(12) COMPACTION** - means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effect such as from repeated application of wheel, track, or roller loads from heavy equipment.

**(13) COMPLETE APPLICATION** - means an application for exploration approval or a surface coal mining and reclamation permit, which contains all information required under the act and 19.8 NMAC Parts 1-35.

**(14) CONSTANCY** - means the percentage of sampling areas of the same vegetative type in which an individual species occurs.

**(15) CROPLAND** - means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories.

**(16) CUMULATIVE IMPACT AREA** - means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and ground-water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) the proposed operation;

(b) all existing operations;

(c) any operation for which a permit application has been submitted to the director; and

(d) all operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

**(17) CURRENT ASSETS** - means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.

**(18) CURRENT LIABILITIES** - means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.

**D.** Definitions beginning with the letter "D"

**(1) DENSITY** - means the number of individuals of a species per unit area.

**(2) DEVELOPED WATER RESOURCES** - is meant to include land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

**(3) DIRECT FINANCIAL INTEREST** - means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also any other arrangements where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

**(4) DIRECTOR** - means the director of mining and minerals division, or his authorized representative.

**(5) DISTURBED AREA** - means any area where vegetation, topsoil, or overburden is removed or upon which topdressing, spoil, coal processing waste, under-

ground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by NMAC 19.8.14 is released.

**(6) DIVERSION** - means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

**(7) DOWNSLOPE** - means the land surface between the projected outcrop of the lowest coal bed being mined along each highwall and a valley floor.

**(8) DRAINAGE GRADE CROSSING** - means the point at which a road crosses a drainage channel at the elevation of the base of that channel.

**(9) DRINKING, DOMESTIC OR RESIDENTIAL WATER SUPPLY** - means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

**E.** Definitions beginning with the letter "E"

**(1) EMBANKMENT** - means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

**(2) EMPLOYEE** - means:

(a) any person employed by the director who performs any function or duty under the act; and

(b) advisory board or commission members and consultants who perform any function or duty under the act, if they perform decision-making functions under the authority of state law or regulations; however, members of advisory boards or commissions established in accordance with state law or regulations to represent multiple interests are not considered to be employees.

**(3) EPHEMERAL STREAM** - means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

**(4) ESSENTIAL HYDROLOGIC FUNCTIONS** - means the role of an alluvial valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape and the physical proper-

ties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation. The role of the alluvial valley floor in making water usefully available for agricultural activities results from:

(a) the existence of flood plains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants;

(b) the presence of earth materials suitable for the growth of agriculturally useful plants;

(c) the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation;

(d) the natural control of alluvial valley floors in limiting destructive extremes of stream discharge; and

(e) the erosional stability of earth materials suitable for the growth of agriculturally useful plants.

(5) **EXCESS SPOIL** - means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with Paragraph (5) of Subsection A of 19.8.20.2055 NMAC in non-steep slope areas shall not be considered excess spoil.

(6) **EXISTING STRUCTURE** - means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of a state program.

(7) **EXPERIMENTAL PRACTICE** - means the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes. Experimental practices need not comply with specific environmental protection performance standards of 19.8.20 NMAC, the act, and 19.8 NMAC Parts 1-35.

(8) **EXTRACTION OF COAL AS INCIDENTAL PART** - means the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of 19.8 NMAC Parts 1-35, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the act and 19.8 NMAC Parts 1-35.

**F.** Definitions beginning with the letter "F"

(1) **FEDERAL LANDS** - means

any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(2) **FEDERAL LANDS PROGRAM** - means a program established by the secretary of the U.S. department of interior, pursuant to Section 523 of the Surface Mining Control and Reclamation Act of 1977 to regulate surface coal mining and reclamation operations on federal lands.

(3) **FEDERAL VIOLATION NOTICE** - means a violation notice issued by OSM or by another agency or instrumentality of the United States.

(4) **FISH AND WILDLIFE HABITAT** - means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(5) **FIXED ASSETS** - means plants, facilities and equipment, not used for the production, transportation or processing of coal, and does not include land or coal in place.

(6) **FLOOD IRRIGATION** - means, with respect to alluvial valley floors, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.

(7) **FOLIAGE COVER** - means that portion of the sampling unit covered by the vertical projection of an individual plant's aerial parts.

(8) **FORESTRY** - means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest, harvest and management operations which is adjacent to or an integral part of these operations is also included. For purposes of 19.8 NMAC Parts 1-35, pinon-juniper type trees shall not be deemed forest trees managed for such long term production.

(9) **FRAGILE LANDS** - means unique or valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants and uncommon geologic formations. National natural landmark sites, areas where mining may cause flooding, areas containing a concentration of unique ecological and aesthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Section 69-25A-26 NMSA 1978 of the act and 19.8.2, 3 and 4 NMAC, that could be damaged or destroyed by surface coal mining operations.

(10) **FREQUENCY** - means the percentage of plots or subplots occupied by each individual species in one sampling unit or area.

(11) **FUGITIVE DUST** - means

that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads, wind erosion of exposed surfaces, storage piles, and spoil piles, reclamation operations and other activities in which material is either removed, stored, transported, or redistributed.

**G.** Definitions beginning with the letter "G"

(1) **GOVERNMENT FINANCED CONSTRUCTION** - means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(2) **GRAZING LAND** - includes both grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing or occasional hay production. Land used for facilities in support of ranching operations which are adjacent to or an integral part of these operations is also included.

(3) **GROUND COVER** - means either foliage or basal area cover of living plant material.

(4) **GROUND WATER** - means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

**H.** Definitions beginning with the letter "H"

(1) **HALF-SHRUB** - means a perennial plant with a woody base whose annually produced stems die back each year.

(2) **HEAD-OF-HOLLOW FILL** - means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In fills with less than 250,000 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

(3) **HIGHWALL** - means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.



**(4) HISTORIC LANDS** - means historic or cultural districts, places, structures or objects, including archaeological and natural historic landmark sites, sites listed on or eligible for listing on a state or national register of historic places, or sites for which historic designation is pending.

