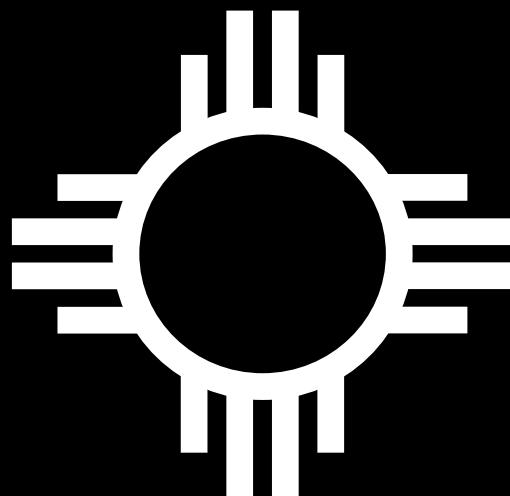


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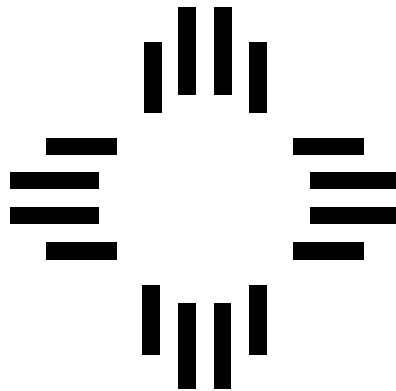
Volume XV  
Issue Number 16  
August 31, 2004



# **New Mexico Register**

**Volume XV, Issue Number 16**

**August 31, 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  
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2004

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# New Mexico Register

Volume XV, Number 16

August 31, 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 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 20.2.66 NMAC - Cotton Gins. This regulation has been developed in response to an amendment to the state's Air Quality Control Act. This statutory amendment directs the Board to specify, by regulation, the best system of emissions reduction currently in use by cotton gins. Once established, the Environment Department may not deny an application for an air quality construction permit for a cotton gin if the applicant proposes use of such system of emissions reduction and meets other requirements of this proposed regulation. The proposed new regulation, along with the revisions to the New Mexico Air Quality Control Act, constitutes a revision to the air quality State Implementation Plan.

The proposed regulation and statutory amendment 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 regulation 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 AIR QUALITY PUBLIC

### HEARINGS

The New Mexico Environmental Improvement Board will hold public hearings on November 4, 2004 at 9:30 a.m. at the New Mexico State Capitol Building, Room 317, Santa Fe, New Mexico, to consider revisions to 20.2.70 NMAC - Operating Permits, 20.2.71 NMAC - Operating Permit Emissions Fees, and 20.2.2 NMAC - Definitions.

The proponent of these regulatory changes is the New Mexico Environment Department.

#### Proposed Revisions to 20.2.70 NMAC - Operating Permits

The Department proposes clarifying language in 20.2.70 NMAC - Operating Permits. The proposed revisions clarify the modeling requirements for Title V sources to certify compliance with state and national ambient air quality standards. The proposed revisions also clarify the applicability of state ambient air quality standards to Title V sources. This hearing was originally scheduled for August 2002, but was vacated pending the outcome of proposed legislation addressing the same issues. The proposed legislation was not adopted. Therefore, the Department has requested a hearing on the proposed revisions. PLEASE NOTE: Notices of Intent to Present Technical Testimony for this hearing are due 30 days prior to the hearing date. See below for additional information regarding the notice requirement.

#### Proposed Revisions to 20.2.71 NMAC - Operating Permit Emissions Fees

The Department proposes to revise the fee schedule for Title V sources in 20.2.71 NMAC - Operating Permit Emissions Fees. The schedule has not been revised since its adoption in 1993. The current schedule is based on the facility's allowable emission rate, or if not specified, the facility's potential-to-emit. The Department proposes two options to revise the fee schedule. In option A, the fee is based on the allowable emission limits and excess emissions above those allowed in tons per year in a source's permit. In option B, the fee is based on allowable emissions only. Both options remove the potential-to-emit fee basis for assessing fees. In addition, both options immediately increase the fee per ton of emission by \$1.75, by \$2.00 for each succeeding year, with a cap of \$18 in 2008. Beginning in 2009, both options apply the Consumer Price Index.

### Proposed Revisions to 20.2.2 NMAC - Definitions

The Department proposes to define the term "excess emissions" in 20.2.2 NMAC - Definitions. The term already appears in 20.2.7 NMAC - Excess Emissions During Malfunctions, Startup, Shutdown or Scheduled Maintenance, and 20.2.70 NMAC - Operating Permits. The term is needed because it will be used in 20.2.71 NMAC - Operating Permit Fees if Option A is adopted. The Department proposes to define the term in 20.2.2 NMAC - Definitions, rather than 20.2.71 NMAC - Operating Permit Fees, because the term is used in several air quality control regulations. The term will not be needed in 20.2.2 NMAC - Definitions if the Board adopts Option B as the revision to 20.2.71 NMAC - Operating Permit Emissions Fees.

The proposed revisions may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room S-2054, Santa Fe, NM. Copies of the proposed revisions may be obtained by contacting Rita Trujillo at (505) 955-8024 or by visiting the Department's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us). Follow the links to the Air Quality Bureau's page and then to proposed regulations. Written questions about the proposed revisions may be addressed to: Rita Trujillo, Manager, Control Strategies Section, Air Quality Bureau, 2044 Galisteo Street, Santa Fe, NM, 87505.

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 the Air Quality Control Act, Section 74-2-6, NMSA 1978.

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 wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

identify the person for whom the witness(es) will testify;

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

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

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.

For the hearing on 20.2.70 NMAC, notices of intent must be received in the Office of the Environmental Improvement Board no later than 5:00 pm on October 5, 2004. For the hearings on 20.2.71 NMAC and 20.2.2 NMAC, notices of intent must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on October 25, 2004. Notices of intent should reference the name of the regulation(s) and the date(s) of the hearing(s). 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 Drive, Room N-2150  
Santa Fe, NM 87502

Any person who wishes to submit a non-technical written statement in lieu of oral testimony may do so at or before the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Judy Bentley by October 15, 2004 at (505) 827-2844 or by mail at Judy Bentley, Chief of the Program Support Bureau, New Mexico Environment Department, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, NM, 87502. TDD or TDY users please access his number via the New Mexico Relay Network. Albuquerque TDD users: (505) 275-7333. Outside of Albuquerque: 1-800-659-1779.