**(5) HISTORICALLY USED FOR CROPLAND** - means:

**(a)** lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface coal mining and reclamation operations;

**(b)** lands that the director determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

**(c)** lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

**(6) HYDROLOGIC BALANCE** - means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

**(7) HYDROLOGIC REGIME** - means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

**I.** Definitions beginning with the letter "I"

**(1) IMMINENT DANGER TO THE HEALTH AND SAFETY OF THE PUBLIC** - means the existence of any condition or practice, or any violation of a permit, 19.8 NMAC Parts 1-35 or other requirements of the act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, sub-

jected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

**(2) IMPOUNDMENT** - means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water or sediment.

**(3) INDIGENOUS** - means an organism that is native, not introduced, or immigrates under its own power into an area.

**(4) INDIRECT FINANCIAL INTEREST** - means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests including interests held by his or her spouse, minor child and other relatives, including in-laws residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

**(5) INDUSTRIAL/COMMERCIAL** - means land used for:

**(a)** extraction or transformation of materials for fabrication or products, wholesaling of products or for long-term storage of products; this includes all heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining and fabricated metal products manufacture; land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included; support facilities include, but are not limited to, all rail, road, and other transportation facilities.

**(b)** retail or trade of goods or services, including hotels, motels, stores, restaurants and other commercial establishments; land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included; support facilities include, but are not limited to, parking, storage or shipping facilities.

**(6) IN SITU PROCESSES** - means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining and fluid recovery mining.

**(7) INTERMITTENT STREAM** - means a stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

**(8) INTERSEEDING** - means a secondary seeding practice into established

vegetation cover in order to take advantage of climatic conditions that favor species requiring special conditions for germination and establishment, or to improve or alter the composition between forage species and shrubs, or between warm and cool season grasses.

**(9) IRREPARABLE DAMAGE TO THE ENVIRONMENT** - means any damage to the environment that cannot be corrected by actions of the applicant.

**L.** Definitions beginning with the letter "L"

**(1) LAND USE** - means specific uses or management related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the director. Land use categories identified in 19.8 NMAC Parts 1-35 are:

- (a)** cropland
- (b)** pasture land or land occasionally cut for hay
- (c)** grazing land
- (d)** forestry
- (e)** residential
- (f)** industrial/commercial
- (g)** recreation
- (h)** fish and wildlife habitat
- (i)** developed water resources
- (j)** undeveloped land or no current use or land management

**(2) LIABILITIES** - means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

**(3) LITTER COVER** - means that portion of the sampling unit covered by dead s of plants.

**M.** Definitions beginning with the letter "M"

**(1) MATERIAL DAMAGE**, in the context of 19.8.9.918 and 19.8.20.2067, 2069 through 2072 NMAC, means:

**(a)** any functional impairment of surface lands, features, structures or facilities;

**(b)** any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

**(c)** any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

**(2) MATERIALLY DAMAGE THE QUANTITY OR QUALITY OF WATER** - means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where such changes are caused by surface coal mining

and reclamation operations and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining.

**(3) MINE PLAN AREA** - means the area of land and water within the boundaries of all permit areas during the entire life of the surface coal mining and reclamation operations as anticipated by the applicant at the time of submission of a permit application. Other terms defined in 19.8 NMAC Parts 1-35 which relate closely to mine plan area are:

**(a)** permit area, which will always be within or the same as the mine plan area;

**(b)** affected area, which will always be within or the same as the permit area; and

**(c)** adjacent area, which may surround or extend beyond the affected area, permit area, or mine plan area.

**(4) MINING PLAN** - means a complete mining and reclamation operations plan that complies with the requirements of the act, 19.8 NMAC Parts 1-35 and all other applicable laws and regulations.

**(5) MOIST BULK DENSITY** - means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105 degrees C.

**(6) MULCH** - means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

**N.** Definitions beginning with the letter "N"

**(1) NATURAL HAZARD LANDS** - means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment.

**(2) NET WORTH** - means total assets minus total liabilities and is equivalent to owners' equity. For the purposes of 19.8.14.1410.A(3)(b) NMAC plants, facilities and equipment used for the production, transportation or processing of coal, and land or coal in place shall not be considered assets in a calculation of net worth.

**(3) NONCOMMERCIAL BUILDING** - means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are also defined in

19.8.1.7 NMAC. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises are excluded.

**(4) NO SIGNIFICANT RECREATIONAL, TIMBER, ECONOMIC OR OTHER VALUES INCOMPATIBLE WITH SURFACE COAL MINING OPERATIONS** - means those significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on off-site areas which could be affected by mining. Those values to be evaluated for their importance include:

**(a)** recreation, including hiking, boating, camping, skiing or other related outdoor activities;

**(b)** timber management and silviculture;

**(c)** agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;

**(d)** scenic, historic, archaeological, aesthetic, fish, wildlife, plants or cultural interests.

**(5) NORMAL EROSION** - means the erosion that occurs on land under natural environmental conditions not disturbed by human activity.

**(6) NOXIOUS PLANTS** - means species that have been included on the official state lists of noxious plants.

**O.** Definitions beginning with the letter "O"

**(1) OCCUPIED DWELLING** - means any building that is currently being used on a regular or temporary basis for human habitation.

**(2) OCCUPIED RESIDENTIAL DWELLING AND ASSOCIATED STRUCTURES** - means, for purposes of 19.8.9.918 and 19.8.20.2067, 2069 through 2072 NMAC, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial pur-

poses are excluded.

**(3) OPERATOR** - means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

**(4) OSM** - means office of surface mining reclamation and enforcement, U.S. department of the interior.

**(5) OTHER TREATMENT FACILITIES** - means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point-source discharge and that are utilized to prevent additional contribution of suspended solids to streamflow or runoff outside the permit area, and to comply with all applicable state and federal water-quality laws and regulations.

**(6) OUTSLOPE** - means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

**(7) OVERBURDEN** - means material of any nature, consolidated or unconsolidated that overlies a coal deposit, excluding topsoil.

**(8) OWNED OR CONTROLLED AND OWNS OR CONTROLS** - means any one or a combination of the relationships specified in Subparagraphs (a) and (b) of Paragraph (8) of Subsection O of 19.8.1.7 NMAC:

**(a)**

**(i)** being a permittee of a surface coal mining operation;

**(ii)** based on instruments of ownership or voting securities, owning of record in excess of 50 percent of an entity; or

**(iii)** having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

**(b)** the following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

**(i)** being an officer or director of an entity;

**(ii)** being the operator of a surface coal mining operation;

**(iii)** having the ability to commit the financial or real property assets or working resources of an entity;

**(iv)** being a general partner in a partnership;

**(v)** based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10

through 50 percent of the entity; or

(vi) owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

**(9) OWNERSHIP or CONTROL LINK** - means any relationship included in the definition of "owned or controlled" or "owns or controls" in Subsection O of 19.8.1.7 NMAC or in the violations review provisions of Subsection C of 19.8.11.1105 NMAC. It includes any relationship presumed to constitute ownership or control under the definition of "owned or controlled" or "owns or controls" in this section, unless such presumption has been successfully rebutted under the provisions of 19.8.11.1117 and 1118 NMAC or under the provisions of 19.8.12 and 19.8.11.1118 NMAC.