Copies of the agenda and the proposed revisions will be provided in alternative forms, e.g. audiotape, if requested by October 15, 2004.

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

ss/Gay Dillingham, Chair

## NEW MEXICO LIVESTOCK BOARD

### NEW MEXICO LIVESTOCK BOARD

#### NOTICE OF HEARING AND REGULAR BOARD MEETING

**NOTICE IS HEREBY GIVEN** that a hearing and regular board meeting will be held on Thursday, September 9, 2004, at The New Mexico Livestock Board, 300 San Mateo NE Suite 1000, Albuquerque, New Mexico, at 9:00 a.m. The Board will set re-record and meat inspection license fees, and other matters of general business.

Copies of the agenda can be obtained by contacting Daniel Manzanares, Executive Director, New Mexico Livestock Board, 300 San Mateo NE Suite 1000, Albuquerque, NM 87108-1500, (505) 841-6161.

Anyone who requires special accommodations is requested to notify the New Mexico Livestock Board office at (505) 841-6161 of such needs at least five days prior to the meeting.

## 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 October 8, 2004. The meeting will be held during the Board's regular business meeting 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 provisions to the Involuntary or Voluntary Separation rule. As a note, previous notice was given that a Special Meeting of the Board would occur on September 10, 2004 to consider this rule. Due to unforeseen circumstances the rule was not ready for public comment and therefore has had to be delayed.

A final agenda for the board meeting will be available at the board office on Tuesday September 28, 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. Thursday, September 30, 2004 to the board office, PO Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico,



87503, attention, Dianna DeJarnette. 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 September 1, 2004.

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 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 PUBLIC EDUCATION DEPARTMENT**

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

The Public Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Department of Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico, 87501-2786, on Friday, October 15, 2004 from 10:00 a.m. to noon regarding the following proposed rulemaking actions:

<b>Rule Number</b>	<b>Rule Name</b>	<b>Proposed Action</b>
6.2.2 NMAC	Operational By-Laws of the Educational Standards Commission	Repeal rule
6.2.8 NMAC (Proposed NMAC No.)	Operational Bylaws of the Educator Quality Council (Proposed rule name)	Adopt new rule
6.19.1 NMAC	Public School Accountability: General Provisions	Amend Sections 2 and 7 (SCOPE and DEFINITIONS)
6.30.2 NMAC	Standards for Excellence	Amend Section 10 (PROCEDURAL REQUIREMENTS)
6.30.6 NMAC (Proposed NMAC No.)	Suspension of Authority of a Local School Board, Superintendent or Principal (Proposed rule name)	Adopt new rule

Proposed new rule 6.2.8 NMAC will establish the Educator Quality Council to advise the Secretary of Education on approval of: educator preparation programs at colleges and universities, rules for licensure of school personnel; state professional development standards and projects, and code of ethics and standards of professional conduct. The proposed amendment to 6.19.1 NMAC will delete the definition of educational standards commission from Section 7 of the rule. In addition, the rule establishing the educational standards commission is proposed for repeal. These rulemaking actions reflect the new governance structure resulting from the Amendment to Article XII, Section 6 of the Constitution of New Mexico. Proposed new rule 6.30.6 NMAC will Section 22-2-14 NMSA 1978 as amended by Laws 2004, Chapter 27. The proposed amendment to 6.30.2 NMAC will amend Section 10 of the rule to require that, beginning with the Spring 2005 administration of the New Mexico high school standards assessment, local school districts must record the test results from each sub-test on each student’s official transcript.

Interested individuals may testify at the public hearing or submit written comments to Dr. William O. Blair, Deputy Director, Assessment and Accountability Division, Public Education Department, Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (bblair@ped.state.nm.us) or telefaxed to (505) 827-4263. Written comments must be received no later than 5 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department’s website (<http://sde.state.nm.us/>) or obtained from Ms. Barbara Trujillo, Assessment and Accountability Division, Public Education Department Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 at (505) 827-6683.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms.

Trujillo as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**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:

3.3.1.7 NMAC Section 7-2-2 NMSA 1978 Income Tax Act **(Definitions)**

The Department proposes to amend the following regulations:

3.3.1.9 NMAC Section 7-2-2 NMSA 1978 Income Tax Act

**(Residency)**  
18.19.5.111 NMAC Section 66-5-60 NMSA 1978 Motor Vehicle Code **(Commercial Driver’s License - Commercial Driver’s License Testing)**

18.19.5.115 NMAC Section 66-5-65 NMSA 1978 Motor Vehicle Code **(Commercial Driver’s License - Restrictions to Commercial Driver’s Licenses)**

The Department also proposes to repeal 18.19.5.105 NMAC **(Commercial Driver’s License - Additional Serious Traffic Violations)** to Section 66-5-54 NMSA 1978 of the Motor Vehicle Code.

The proposals were placed on file in the Office of the Secretary on July 21, 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 October 29, 2004.

A public hearing will be held on the proposals on Wednesday, October 6, 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 October 6, 2004.

**3.3.1.7 DEFINITIONS:** For purposes of Subsection S of Section 7-2-2 NMSA and Section 3.3.1.9 NMAC, a "day" is any consecutive 24-hour period.

**3.3.1.9 [ RESIDENCY SHOWN BY VOTER REGISTRATION AND OTHER EVIDENCE**

**A.** Section 7-2-2 NMSA 1978 defines a "resident" as an individual who is domiciled in this state on the last day of the taxable year. Every individual has a domicile somewhere and each individual has only one domicile at one time.

**B.** A domicile is a place of a true, fixed home and a permanent establishment to which one intends to return when absent and where a person has voluntarily fixed habitation of self and family with the intention of making a permanent home.

**C.** The following individuals are presumed to be domiciled in New Mexico, and therefore residents of New Mexico:

(1) individuals other than members of the United States armed forces:

(a) any individual who has registered to vote in the state during a taxable year and who has not subsequently registered to vote elsewhere outside this state on or before the last day of the taxable year; and

(b) any individual who:

(i) holds a valid driver's license issued by the taxation and revenue department pursuant to the Motor Vehicle Code and who has not been subsequently licensed, including the surrender of the New Mexico license, by another state on or before the last day of the taxable year; or

(ii) has claimed to be a New Mexico resident for any other official purpose, such as for paying resident tuition at state schools, colleges or universities or obtaining resident hunting or fishing licenses;

(2) individuals who are members of the United States armed forces:

(a) any member whose home of record is in New Mexico unless that member is registered to vote in another state on the last day of the taxable year or unless the member's compensation for military service is otherwise exempt from New Mexico income tax under the provisions of the Soldiers and Sailors Civil Relief Act of 1940, 50 U.S.C. App. 574; and

(b) any member stationed in New Mexico, whose compensation for military service is otherwise exempt from New Mexico income tax under the provisions of the Soldiers and Sailors Civil Relief Act of

1940, 50 U.S.C. App. 574, who is registered to vote in this state on the last day of the taxable year.

**D.** An individual presumed to be domiciled in New Mexico may rebut the presumption by establishing by a preponderance of evidence the state in which the individual is domiciled.

**E.** This version of Section 3.3.1.9 NMAC is applicable to taxable years beginning on or after January 1, 1993.]

**RESIDENCY**

**A. Full-year residents.** For purposes of the Income Tax Act, the following are full year residents of this state:

(1) an individual domiciled in this state during all of the taxable year, or

(2) an individual other than an individual described in Subsection D of this Section who is physically present in this state for a total of one hundred eighty-five (185) days or more during the taxable year regardless of domicile.

**B. Part-year residents.**

(1) An individual who is domiciled in New Mexico for part but not all of the taxable year, and who is physically present in New Mexico for fewer than 185 days, is a part-year resident.

(a) During the first taxable year in which an individual is domiciled in New Mexico, if the individual is physically present in New Mexico for less than a total of 185 days, the individual will be treated as a non-resident of New Mexico for income tax purposes for the period prior to establishing domicile in New Mexico.

(b) An individual domiciled in New Mexico who is physically present in New Mexico for fewer than 185 days and changes his place of abode to a place outside this state with the bona fide intention of continuing to live permanently outside New Mexico, is not a resident for Income Tax Act purposes for periods after that change of abode.

(2) An individual who moves into this state with the intent to make New Mexico his permanent domicile is a first-year resident. A first-year resident should report any income earned prior to moving into New Mexico as nonresident income even if he is physically present in New Mexico for 185 days or more.

**C. "Domicile" defined:**

(1) A domicile is a place of a true, fixed home, a permanent establishment where one intends to return after an absence and where a person has voluntarily fixed habitation of self and family with the intention of making a permanent home. Every individual has a domicile somewhere, and each individual has only one domicile at a time.

(2) The following individuals are presumed to be domiciled in New Mexico:

(a) an individual who is registered to vote in the state during a taxable year who has not subsequently registered to vote elsewhere outside this state on or before the last day of the taxable year;

(b) an individual who holds a valid driver's license issued by the taxation and revenue department pursuant to the Motor Vehicle Code and who has not been subsequently licensed by another state on or before the last day of the taxable year; or

(c) an individual who has claimed to be a New Mexico resident for any other official purpose, such as eligibility for resident tuition at state schools, colleges or universities, or for hunting or fishing licenses.

(3) An individual presumed to be domiciled in New Mexico may rebut the presumption by establishing by a preponderance of evidence the state in which the individual is domiciled.

**D. "Domicile" and residency for armed forces personnel.**

(1) A resident of this state who is a member of the United States armed forces does not lose residence or domicile in this state, or gain residency or domicile in another state, solely because the service member left this state in compliance with military orders.

(2) A resident of another state who is a member of the United States armed forces does not acquire residence or domicile in this state solely because the service member is in this state in compliance with military orders.

(3) A resident of another state who is a member of the United States armed forces does not become a resident of this state solely because the service person is in this state for one hundred and eighty-five (185) or more days in a taxable year.

(4) Compensation for service in the armed forces is subject to personal income tax only in the state of the service member's domicile. "Compensation for military service" does not include compensation for off-duty employment, or military retirement income.

(5) For purposes of this section, "armed forces" means all members of the Army of the United States, the United States Navy, the Marine Corps, the Air Force, the Coast Guard, all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy, reservists placed on active duty, and members of the National Guard called to active federal duty.

**E. Examples:**

(1) A, a life-long resident of Texas, accepts a job in New Mexico. On December 5, 2003, A moves to New Mexico with the intention of making New Mexico her permanent home. A has established domicile in New Mexico during the 2003 tax year. Because she was physically pres-

ent in New Mexico for fewer than 185 days during that year, she should file as a part-year resident, and she will be treated as a resident for personal income tax purpose only for that period after she establishes a New Mexico domicile.

(2) B, a resident of Arizona, makes several weekend visits to New Mexico in the early months of 2004. On July 1, 2004, he moves to New Mexico with the intention of making it his permanent home. Family matters call him back to Arizona on August 1, 2004, and he soon determines that he must remain in Arizona. B was domiciled in New Mexico during the thirty days he spent in this state with the intention of making it his permanent home. Because B was physically present in this state for fewer than 185 days in 2004, B should file as a part-year resident for that tax year. For personal income tax purposes he will be treated as a resident of New Mexico only from July 1 to August 1, 2004.

(3) C was born and raised in New Mexico. She leaves New Mexico in December 2003 to pursue a two-year master's degree program in Spain. She intends to return to New Mexico when she completes her studies. During her absence she keeps her New Mexico driver's license and voter registration. Because New Mexico remains her domicile, C should file returns for tax years 2003, 2004 and 2005 as a full-year New Mexico resident.

(4) D, a resident of California, comes to New Mexico on three separate occasions in 2004 to work on a movie. D does not intend to remain in New Mexico, and when the movie is completed, D returns to her home in California. D is physically present in New Mexico for 200 days in 2004. Because D was physically present in New Mexico for at least 185 days, D must file as a full-year resident of New Mexico for tax year 2004.

(5) E, a resident of New Mexico, joined the army. Since joining the military, E has been stationed in various places around the world. Although E has not been back to New Mexico in the ten years since he joined the army, he continues to vote in New Mexico and holds a current New Mexico driver's license. E must file as a full-year resident of New Mexico.

(6) Same facts as Example 5, except that in August 2003, while stationed in Georgia, E retires from the military. Instead of returning to New Mexico, E moves to Florida where he intends to spend his retirement. For tax year 2003, E must file as a part-year resident, because he was not physically present in the state for 185 days or more. E is a resident of New Mexico until August 2003, when he moves to Florida with the intent of making that his permanent home.