**P.** Definitions beginning with the letter "P"

**(1) PARENT CORPORATION** - means a corporation which owns or controls the applicant.

**(2) PASTURELAND OR LAND OCCASIONALLY CUT FOR HAY** - means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock of occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

**(3) PERENNIAL STREAM** - means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

**(4) PERFORMING ANY FUNCTION OR DUTY UNDER THIS ACT** - means those decisions or actions, which if performed or not performed by an employee, affect the programs under the act.

**(5) PERMANENT DIVERSION** - means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the director and other appropriate state and federal agencies.

**(6) PERMIT** - means a permit to conduct surface coal mining and reclamation operations issued pursuant to Laws 1972, Chapter 68, as amended, or by the director pursuant to the act.

**(7) PERMIT AREA** - means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the

director. This area shall include, at a minimum, all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit. The permit area shall not include roads, not otherwise within the permit boundary, infrequently used to monitor remote facilities or environmental resources, or for exploration or surveying purposes, if the director approves such use of such roads, after determining that such use will not result in a significant adverse affect upon the environment.

**(8) PERMIT MODIFICATION** - means an alteration of the terms or requirements of a permit, which alteration is not a permit revision.

**(9) PERMIT REVISION** - means a significant alteration of the terms or requirements of a permit, as identified in Subsection A of 19.8.13.1301 NMAC.

**(8)10) PERMITTEE** - means a person holding or required by the act and 19.8 NMAC Parts 1-35 to hold a permit to conduct surface coal mining and reclamation operations issued by the director pursuant to the act and 19.8 NMAC Parts 1-35.

**(9)11) PERSON** - means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agency, unit, or instrumentality of federal, state or local government including any publicly owned utility or publicly owned corporation of federal, state or local government.

**(10)12) PERSON HAVING AN INTEREST WHICH IS OR MAY BE ADVERSELY AFFECTED OR PERSON WITH A VALID LEGAL INTEREST** - shall include any person

(a) who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the secretary of the U.S. department of interior or the director or,

(b) whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the secretary of the U.S. department of interior or the director.

**(11)13) PRECIPITATION EVENT** - means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in 19.8 NMAC Parts 1-35, a precipitation event also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

**(12)14) PREVIOUSLY**

**MINED AREA** means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the performance standards of SMCRA, the act, and the New Mexico regulatory program.

**(13)15) PRIME FARMLAND** - means those lands which are defined by the secretary of the U.S. department of agriculture in 7 CFR 657 (federal register vol. 4 no. 21) and which have historically been used for cropland as that phrase is defined in 19.8 NMAC Parts 1-35.

**(14)16) PROHIBITED FINANCIAL INTEREST** - means any direct or indirect financial interest in any coal mining operation.

**(15)17) PROPERTY TO BE MINED** - means both the surface and mineral estates on and underneath lands which are within the permit area.

**(16)18) PUBLIC BUILDING** - means any structure that is owned by a public agency or used principally for public business, meetings or other group gatherings.

**(17)19) PUBLIC OFFICE** - means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

**(18)20) PUBLIC PARK** - means an area dedicated or designated by any federal, state, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public because of that use.

**(19)21) PUBLIC ROAD** - means all roads and highways except private roads, established pursuant to any law of the United States or the state of New Mexico, and roads dedicated to the public use, that have not been vacated or abandoned, and such other roads as are recognized by the corporate authorities of any county in New Mexico.

**Q.** Definitions beginning with the letter "Q" **QUALIFIED LABORATORY** - means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core sampling, or other services as specified at 19.8.32.3203 NMAC under the small operator assistance program and which meet the standards of 19.8.32.3204 NMAC.

**R.** Definitions beginning with the letter "R"

**(1) RANGELAND** - means land on which the natural potential (climax) plant cover is principally native grasses, forbs and shrubs valuable for forage. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

**(2) RECHARGE CAPACITY** - means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

**(3) RECLAMATION** - means those actions taken to restore mined land as required by the act and 19.8 NMAC Parts 1-34 to a postmining land use approved by the director.

**(4) RECREATION** - means land used for public or private leisure time use, including developed recreation facilities such as parks, camps and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

**(5) RECURRENCE INTERVAL** - means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10 year 24 hour precipitation event would be that 24 hour precipitation event expected to occur on the average once in 10 years.

**(6) REFERENCE AREA** - means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species composition that are produced naturally or by crop production methods approved by the director. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

**(7) REPLACEMENT OF WATER SUPPLY** means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies. Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner. If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

**(8) RENEWABLE RESOURCE LANDS** - means aquifers and areas for the recharge of aquifers and other underground

waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

**(9) RESIDENTIAL** - includes single and multiple family housing, mobile home parks and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

**(10) ROAD** - means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or within the affected area or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

**S.** Definitions beginning with the letter "S"

**(1) SAFETY FACTOR** - means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

**(2) SEDIMENTATION POND** - means a primary sediment control structure designed, constructed and maintained in accordance with 19.8.20.2014 NMAC and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

**(3) SELF-BOND** - means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the state of New Mexico, with or without separate surety.

**(4) SIGNIFICANT FOREST COVER** - means an existing plant community consisting predominantly of trees and other woody vegetation. The secretary of the U.S. department of agriculture shall decide on a case-by-case basis whether the forest cover is significant within national

forests of New Mexico.

**(5) SIGNIFICANT, IMMEDIATE ENVIRONMENTAL HARM TO LAND, AIR OR WATER RESOURCES** - means:

**(a)** An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

**(b)** An environmental harm is imminent, if a condition, practice, or violation exists which:

**(i)** is causing harm; or,

**(ii)** may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 69-25A-25(B) NMSA 1978 of the act.

**(c)** An environmental harm is significant if that harm is appreciable and not immediately repairable.

**(6) SLOPE** - means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

**(7) SMCRA** - means the Surface Mining Control and Reclamation Act of 1977, as amended, its implementing regulations at 30 CFR Chapter VII, and any state or federal law, rule, regulation or program enacted or promulgated pursuant to it.

**(8) SOIL HORIZONS** - means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are:

**(a) "A" HORIZON** - the uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant and leaching of soluble or suspended particles are typically the greatest.

**(b) "B" HORIZON** - the layer that typically is immediately beneath the "A" horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the "A" or "C" horizons.

**(c) "C" HORIZON** - the deepest layer of a soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

**(9) SOIL SURVEY** - means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the national cooperative soil survey.

**(10) SPOIL** - means overburden that has been removed during surface coal mining operations, or underground develop-

ment waste material.

**(11) STABILIZE** - means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

**(12) STATE VIOLATION NOTICE** - means any written notification from the director of a violation of the act or 19.8 NMAC Parts 1-35, whether by letter, memorandum, legal or administrative pleading or other written communication, or by another agency or instrumentality of state government.

**(13) STEEP SLOPE** - means any slope with an average inclination of 20 degrees or more from the horizontal or such lesser slope as may be designated by the director after consideration of soil, climate and other characteristics of a region within the state.

**(14) SUBIRRIGATION** - means with respect to alluvial valley floors, the supplying of water to plants from underneath or from a semi-saturated or saturated subsurface zone where water is available for use by vegetation. Subirrigation may be identified by:

(a) diurnal fluctuation of the water table, due to the differences in nighttime and daytime evapotranspiration rates;

(b) increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary action;

(c) mottling of the soils due to iron in the root zone;

(d) existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or

(e) increase in stream flow or a rise in ground water levels, shortly after the first killing frost on the valley floor.

**(15) SUBSTANTIAL LEGAL AND FINANCIAL COMMITMENTS IN A SURFACE COAL MINING OPERATION** - means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and capital-intensive activities.

**(16) SUBSTANTIALLY DISTURB** - means for purposes of coal exploration, to impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.

**(17) SUCCESSOR IN INTEREST** - means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

**(18) SUITABLE MATERIAL** -

means subsoil or geologic material that can be manipulated to form a sufficient amount of soil size particles with the nutrient capability for supporting desirable vegetation in compliance with the postmining land use.

**(19) SURETY BOND** - means an indemnity agreement in a sum certain payable to the state of New Mexico, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in the state.

**(20) SURFACE COAL MINING OPERATIONS** - means:

(a) activities conducted on the surface lands in connection with a surface coal mine or, subject to the requirements of Section 69-25A-20 NMSA 1978 of the act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce; such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site, provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16 2/3 per centum of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 69-25A-16 NMSA 1978 of the act; and provided, further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) areas upon which the activities described in Subparagraph (a) of Paragraph (20) of Subsection S of 19.8.1.7 NMAC occur or where those activities disturb the natural land surface; these areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

**(21) SURFACE COAL MINING AND RECLAMATION OPERATIONS WHICH EXIST ON THE DATE OF ENACTMENT** - means all surface coal

mining and reclamation operations which were being conducted on August 3, 1977.

**(22) SURFACE COAL MINING AND RECLAMATION OPERATIONS** - means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.

**(23) SURFACE MINING ACTIVITIES** - means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

**(24) SURFACE OPERATIONS AND IMPACTS INCIDENT TO AN UNDERGROUND COAL MINE** - means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in Section 69-25A-3(P) NMSA 1978 of the act and the definition of surface coal mining operations appearing in 19.8.1.7 NMAC.

**(25) SUSPENDED SOLIDS OR NONFILTERABLE RESIDUE, EXPRESSED AS MILLIGRAMS PER LITER** - means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the environmental protection agency's regulations for waste water and analysis (40 CFR 136).

T. Definitions beginning with the letter "T"

**(1) TANGIBLE NET WORTH** - means net worth minus intangibles such as goodwill and rights to patents or royalties.

**(2) TEMPORARY CESSATION OF OPERATIONS** - means cessation of mining or reclamation operations for more than thirty days and where a reasonable expectation of the continuation of mining can be demonstrated by the permittee.

**([2]3) TEMPORARY DIVERSION** - means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the director to remain after reclamation as part of the approved postmining land use.

**([3]4) TON** - means 2000 pounds avoirdupois (.90718 metric tons).

**([4]5) TOPDRESSING** - means topsoil or other suitable material that has the capability of sustaining desirable vegetation for the approved postmining land use.

**([5]6) TOPSOIL** - means the "A" soil horizon layer of the three major soil horizons or other surface soil material of suitable texture and pH, and lacking con-

centrations of elements toxic to plants.

**([6]7) TOXIC-FORMING MATERIALS** - means earth materials or wastes which if acted upon by air, water, weathering or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

**([7]8) TOXIC MINE DRAINAGE** - means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

**([8]9) TRANSFER, ASSIGNMENT, OR SALE OF RIGHTS** - means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the director.

**U.** Definitions beginning with the letter "U"

**(1) UNCONSOLIDATED STREAMLAID DEPOSITS HOLDING STREAMS** - means, with respect to alluvial valley floors, all flood plains and terraces located in the lower portions of topographic valleys which contain perennial or other streams with channels that are greater than 3 feet in bankfull width and greater than 0.5 feet in bankfull depth.

**(2) UNDERGROUND DEVELOPMENT WASTE** - means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved and disposed of during development and preparation of areas incident to underground mining activities.

**(3) UNDERGROUND MINING ACTIVITIES** - means a combination of:

**(a)** surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance and reclamation of roads, above ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste and areas on which materials incident to underground mining operations are placed; and

**(b)** underground operations such as underground construction, operation and reclamation of shafts, adits, underground support facilities, in situ processing and underground mining, hauling, storage, and blasting.

**(4) UNDEVELOPED LAND OR NO CURRENT USE OR LAND MANAGEMENT** - means land that is undeveloped or, if previously developed, land that has been allowed to return natural-

ly to an undeveloped state or has been allowed to return to forest through natural succession.

**(5) UNDEVELOPED RANGE-LAND** - means, for purposes of alluvial valley floors, lands where the use is not specifically controlled and managed.