(7) F, a resident of Texas, is an air

force officer. In March 2002 he moves to New Mexico with his spouse to begin a two-year assignment at Kirtland Air Force Base. F is registered to vote in Texas and holds a Texas driver's license. F is not a resident of New Mexico in 2002. F's spouse is a full-year resident of New Mexico in 2002, regardless of domicile, because she is physically present in New Mexico for 185 days or more. During the second year of F's assignment, he registers to vote in New Mexico, obtains a New Mexico driver's license, and enrolls his son in a New Mexico University paying resident tuition. Although F's presence in New Mexico under military orders is not sufficient to establish New Mexico residency or domicile, his conduct in 2003 is sufficient to establish domicile. In 2003 F must file as a part-year resident of New Mexico. He will be treated as a non-resident for income tax purposes for that period of 2003 prior to establishing domicile in New Mexico.

(8) G is a Native American who lives and works on his tribe's pueblo in New Mexico. Federal law prohibits the state from taxing income earned by a Native American who lives and works on his tribe's territory. G joins the marines and is stationed outside New Mexico. Because G's domicile remains unchanged during his military service, G's income from military service is treated as income earned on the tribe's territory by a tribal member living on the tribe's territory, and is not taxable by New Mexico.

#### 18.19.5.111 COMMERCIAL DRIVER'S LICENSE - COMMERCIAL DRIVER'S LICENSE TESTING:

A. A New Mexico commercial driver's license shall not be issued to any person who has not successfully completed the knowledge and skills tests specified by 18.19.5.111 NMAC. The knowledge tests for New Mexico are in two forms, form A and form B, for each of seven areas of knowledge: general knowledge, air brakes, combination vehicles, passenger transport, tank vehicles, doubles/triples and hazardous materials (HAZMAT). If a driver fails to pass a knowledge test, either form A or B, the alternate form shall be administered the next time the driver takes the test. Passing grades for each separate test shall be 80% or higher. Any driver who does not achieve a score of 80% or higher on any knowledge or skill test may retake a test on that subject after one week or more has intervened since the date last tested. The director, motor vehicle division, however, may waive the time limit when the driver demonstrates that the one week wait would cause undue hardship.

B. A school bus endorsement shall not be issued to any person who has not successfully completed a knowl-

edge test and a skills test in both a passenger commercial motor vehicle and a school bus.

~~B.~~ C. The skills tests for New Mexico shall be composed of the three parts set forth in Subsections C through E of 18.19.5.111 NMAC.

~~C.~~ D. The pre-trip test which shall consist of at least the following parts:

(1) Tractor-trailer addressing the following elements:

- (a) Engine compartment
- (b) Engine start
- (c) Front of vehicle
- (d) Left or right side of vehicle
- (e) Coupling system
- (f) Rear of vehicle

(2) Straight truck:

- (a) Engine compartment
- (b) Engine start
- (c) Front of vehicle
- (d) Left or right side of vehicle
- (e) Rear of vehicle

(3) School bus, coach bus, transit bus:

- (a) Engine compartment
- (b) Engine start
- (c) Front of vehicle
- (d) Right side of vehicle
- (e) Passenger compartment
- (f) Rear of vehicle

~~D.~~ E. The basic skills tests which shall consist of one of the following forms:

(1) Form 1 addressing at least the following:

- (a) Alley dock
- (b) Straight line backing
- (c) Sight side parallel park
- (d) Conventional parallel park

(2) Form 2 addressing at least the following:

- (a) Right turn
- (b) Alley dock
- (c) Conventional parallel park
- (d) Backing serpentine

(3) Form 3 addressing at least the following:

- (a) Alley dock
- (b) Straight line backing
- (c) Conventional parallel park
- (d) Backing serpentine

~~E.~~ F. The road test shall consist of the following maneuvers:

- (1) Four left turns
- (2) Four right turns
- (3) One stop intersection
- (4) One through intersection
- (5) Urban straight section
- (6) Expressway section or rural section if no expressway available

(7) One drive down grade and one simulated drive down grade

- (8) One drive up grade
- (9) Stop on downgrade or stop on upgrade

- (10) One underpass or one bridge

(tractor-trailer only)

(11) One curve (left or right)

(12) Railroad crossing:

(a) For non-bus and non-HAZ-

MAT: One railroad crossing or one extra through intersection

(b) For bus or HAZMAT: One

railroad crossing or one simulated railroad crossing.

[F.] G. The skills test required by 18.19.5.111 NMAC shall be deemed to have been met by a driver who has been qualified and employed as a commercial driver for two or more years at the time of application for a class A, B, or C license, and who has not been convicted of a point assessment violation nor had an accident with fault while driving a commercial vehicle within the last three years.

18.19.5.115 **COMMERCIAL DRIVER'S LICENSE - RESTRICTIONS TO COMMERCIAL DRIVER'S LICENSES:**

A. Commercial driver's licenses may have one or more of the following restrictions place upon the license:  
Restriction

Code                      Restriction

B                      Driver must wear corrective lenses while driving.

C                      Driver limited to vehicles equipped with suitable mechanical aids such as special brakes, hand controls or other adaptive devices.

D                      Driver must use prosthetic aids (other than glasses) while driving.

E                      Driver limited to vehicles with automatic transmissions.

K                      Driver limited to driving a commercial vehicle in intrastate commerce only.

L                      Driver limited to driving commercial vehicles which do not have air brakes.

M                      Driver not authorized to drive a Class A bus.

N                      Driver not authorized to drive a Class A or Class B bus.

O                      Driver not authorized to drive a Class A tractor trailer combination vehicle.

R                      Driver limited to operating a school bus.

S                      Driver authorized to operate only a commercial motor vehicle owned by a governmental entity, and only as a government employee.

T                      Driver authorized only to operate a Class B or Class C bus.

B. Paragraph (2) of Subsection D of Section 66-5-65 NMSA 1978 specifies a restriction.

18.19.5.105 [**COMMERCIAL DRIVER'S LICENSE - ADDITIONAL**

~~**SERIOUS TRAFFIC VIOLATIONS:**~~

~~The secretary determines that the following violations of the Motor Vehicle Code are serious traffic violations when committed by the holder of a commercial driver's license while the holder was driving a commercial motor vehicle:~~

~~A. Improper or erratic lane changes, as defined in Section 66-7-317 NMSA 1978;~~

~~B. Following the vehicle ahead too closely, as defined in Section 66-7-318 NMSA 1978; and~~

~~C. A traffic control law violation arising in connection with a fatal traffic accident.] [RESERVED]~~

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**End of Notices and Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

This is an amendment to 16.30.2 NMAC, Section 13, effective September 16, 2004. Subsection A of 16.30.2.13, was amended to state the board's responsibility for oversight of board function and for the appointment of the director.