**(6) UPLAND AREAS** - means with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

**V.** Definitions beginning with the letter "V"

**(1) VALLEY FILL** - means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than 20 degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

**(2) VIOLATION NOTICE** - means any written notification from a governmental entity, whether by letter, memorandum, judicial or administrative pleading, or other written communication, of a violation of the act, SMCRA, a state program, or any federal law, rule, or regulation pertaining to air or water environmental protection in connection with a surface coal mining operation. It includes, but is not limited to, a notice of violation; an imminent harm cessation order; a failure-to-abate cessation order; a final order, bill, or demand letter pertaining to a delinquent civil penalty; a bill or demand letter pertaining to delinquent abandoned mine reclamation fees; and a notice of bond forfeiture, where one or more violations upon which the forfeiture was based have not been corrected.

**(3) VOLUME WHEN USED IN REFERENCE TO TIMBER** - means the board foot volume per square foot of basal area for each height class of commercial timber trees or volume per acre in cords for firewood producing trees.

**W.** Definitions beginning with the letter "W"

**(1) WATER TABLE** - means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

**(2) WILLFUL VIOLATION** - means an act of omission which violates the act, 19.8 NMAC Parts 1-35 or any permit conditions, committed by a person who intends the result which actually occurs.

**(3) WORKING CAPITAL** - means the excess of the operator's current

assets over its current liabilities.

[11-29-97; A, 12-15-99; 19 NMAC 8.2.107 - Rn, 19 NMAC 8.2.1.107 & A, 9-29-2000; A, 1-15-2002; A, 7-30-2004]

## NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment to 19.8.5 NMAC, Section 506, and was adjusted to conform to current NMAC requirements, effective 7-30-2004.

### 19.8.5.506 Permit and Exploration Fees

Each application, pursuant to the act and 19.8 NMAC Parts 1-35 shall be accompanied by a fee determined under the following schedule:

~~A. Original permit filing fee shall be \$1,000 plus \$15 per acre for estimated area to be disturbed during the first year of mining.]~~

A. Original permit filing fee shall be \$2,500 plus \$25.00 per acre for estimated area to be disturbed during the first year of mining.

~~B. Commencing the second year the annual permit fee shall be \$1,000. In addition, there shall be an acreage fee of \$15.00 per acre of disturbed permit area for which the bond has not been released, provided that \$10,000 per year acreage fee is the maximum charge per year for all disturbance. The maximum annual fee will therefore be:~~

~~Permit fee = \$1,000~~

~~Acreage fee = \$10,000~~

~~Max. Total = \$11,000~~

~~The annual fee is to be submitted with the annual report.]~~

B. Commencing the second year the annual permit fee shall be \$2,500. In addition, there shall be an acreage fee of \$25.00 per acre of disturbed permit area for which the bond has not been released, provided that \$15,000 per year acreage fee is the maximum charge per year for all disturbance. The maximum annual fee will therefore be:

Permit fee = \$2,500

Acreage fee = \$15,000

Max. Total = \$17,500

The annual fee is to be submitted with the annual report.

**C.** Pending further study, the initial annual acreage fee shall not be collected for acres classified as disturbed, when disturbance is due to subsidence associated with underground mining, unless it is determined by the director that such subsidence causes significant environmental damage to the surrounding area.

~~D. The fee for transferring a permit shall be \$500.]~~

**D.** The fee for transferring a permit shall be \$1,000.

~~**E.** For each revision, the fee will be on a sliding scale from \$0 to \$2,500, depending upon significance of the revision. The Director will determine the amount of the fee for each revision.~~

**E.** For revision applications expanding the size of the permit the fee shall be \$4,000 plus \$25.00 per acre for the estimated area to be disturbed during the first year of mining in the expansion area. For all other revision applications the fee shall be \$4,000.

~~**F.** The fee for filing a notice of intention to explore under 19.8.6.601 NMAC shall be \$50.00.~~

**F.** The fee for filing a notice of intention to explore under 19.8.6.601 NMAC shall be \$100.

~~**G.** The fee for filing an application for approval under 19.8.6.602 NMAC shall be \$100.00.~~

**G.** The fee for filing an application for approval under 19.8.6.602 NMAC shall be \$200.

[11-29-97; 19.8.5.506 NMAC - Rn, 19 NMAC 8.2.5.506, 9-29-2000; A, 1-15-2001; A, 7-30-2004]

## NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment to 19.8.12 NMAC, Section 1200, and was adjusted to conform to current NMAC requirements, effective 7-30-2004.

### 19.8.12.1200 Administrative Review by the Director

**A.** Within 30 days after the applicant or permittee is notified of the final decision of the director concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights, or concerning an application for coal exploration, or pursuant to Paragraph (2) of Subsection E of 19.8.13.1301 NMAC a decision regarding a permit modification, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision in accordance with this section. Such request shall be in writing and state with reasonable specificity the reasons for the request and objections to the director's decision.

**B. (4)** The director shall commence the hearing within 30 days of such request. This hearing shall be of record, adjudicatory in nature, and no person who presided at an informal conference under 19.8.11.1103 NMAC shall either preside at the hearing or participate in the decision fol-

lowing the hearing, or in any administrative appeal therefrom.

~~(2)~~(1) The director may, under such conditions as he may prescribe, grant such temporary relief as he deems appropriate, pending final determination of the proceeding, if:

(a) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(b) the person requesting that relief shows that there is substantial likelihood that he will prevail on the merits of the final determination of the proceeding;

(c) the relief is not to affect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(d) the relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the director.

~~(3) (a)~~(2) For the purpose of such hearing, the director may administer oaths and affirmation, subpoena witnesses, written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining and reclamation operations carried on by the applicant in the general vicinity of the proposed operations.

~~(b)~~(a) A verbatim record of each public hearing required by this section shall be made, and a transcript made available on the motion of any party or by order of the director.

~~(c)~~(b) Ex parte contacts between representatives of the parties before the director and the director shall be prohibited.

~~(4)~~(3) Within the time period specified by section 69-25A-29 NMSA 1978 of the act after the close of the record, the director shall issue and furnish the applicant, and each person who participated in the hearing, with the written findings of fact, conclusions of law, and order of the director with respect to the appeal.

~~(5)~~(4) The burden of proof at such hearings shall be on the party seeking to reverse the decision of the director.

[11-29-97; 19.8.12.1200 NMAC - Rn, 19 NMAC 8.2.12.1200, 9-29-2000; A, 7-30-2004]

## NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment to 19.8.13 NMAC, Sections 1300 and 1301 and was adjusted to conform to current NMAC requirements, effective 7-30-2004.

### 19.8.13.1300 Director's Review of Outstanding Permits

**A. (4)** The director shall review each permit issued and outstanding during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 19.8.10.1000, 1001, 1003 and 1005 NMAC.

~~(2)~~**B.** For permits of longer than five year terms, a review of the permit shall be no less frequent than the permit midterm or every five years, whichever is more frequent.

~~(3)~~**C.** Each permit which authorizes the use of an experimental practice shall be reviewed in its entirety by the director at a frequency set forth in the approved permit, but no less frequently than every 2 1/2 years. Copies of the decision of the director shall be sent to the permittee and shall be subject to the provisions for administrative and judicial review of 19.8.12 NMAC.

~~(B)~~**D.** ~~[After this review, the]~~ The director may, by order, require reasonable revisions or modification of the permit provisions to ensure compliance with the act and 19.8 NMAC.

~~(C)~~**E.** Copies of the decision of the director shall be sent to the permittee.

~~(D)~~**F.** Any order of the director requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of decisions in 19.8.12 NMAC.

[11-29-97; 19.8.13.1300 NMAC - Rn, 19 NMAC 8.2.13.1300, 9-29-2000; A, 7-30-2004]

### 19.8.13.1301 Permit Revisions

**A.** A revision to a permit shall be obtained:

(1) for changes in the surface coal mining or reclamation operations described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conducting mining or reclamation operations contemplated by the original permit; significant departures as used herein include, but are not limited to:

(a) significant changes in the permit area boundary;

(b) changes in the method of extracting coal from the earth (e.g. change from surface to underground mine);

(c) experimental practices as that term is used in 19.8.10 NMAC and Section 69-25A-33 NMSA 1978 of the act;

(d) changes which would require a variance under 19.8.10.1003 NMAC;

(e) changes which may have an adverse effect on the environment of a nature not originally covered by the approved permit; or

(f) changes which may have an effect on performance bond requirements.

(2) when required by an order issued under 19.8.13.1300 NMAC;

(3) in order to continue operation after the cancellation or material reduction of the liability insurance policy, capability or self-insurance performance bond, or other equivalent guarantee upon which the original permit was issued; or

(4) ~~has~~ as otherwise required by the act and 19.8 NMAC.

**B.** A permit modification shall be obtained for all other changes to a permit that are not classified as a permit revision.

**C.** The operator may not implement any permit revision or permit modification before obtaining the director's written approval.

**B|D.** The application for revision shall be filed in accordance with the following:

(1) the permittee shall submit the application to the director within the time provided for in Paragraph (2) of Subsection B of 19.8.5.504 NMAC;

(2) applications for all types of revisions of a permit shall contain:

(a) an identification of the permit by permit number or other appropriate reference which is the subject of the revision;

(b) a specific description of the requested change in the terms of the permit;

(c) a specific description of any changes in the mining and reclamation operation which may have an effect on performance bond requirements; and

(d) such other information as may be deemed necessary to the director to determine if the proposed revision will comply with the act and 19.8 NMAC.

**E.** Hearing and notice requirements.

~~(3)~~**(1)** Permit revision. Any application for a revision ~~[which proposed]~~ that proposes significant alterations in the operations described in the materials submitted in the application for the original permit under 19.8.7 NMAC, 19.8.8 NMAC, 19.8.9 NMAC, or 19.8.10 NMAC, or in the conditions of the original permit, shall, at a minimum, be subject to the requirements of 19.8.11 NMAC and 19.8.12 NMAC.

**(2) Permit modification.**

**(a)** Within 10 days after the filing of a complete application for a permit modification, the director shall issue a decision approving or denying the application in whole or in part. A written copy of the decision shall be promptly provided to the permittee and to interested parties.

**(b)** Within 30 days after the decision notification required by Subparagraph (a) of Paragraph (2) of Subsection E of 19.8.1301 NMAC, the permittee or any person may request a formal hearing in regard

to the director's decision, in accordance with 19.8.12.1200 NMAC.

**[E]F.** An application for a permit revision shall be reviewed by the director to determine whether a new or updated determination of the probable hydrologic consequences as described in Subsection C of 19.8.9.907 NMAC or a new or updated assessment of the probable cumulative impacts as described in Subsection C of 19.8.11.1106 NMAC shall be required.

**[B]G.** Any revisions which propose significant departures in the experimental practice shall, at a minimum, be subject to the requirements of 19.8.11 NMAC and 19.8.12 NMAC and concurrence by the director of the office of surface mining. Revisions that do not propose significant departures in the experimental practice shall not require concurrence by the director of the office of surface mining.

**[E]H.** The director shall approve or disapprove the complete application for revision, in accordance with the requirements of 19.8.11 NMAC and Subsection B of 19.8.5.504 NMAC.

**[F]I.** Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new permit and shall not be approved under this part.

[11-29-97; 19.8.13.1301 NMAC - Rn, 19 NMAC 8.2.13.1301, 9-29-2000; A, 7-30-2004]

## NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment to 19.8.20 NMAC, Section 2073, and was adjusted to conform to current NMAC requirements, effective 7-30-2004.

### 19.8.20.2073 Cessation of Operations: Temporary

**A.** Each person who conducts surface coal mining operations shall effectively secure surface facilities and support and maintain any surface access openings to underground operations in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of his obligation to comply with any provisions of the approved permit.

**B.** Before temporary cessation of mining and reclamation operations for a period of thirty days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, persons who conduct surface coal mining operations shall submit to the director a notice of intention to cease or abandon mining and recla-

mation operations. This notice shall include a statement of the exact number of acres, and for underground mines the horizontal and vertical extent of subsurface strata which will have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished and identification of the backfilling, regrading, revegetation, environmental monitoring, underground opening closures, and water treatment activities that will continue in the temporary cessation.

~~[E]~~ ~~[Reserved]~~

**C.** At the director's discretion, the permittee may be directed to take other reasonable actions consistent with 19.8 NMAC to ensure the protection of public safety and the environment while the operation is under temporary cessation.

**D.** No temporary cessation of mining and reclamation operations shall extend beyond the current permit term, unless the director approves an extension of the temporary cessation during the permit renewal process conducted in accordance with 19.8.13 NMAC.

**E.** To continue under a temporary cessation beyond an existing permit term, the permittee must demonstrate that the mining operation has a reasonable expectation of continuing operations.

**F.** A temporary cessation may not be used to justify a lengthy delay to final reclamation or to preserve facilities beyond what may be considered appropriate for its use in association with an existing permit.