**16.30.2.13 BOARD RESPONSIBILITIES [FOR PUBLICATIONS:]**

**A.** The board is responsible for providing oversight for all board functions.

**B.** The board shall appoint the director.

**C. Publications:**

~~[A-]~~ **(1)** Roster: A roster showing the number and addresses of all registered architects shall be prepared by the board and made available or sold to the public in accordance with the Architectural Act, Subsection E of Section 61-15-5 NMSA 1978.

~~[B-]~~ **(2)** Annual report: The chair shall submit an annual report to the governor and shall make that report available to all registrants (Subsection C of Section 61-15-5 NMSA 1978).

~~[C-]~~ **(3)** Architectural Act, rules and regulations: The board shall maintain current editions of the Act that will be published as often as the board deems necessary. These shall be made available to all architects registered in the state of New Mexico and to all applicants applying for registration. In addition, notice shall be made to all registered architects when changes occur in the statutes or rules and regulation.

[16.30.2.13 NMAC - Rp 16 NMAC 30.2.9.3, 9/6/2001; A, 9/16/2004]

### NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

This is an amendment to 16.30.3 NMAC, Sections 9, 10, 11, 14, 18 and 19, effective September 16, 2004.

**16.30.3.9 REGISTRATION THROUGH EDUCATION, TRAINING AND EXAMINATION:**

**A.** Registration standards shall be in accordance with those of the National Council of Architectural Boards (NCARB) as described under "standards of eligibility for Council certification" in the latest editions of the NCARB Handbook for Interns and Architects and the NCARB

Education Standard.

**B.** Training requirements shall satisfy the NCARB standards of training. The applicant shall provide a complete and bound NCARB Intern Development Program (IDP) record showing completion of the IDP training requirements as set forth in the latest editions of the NCARB Handbook for Interns and Architects, the NCARB Education Standard and the IDP Guidelines. Copies of the latest editions of the NCARB Handbook for Interns and Architects, the NCARB Education Standard and the IDP Guidelines are available from the board office.

**C.** Application for examination:

**(1)** Individuals applying for registration by examination shall request application forms from the board. The application, together with the application fee, shall be sent to the board office.

**(2)** Applications will be accepted at any time, for review and approval by the board. Approved examination candidates will schedule examinations with NCARB. The board may require applicants for examination to appear before it for a personal interview.

~~**(3)** [Board approval of applications for the Architect Registration Examination (A.R.E.) shall remain valid for three (3) years. Thereafter, an applicant may request from the board a renewable one (1) year extension. Those desiring re-examination during the period when the application is in force shall do so through NCARB.]~~

To pass the Architect Registration Examination (A.R.E.), an applicant must achieve a passing grade on each division. A passing grade for any division of the A.R.E. shall be valid for five (5) years, after which time the division must be retaken unless all divisions have been passed. NCARB may allow a reasonable extension of such period in circumstances where completion of all divisions is prevented by a medical condition, by active duty in military service or by other like causes. The transition rules are as follows:

**(a)** for applicants who have passed all divisions of the A.R.E. by January 1, 2006, regardless of the time taken, such applicants will have passed the A.R.E.:

**(b)** for applicants who have passed one or more but not all divisions of the A.R.E. by January 1, 2006, such applicants will have five (5) years to pass all remaining divisions. A passing grade for any remaining division shall be valid for five (5) years, after which time the division must be retaken if the remaining divisions have not been passed; the five (5) year period shall commence after January 1, 2006,

on the date when the first passed division is administered;

**(c)** for applicants who have passed no divisions of the A.R.E. by January 1, 2006, such applicants shall be governed by the the above five (5) year requirement. The five (5) year period shall commence on the date when the first passed division is administered.

**(4)** In case an applicant does not qualify for examination, he or she shall be informed of the cause and apprised of his or her rights under the Uniform Licensing Act, Sections 61-1-1 through -31 NMSA 1978. Should the applicant subsequently meet the requirements for examination, he or she may resubmit the application.

**D.** Examination materials and results shall be confidential and shall not be considered public records. Nothing therein shall prevent the board from reporting an applicant's scores to the architectural registration boards in other jurisdictions or to the National Council of Registration Boards (NCARB). The board shall give written notification to an applicant no later than thirty (30) days after the board receives the results from NCARB.

**E.** Special provisions for examinees with disabilities:

**(1)** Any examinee requiring special examination provisions to accommodate a qualifying temporary or permanent disability as defined by the Americans with Disabilities Act, including any modification of the Architect Registration Examination administration process, must submit a written request for such provisions at least ninety (90) days prior to the exam, including documentation justifying such request.

**(2)** The board shall have the right to solicit additional information within thirty (30) days of such request. The examinee shall provide such additional information within ten (10) days following receipt of the board's request.

**F.** Examination application fee:

- (1)** In-state ..... \$50.00
- (2)** Out-of-state ..... \$100.00

[16.30.3.9 NMAC - Rp 16 NMAC 30.3.9, 9/6/2001; A, 9/16/2004]

**16.30.3.10 REGISTRATION THROUGH RECIPROCITY:**

**A.** An individual who holds a current NCARB certificate and is seeking registration through reciprocity or endorsement shall return a completed application and all fees to NCARB for processing. The application shall be valid for six (6) months from the time received by the board from NCARB.

**B.** An individual who cannot meet the requirements for NCARB cer-

tificate and is seeking registration through reciprocity or endorsement as a broadly-experienced architect must hold a current and valid registration issued by the licensing authority of another jurisdiction and have held such registration in a position of responsibility for at least five (5) years. The broadly-experienced category applicant shall return to the board a completed application, on the form prescribed by the board, along with other pertinent documents and the application fee. The board shall have the right to institute procedures for the broadly-experienced architect process as it deems necessary. Each broadly-experienced category applicant shall provide to the board evidence of academic training and work experience directly related to architecture and demonstrating minimum competencies as described in 16.30.6 NMAC, including but not limited to evidence of training or experience in the following areas:

- (1) design and construction documents;
- (2) construction administration;
- (3) management; and
- (4) related activities.

C. Each applicant must attest on an affidavit that the applicant:

(1) has not performed or offered to perform, and will not perform or offer to perform, architectural services in the state of New Mexico until such time as the applicant becomes a New Mexico registered architect;

(2) is in good standing and has disclosed all requested information on disciplinary proceedings in any other jurisdiction; and

(3) has secured a copy and has read the Architectural Act, Sections 61-15-1 through -13 NMSA 1978 and the New Mexico Board of Examiners for Architects Rules and Regulations, and shall comply with the same.

D. All applicants must pass a New Mexico architectural jurisprudence exam administered by the board. An applicant who has failed two (2) successive architectural jurisprudence exams shall not be eligible to apply for architectural registration for a period of one (1) year from the date of the last jurisprudence exam failed.

E. Applicants for registration through reciprocity or endorsement shall present a certificate of good standing from a jurisdiction in which a current and valid registration is held.

F. Seismic design requirements: Applicants for registration through reciprocity or endorsement shall present evidence satisfactory to the board of their qualification in design for seismic forces. The evidence shall be based on NCARB requirements existing at the time of application.

G. The board may require

an applicant for registration through reciprocity or endorsement to appear before the board for a personal interview and to complete a written or oral examination.

H. The board shall review all applications on a case-by-case basis.

I. Provisional registration:

(1) An applicant for registration through reciprocity or endorsement may be issued a provisional registration prior to full registration upon satisfaction of the following requirements:

(a) the applicant has complied with all requirements prescribed in Subsections A-G of 16.30.3.10 NMAC above;

(b) the board director has certified that the application is complete and there are no apparent disciplinary actions pending or in force in any jurisdiction at the time of the application; and

(c) the exam and reciprocity committee has reviewed the application and will recommend registration at the next board meeting.

(2) The board may issue provisional registration to an applicant upon the review and recommendation of the application by the exam and reciprocity committee.

(3) Any provisional registration shall be valid only from the date of issuance through the date of the next regularly scheduled board meeting.

(4) An applicant for registration through reciprocity or endorsement who has received provisional registration and who engages in the practice of architecture during the term of provisional registration shall do so under the regulatory authority of the Architectural Act, Sections 61-15-1 through -13 NMSA 1978 and these rules and regulations.

J. Upon approval of the board, a new registrant will receive a wall certificate within a reasonable period following the board's decision.

[16.30.3.10 NMAC - Rp 16 NMAC 30.3.10, 9/6/2001; A, 9/15/2003; A, 9/16/2004]

#### 16.30.3.11 REGISTRATION RENEWAL:

A. Fees: Renewal fees are paid biennially in even-numbered years. New registrations occurring in a non-renewal year shall be prorated on a yearly basis and shall expire on December 31st of that odd-numbered year. The fees for two (2) years are:

(1) in state .....\$225.00

(2) out of state ..... \$325.00

B. Continuing education: Effective December 31, 2001, all architects will be required to show compliance with these mandatory education requirements as a condition for renewing registration:

(1) Purpose and scope:

(a) These rules provide for a continuing education program to insure that all architects remain informed of these technical subjects necessary to safeguard life, health, property, and promote the public welfare. ~~[These rules apply to all architects registered in New Mexico.]~~

(b) Continuing education is focused on registrants becoming more proficient at their architectural practice. Activities not at an architectural registrant level or within an architectural context cannot be claimed for continuing education credit.

(c) Pro bono activities should be seen as the opportunity to "round out" one's continuing education experience; all pro bono activities (serving on committees, providing architectural services and mentoring) as well as tours, business seminars or classes, and architectural history seminars or classes should be considered general not public protection hours unless the registrant documents how the registrant (not the community or client) gained specific public protection knowledge.

(d) These rules apply to all architects registered in New Mexico.

(2) Definitions:

(a) "Eligible contact hour" means fifty (50) minutes actual time engaged in continuing education activities supported by documentation of content and registrant participation.

(b) "Health, safety and welfare in architecture" is anything that relates to the structure or soundness of a building or site or its role in promoting the health, safety or well being of its occupants.

(c) "Public protection hours" means continuing education contact hours in which the subject matter is health, safety and welfare as defined in Subparagraph (b) of Paragraph (2) of Subsection B of 16.30.3.11 NMAC above. Sixteen (16) public protection hours are required for each renewal cycle, however registrants may complete all twenty-four (24) contact hours in public protection subjects.

(d) "General subjects" refers to eight (8) of the total twenty-four (24) contact hours required per renewal cycle which may be in areas other than public protection but which must focus on increasing the registrant's architectural knowledge. All pro bono activities are general subjects unless the registrant documents how the registrant (not the community or client) gained specific health, safety and welfare knowledge.

(e) "Continuing education provider" means any association, organization or business entity which supplies structured, architectural registrant continuing education activities and the corresponding documentation of content and participation. If a continuing education provider includes

a testing component to be successfully completed in order to receive a certificate, the registrant must complete all phases of the provider's program. Contact hours shall be credited as indicated by the provider.

**(3) Requirements:**

**(a)** To renew registration, in addition to other requirements, an architect must have acquired continuing education for each 24-month period since the architect's last renewal of initial registration, or be exempt from these continuing education requirements as provided below. Failure to comply with these requirements may result in non-renewal of the architect's registration, or other disciplinary action, or both.

**(b)** Renewal period: For any 24-month biennial renewal period a total of twenty-four (24) contact hours from the activities listed in Paragraph (4) of Subsection B of 16.30.3.11 NMAC below must be reported. At least sixteen (16) contact hours shall be in public protection subjects: safeguarding life, health, property and promoting the public welfare. The remaining eight (8) hours may be acquired in more general subjects. No more than eight (8) hours may be carried over from one renewal cycle to another.