[11-29-97; Rn, 19 NMAC 8.2.20.2071, 12-15-99; 19.8.20.2073 NMAC - Rn, 19 NMAC 8.2.20.2073, 9-29-2000; A, 7-30-2004]

## NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS MUSEUM OF NATURAL HISTORY AND SCIENCE

This is an amendment to 4.53.2. NMAC, Sections 3, 5, & 8, effective 8/1/2004

4.53.2.1 **ISSUING AGENCY:** New Mexico Museum of Natural History and Science, a Division of the ~~[office]~~ Department of Cultural Affairs.  
[12-12-89, 9-10-96; 4.53.2.1 NMAC - Rn, 4 NMAC 53.2.1, 7/14/2000; A, 8/1/2004]

4.53.2.3 **STATUTORY AUTHORITY:** This regulation is implemented pursuant to Chapter 18-Article 3A-9 (I), NMSA 1978, (Repl. Pamp, 1991) and amendments thereto, which authorize the director, consistent with the policies set by



the board of trustees and the ~~[officer]~~ secretary of the department of cultural affairs to impose and collect admission fees for the normal operation of the museum of natural history and science; and which authorize the museum to provide free admission to senior citizens (over sixty years of age) to enter the museum on Wednesdays, except for special exhibits, and programs where commissions or royalties are paid by contract.  
[12-12-89, 9-10-96; 4.53.2.3 NMAC - Rn, 4 NMAC 53.2.3, 7/14/2000; A, 8/1/2004]

**4.53.2.8 PUBLIC ADMISSIONS PRICES:**

**A.** Public admissions prices for the New Mexico museum of natural history and science are as follows:

- (1) Adults ~~[\$5]~~ \$6
- (2) Seniors (60+) ~~[\$4]~~ \$5
- (3) Children (3-12) ~~[\$2]~~ \$3

**B.** Public admissions prices for the ~~[dynamax Theater]~~ dynatheater located at the New Mexico museum of natural history and science are as follows:

- (1) Adults \$6
- (2) Seniors \$5
- (3) Children \$3 (3-12)

~~[C. Public admissions prices for the museum and dynamax theater combined and located at the New Mexico museum of natural history and science are as follows:~~

- ~~(1) Adults \$9~~
- ~~(2) Seniors \$7~~
- ~~(3) Children (3-12) \$3~~

~~[D.]~~ **C.** Public admissions prices for the museum or off-site location for special traveling exhibits, also known as "blockbuster" exhibits. The prices indicated are "up to" dollar amounts and are as follows:

- (1) Adults Up To \$5
- (2) Seniors (60+) Up To \$4
- (3) Children (3-12) Up To \$2

~~[E.]~~ **D.** Public admissions prices for the lodestar virtual voyages simulator ride located at the New Mexico museum of natural history and science are as follows:

- (1) Adults ~~[\$5]~~ \$4
- (2) Seniors (60+) \$4
- (3) Children (3-12) ~~[\$3]~~ \$4

~~[F.]~~ **E.** Public admissions prices for the lodestar planetarium located at the New Mexico museum of natural history and science are as follows:

- (1) Adults \$6
- (2) Seniors (60+) \$5
- (3) Children (3-12) \$3

[12-12-89, 9-10-96, 10-29-99; 4.53.2.8 NMAC - Rn & A, 4 NMAC 53.2.8, 7/14/2000; A, 8/1/2004]

**NEW MEXICO ENERGY,  
MINERALS AND NATURAL  
RESOURCES  
DEPARTMENT  
OIL CONSERVATION DIVISION**

19 NMAC 15.O, Administration, filed 01-18-96, has been reformatted and renumbered to 19.15.15 NMAC to comply with the current NMAC requirements, effective 07/30/04.

**NEW MEXICO  
DEPARTMENT OF HEALTH  
PUBLIC HEALTH DIVISION**

This Part 7 NMAC 4.4, Control of Communicable Disease in Health Facility Personnel (filed October 18, 1996) is hereby repealed effective July 30, 2004.

**NEW MEXICO  
MEDICAL  
BOARD**

This is an amendment to 16.10.9 NMAC, Section 9, effective August 6, 2004.

**16.10.9.9 PHYSICIAN ASSISTANT FEES**

**A.** Application fee of \$100.

**B.** Biennial renewal of licensure fee of \$100.

**C.** Change of primary supervising physician fee of \$25.

**D.** Late fee of \$25 for physician assistants who renew their license, or provide required documentation, after ~~[August 31 but by October 15]~~ March 1 but by April 15 of the renewal year.

**E.** Late fee of \$50 for physician ~~[assistant]~~ assistants who renew their license, or provide required documentation, between ~~[October 16 and December 31]~~ April 15 and May 30 of the renewal year.

**F.** Fee of \$25 for placing a physician ~~[assistant]~~ assistants license on inactive status.

**G.** Renewal fee of \$75 for physician assistants renewing their license on, or prior to, August 31, 2004 for a license that is valid until March 1, 2006.

(1) A late fee of \$25 will be charged for licenses renewed after August 31, 2004 but no later than October 15, 2004.

(2) A late fee of \$50 will be charged for licenses renewed between October 15, 2004 and November 30, 2004.

[16.10.9.9 NMAC - Rp 16 NMAC 10.9.8.2, 7/15/01; A, 8/6/04]

**NEW MEXICO MEDICAL  
BOARD**

This is an amendment to 16.10.10 NMAC, Sections 3, 6 and 13, effective August 6, 2004.

**16.10.10.3 STATUTORY AUTHORITY:** This part is adopted pursuant to the Health Care Quality Improvement Act of 1986, 42 U.S.C.A. Sections 11131-11152 and Sections ~~[61-6-15(H)-24]~~ 61-6-15(D) 21 and 61-6-16, NMSA 1978.

[16.10.10.3 NMAC - Rp 16 NMAC 10.10.3, 7/15/01; A, 8/6/04]

**16.10.10.6 OBJECTIVE:** This part provides requirements for health care entities to provide reports to the board of all malpractice payments made on behalf of licensees, ~~[and]~~ all actions adversely affecting licensing or clinical privileges, and actions taken by a governmental or law enforcement agency.