**(4) Activities:** The following list shall be used by all registrants in determining the types of activities that would fulfill continuing education requirements:

**(a)** contact hours in attendance at short courses or seminars dealing with architectural subjects and sponsored by academic institutions;

**(b)** contact hours in attendance at technical presentations on architectural subjects which are held in conjunction with conventions or at seminars related to materials use and functions. Such presentations as those sponsored by the American institute of architects, construction specifications institute, construction products manufacturers council or similar organizations devoted to architectural education may qualify;

**(c)** contact hours in attendance at short courses or seminars related to business practice or new technology and offered by colleges, universities, professional organizations or system suppliers;

**(d)** contact hours spent in self-study courses such as those sponsored by the national council of architectural registration boards, American institute of architects or similar organizations;

**(e)** up to three preparation hours may be credited for each class hour spent teaching architectural courses or seminars; college or university faculty may not claim credit for teaching regular curriculum courses;

**(f)** contact hours spent in architectural research that is published or formally presented to the profession or pub-

lic;

**(g)** college or university credit courses dealing with architectural subjects or business practice; each semester hour shall equal fifteen (15) contact hours; a quarter hour shall equal ten (10) contact hours;

**(h)** contact hours spent in professional service to the public or profession on boards, commissions or committees that draws upon the registrant's professional expertise, such as: serving on planning commissions, building code advisory boards, urban renewal boards, professional boards or committees or code study committees; except as allowable by law, all services must be provided pro bono;

**(i)** a maximum of eight (8) contact hours biennially for architectural services donated to charitable, religious, educational or other public or private non-profit organization, as defined under Section 501 (c) (3) of the Internal Revenue Code, organized for the benefit of the general public;

**(j)** mentoring: A maximum of eight (8) contact hours biennially may be acquired for serving as a mentor for the intern development program (IDP) or the A.R.E. study sessions; alternatively, a maximum of eight (8) contact hours may be acquired for serving as mentor for student/intern architectural projects that benefit the general public;

**(k)** contact hours spent in educational tours of architecturally significant buildings, where the tour is sponsored by a college, university or professional organization and the presentation content is designed for architect participants.

**(5) Records and record-keeping:**

**(a)** A registered architect shall complete and submit forms prescribed or accepted by the board certifying to the architect's having obtained the required continuing education hours. Registrants also shall maintain substantiating information in support of each continuing education claim.

**(b)** One (1) continuing education hour shall represent a minimum of actual course time. No credit will be allowed for introductory remarks, meals, breaks or administrative matters related to courses of study.

**(c)** Failure to fulfill the continuing education requirements, or file the required biennial report, properly and completely signed, shall result in non-renewal of an architect's certificate of registration.

**(d)** Any untrue or false statements or the use thereof with respect to course attendance or any other aspect of continuing education activity is fraud or misrepresentation and will subject the registrant to revocation of registration or other disciplinary action.

**(6) Initial registration:**

**(a)** An architect whose initial registration occurs less than twelve (12) months from the December 31st deadline of the next renewal cycle shall not be required to report continuing education hours.

**(b)** An architect whose initial registration occurs more than twelve (12) months from the December 31st deadline of the next renewal cycle but less than twenty-four (24) months from the date of initial registration shall be required to report twelve (12) contact hours, eight (8) of which shall be in public protection subjects.

**(7) Reinstatement:** A former registrant, ~~[with a registration that has been expired less than three (3) years]~~ may only apply for reinstatement under 16.30.3.13 NMAC if all delinquent contact hours are earned within the twelve (12) months preceding the application to renew. However, if the total number of contact hours required to become current exceeds twenty-four (24), then twenty-four (24) shall be the maximum number of contact hours required.

**(8) Exemptions:** A registrant shall be deemed to have complied with the foregoing continuing education requirements if the architect attests in the required affidavit that for not less than twenty-one (21) months of the preceding two-year period of registration, the architect:

**(a)** has served honorably on active duty in the military service (exceeding ninety (90) consecutive days); or

**(b)** is a resident of another state or district that accepts New Mexico requirements to satisfy its continuing education requirements, and certifies that all requirements for current continuing education compliance and registration have been met in that jurisdiction; or

**(c)** is a government employee working as an architect and assigned to duty outside the United States.

**(9) Non-compliance:**

~~**(a)** If any credits are disallowed by the board, then the registrant shall have one hundred and eighty (180) calendar days after notification to substantiate the original claim or obtain other contact hours to meet the minimum requirements. Such contact hours shall not be used again in the next renewal cycle.~~

~~**(b)** Failure to comply with the requirements of this section shall result in non-renewal of registration and forfeit of the renewal fee.]~~

**(10)** **(9)** The board may consider a hardship case.

**(10) Audit:** A number of registrants shall be selected at random to submit substantiating information to support their continuing education claim. If any credits are disallowed by the board, then the registrant shall have one hundred and eighty

(180) calendar days after notification to substantiate the original claim or obtain other contact hours to meet the minimum requirements. Such contact hours shall not be used again in the next renewal cycle.

(11) Non-compliance: Failure to comply with the requirements of this section shall result in non-renewal of registration and forfeit of the renewal fee.

[16.30.3.11 NMAC - Rp 16 NMAC 30.3.11, 9/6/2001; A, 9/15/2003; A, 4/15/2004; A, 9/16/2004]

**16.30.3.14 [CERTIFICATE EXPIRED FOR THREE (3) YEARS OR MORE AND RENEWAL OF SUCH A CERTIFICATE:**

~~A. In the event a certificate has lapsed for a continuous period of three (3) years or more, then the certificate and the file shall be transferred to the state records center for storage.~~

~~B. To renew a certificate that has been expired three (3) years or more, the former registrant shall complete continuing education requirements as stated in Paragraph (7) of Subsection B of 16.30.3.11 NMAC and shall be required to present evidence to the board of continued proficiency. At the board's discretion, the former registrant may be required to complete additional requirements and may be required to appear personally before the board in order that the board may determine whether to renew the lapsed certificate.]~~

**[RESERVED]**

[16.30.3.14 NMAC - Rp 16 NMAC 30.3.11.4, 9/6/2001; A, 9/15/2002; Repealed, 9/16/2004]

**16.30.3.18 INDIVIDUAL SEAL AND DOCUMENT IDENTIFICATION:**

A. Registration seal specifications: Each architect registered for practice within the state of New Mexico shall secure a registration seal of the following design: The seal shall secure a registration seal of the following design: The seal shall have two (2) concentric circles with the outer circle measuring 1-3/4 inches in diameter and the inner circle being 1-1/4 inches in diameter. The upper portion of the annular space between the two circles shall bear the words "STATE OF NEW MEXICO" and the lower portion shall bear the words "REGISTERED ARCHITECT". The space enclosed by the inner circle shall bear the name of the architect and his or her registration number. In no event shall the seal contain more than one name of an architect. By placement of a seal and signature on a drawing, an architect verifies that his or her registration is valid and that he or she is practicing in accordance with the Architectural Act, Sections 61-15-1 through -13 NMSA 1978 and these rules and regulations.