[16.10.10.6 NMAC - Rp 16 NMAC 10.10.6, 7/15/01; A, 8/6/04]

**16.10.10.13 LICENSEE REPORTING REQUIREMENTS.**

Consistent with Section 61-6-15(D)21 NMSA 1978, in addition to the reporting requirements in 16.10.10.8 (medical malpractice), 16.10.10.9 (adverse actions on clinical privileges), and 16.10.10.10 (credentialing discrepancies), a licensee must report any actions taken by another licensing jurisdiction, any governmental agency, any law enforcement agency, or any court for acts or conduct similar to acts or conduct that would constitute grounds for action under the Medical Practice Act. Reports must be received by the board within 45 days from the date the action occurs. For the purpose of this section, the "action occurs" when the decision making body makes the decision. An appeal of the decision does not alter or add to the time of the requirement that the action be reported within 45 days from the date the decision making body makes the decision.

[16.10.10.13 NMAC - N, 8/6/04]

**NEW MEXICO MEDICAL  
BOARD**

This is an amendment to 16.10.15 NMAC, Sections 9, 10 and 16, effective August 6, 2004.

**16.10.15.9 LICENSURE PROCESS.** Each applicant for a license as a physician assistant shall submit the required fees and following documentation:

**A.** A completed application for which the applicant has supplied all

information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for 1 year from the date of receipt.

**B.** Two letters of recommendation from physicians licensed to practice medicine in the United States or physician assistant program directors, or the director's designee, who have personal knowledge of the applicant's moral character and competence to practice. Letters of recommendation must be sent directly to the board from the individual recommending the applicant.

**C.** Verification of licensure in all states where the applicant holds or has held a license to practice as a physician assistant, or other health care profession. Verification must be sent directly to the board from the other state board(s). Verification must include a raised seal; attest to current status, issue date, license number, and all other related information.

**D.** All applicants may be required to personally appear before the board or the board's designee for an interview and must present original documents, as the board requires. The initial license will be issued following completion of any required interview, and/or approval by a member or agent of the board.

**E.** The initial license is valid until ~~[August 31 of the next even-numbered year]~~ March 1 of the year following NCCPA expiration.

**F.** The board will develop a process to transition from the current renewal cycle of August 31 of each even-numbered year so licensees with NCCPA certifications that expire on December 31, 2004 will renew their license on March 1, 2005 and that licensees with NCCPA certifications that expire on December 31, 2005 will renew their license on March 1, 2006. The process may include prorating of those fees defined in 16.10.9.9 NMAC.

[16.10.15.9 NMAC - N, 7/15/01; A, 10/5/03; A, 8/6/04]

#### 16.10.15.10 INTERIM PERMITS

**A.** Are issued to eligible applicants who have completed the application process and complied with all other requirements except certification by the NCCPA ~~[and attendance at a license orientation meeting]~~. Interim permits are issued to eligible applicants who have completed the application process and complied with all other licensure requirements except certification by the NCCPA.

**B.** Physician assistants not currently certified by NCCPA have a one-time grace period of one-year from the date of graduation from a program approved by ARC-PA or its successor agency to become certified. ~~[Are valid until the license orientation meeting at which time a permanent~~

~~license is issued.]~~

**C.** Interim permits expire at the end of the one year grace period. Upon expiration of the interim permit the physician assistant may no longer practice, ~~[and]~~ but may reapply upon NCCPA certification.

[16.10.15.10 NMAC - N, 7/15/01; A, 10/5/03; A, 8/6/04]

#### 16.10.15.16 LICENSE EXPIRATION, RENEWAL, CHANGE OF STATUS

**A.** Physician assistant licenses expire on ~~[August 31 of each even-numbered year]~~ March 1 of the year following NCCPA expiration. Licenses not renewed by ~~[September 1]~~ March 1 of the expiration year are considered expired.

**B.** A completed renewal application, post-marked on or before ~~[August 31]~~ March 1 of the renewal year, shall include the required fees as defined in 16.10.9.9 NMAC, and proof of current NCCPA certification.

**C.** The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal application if one has not been received.

**D.** Renewal applications postmarked or hand-delivered after ~~[August 31 with]~~ March 1 but prior to May 30 shall be subject to late penalties as defined in 16.10.9.9 NMAC.

**E.** Unless a complete renewal application is received by the board office, or post-marked, before ~~[November 30]~~ May 30, the license shall be summarily suspended.

**F.** At the time of license renewal a physician assistant may request a status change. A license that is placed on inactive status requires payment of a fee as defined in 16.10.9.9 NMAC.

**G.** Re-instatement within two years. An inactive or suspended license may be placed on active status upon completion of a renewal application in which the applicant has supplied all required fees and proof of current NCCPA certification.

**H.** Re-instatement after two years. An inactive or suspended license may be placed on active status upon completion of a re-instatement application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board. Applicants may be required to personally appear before the board or the board's designee for an interview.

[16.10.15.16 NMAC - N, 7/15/01; A, 10/5/03; A, 8/6/04]

## NEW MEXICO BOARD OF VETERINARY MEDICINE

This is an amendment to 16.25.9 NMAC, Section 9, effective August 7, 2004.

### 16.25.9.9 PREMISES - GENERAL REQUIREMENTS:

**A.** All premises where veterinary medicine (including its various branches) is being practiced, and all instruments, equipment, apparatus, and apparel used in connection with those practices, shall be kept clean and sanitary and shall conform to the standards specified for different types of facilities.

~~[B. Emergency service either by staff veterinarians or by pre-arranged referral to another veterinarian within a reasonable distance shall be provided at all times. Referral must be acknowledged and agreed upon by both the referring and referred veterinarians.]~~

~~C.]~~ **B.** Every veterinary facility shall maintain the following:

(1) a sanitary environment, to include the proper routine disposal of waste material, proper sterilization or sanitation of all equipment used in diagnosis or treatment, and adequate storage to provide a neat and orderly appearance;

(2) an adequate library of textbooks, journals or other current veterinary reference materials, readily available on the premises or available through electronic access;

(3) proper storage and environmental control for all medicines and biologics, based on the manufacturer's recommendations;

(4) properly maintained records;

(5) legally accessible methods for the disposal of deceased animals and infectious waste.

[16.25.9.9 NMAC - Rp 16.25.9.9 NMAC, 6-7-02; A, 8-7-04]

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## End of Adopted Rules Section

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## SUBMITTAL DEADLINES AND PUBLICATION DATES

2004

<b>Volume XV</b>	<b>Submission Deadline</b>	<b>Publication Date</b>
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
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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

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