**B. Use of registration seal:**

(1) Each original sheet of construction drawings and each cover sheet of specifications, submitted for permitting, and reports, prepared by or under the responsible charge of an individual architect, must bear the imprint of the seal with the signature of that architect and the date of the signature closely aligned to the seal. The name and address of the architect must also appear on the sealed page. A registrant may apply a seal, signature and date of signature by hand. A registrant may affix an electronically-generated seal, signature, and date of signature. An electronic signature may be utilized provided the registrant utilizes a secure method of affixation; the registrant does not authorize any other person to so affix; and the registrant and client have agreed to conduct transactions by electronic means. Drawings, reports or documents that are signed using an electronic signature shall employ an authentication procedure to ensure the validity of the electronic signature. Signature shall be as defined in Subsection N of 16.30.1.7 NMAC.

(2) As provided in the Architectural Act, Subsection A of Section 61-15-7 NMSA 1978, all plans, specifications, plats and reports prepared by an architect or under the architect's responsible charge shall be signed and sealed by that architect, including all plans and specifications prepared by the architect or under the architect's responsible charge on work described in Subsection B, Project Exemptions, of Section 61-15-9 NMSA 1978.

(3) Placing of multiple architectural seals on plans, specifications or reports shall not be permitted. The architect-of-record must seal, sign and date all construction drawings, specifications, and reports prepared by or under the supervision of that architect. In doing so, the architect-of-record assumes full responsibility for these documents.

(4) Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible charge because the reviewer has neither control over nor detailed knowledge of the content of such submissions throughout their preparation. Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible charge by persons not employed in the office where the architect is resident, shall maintain and make available to the board upon request for at least five (5) years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation.

(5) An exception to Paragraph (4) of Subsection B of 16.30.3.18 NMAC above is made for architects who review, adapt, and seal prototypical projects provided that:

(a) the project qualifies as a prototypical project meaning the original plans were designed by other architects, engineers or architects and engineers with the intent of being used in several diverse locations with local adaptations;

(b) the New Mexico registered architect has permission of the plan owner to adapt the documents; and

(c) all previous title blocks and seals have been removed. In applying his or her seal, the New Mexico registered architect assumes full responsibility for the documents as if prepared by or under the architect's responsible charge.

(6) An exception to Paragraph (4) of Subsection B of 16.30.3.18 NMAC above is made for kit-of-parts. A kit-of-parts is a manufactured item and the New Mexico registered architect is not responsible for the components.

(7) Architectural and engineering seals are required for any subsequent and physically linked construction to a project which, when seen together with the original construction, would have required both seals.

(8) A legally applied seal and signature is a permanent part of construction documents and may not be removed for non-payment of fees or other civil action.

~~C. [In the case of termination or death:]~~ **Assumption of projects**

(1) Sealed work: Prior to sealing, signing and dating work, a successor registered architect shall be required to notify the original architect, his successors, or assign, by certified letter to the last known address of the original registered architect, of the successor's intention to use or reuse the original registered architect's work. A successor registered architect must use his or her own title block, seal and signature and must remove the title block, seal and signature of the original architect before sealing, signing and dating any sealed construction drawings and specifications. The successor registered architect shall take full responsibility for the drawings as though they were the successor's original product.

(2) Unsealed work: When an architect assumes responsibility of an incomplete project, the following evaluation must occur before the architect can be said to have exhibited responsible charge over the project:

(a) Program: the architect shall meet with the client to assure that the client's needs are met.

(b) Codes: the architect shall assure that the project is in compliance with all federal, state, and local regulation.



(c) Coordination: the architect shall assure coordination with the other professionals in a multi-seal project.

(d) Analysis: the architect shall assure the project meets all technical, aesthetic, and quality requirements and that site and environmental issues have been addressed.

(e) The architect of record who assumes the incomplete project shall be charged with keeping records of the project for five years.

**D.** Plan checking: Any authorized person checking documents for compliance with any applicable statutes, codes, ordinances, rules or regulations such as building codes, fire codes or zoning ordinances may "red-line" and list changes to meet such applicable statutes, codes, ordinances, rules and regulations, as this is not the practice of the profession. However, a person may not modify a professional document submitted for review unless that modification is supported by reference to an applicable code or standard. A non-registrant shall not modify, in any manner, a document embodying the discretion or judgment of a registrant without the express permission of the architect who is in responsible charge.

[16.30.3.18 NMAC - Rp 16 NMAC 30.3.14, 9/6/2001; A, 9/15/2002; A, 9/16/2004]

**16.30.3.19 CHANGE OF ADDRESS:**

**(1)** Registrants shall notify the board of a change of address to either their business address or residential address within 30 days of a move.

**(2)** Registrants who fail to notify the board of a change of address to either their business address or residential address shall be subject to a penalty of twenty-five dollars (\$25.00).

[16.30.3.19 NMAC - N, 9/15/2002; A, 9/16/2004]

**NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS**

This is an amendment to 16.30.4 NMAC, Section 12, effective September 16, 2004. Subsection B of 16.30.4.12 NMAC was amended to specifically state that an architect must confer with a client to assure the client's program needs are met.

**16.30.4.12 PROFESSIONAL CONDUCT**

**A.** Each office maintained for the preparation of architectural drawings, specifications, reports or other professional work shall have an architect regularly employed having direct knowledge and

supervisory control of such work.

**B.** In providing architectural services, an architect shall confer with the client to assure that the client's program needs are met.

~~**C.**~~ **C.** An architect shall not sign or seal drawings, specifications, reports or other professional work which was not prepared by the architect or under his or her responsible charge as defined in Subsection M of 16.30.1.7 NMAC. Responsible charge may be exercised through a third party who is not a registered architect, but the architect must maintain and make available to the board upon request for at least five years following sealing or signing, adequate and complete records demonstrating the extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation.

~~**D.**~~ **D.** An architect shall neither offer nor make any gifts, other than gifts of nominal value, which may include reasonable entertainment and hospitality, with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested.

~~**E.**~~ **E.** An architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

~~**F.**~~ **F.** A registered architect shall not associate in a business venture offering architectural services with a person or firm where there is reason to believe that person or firm is engaging in activity of a fraudulent or dishonest nature or is violating board rules and regulations or statutes. A registered architect with such knowledge shall report such occasions to the board, and shall cooperate with any resulting investigations.

[16.30.4.12 NMAC - Rp 16 NMAC 30.4.8.5, 9/6/2001; A, 9/16/2004]

**NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS**

This is an amendment to 16.30.5 NMAC, Section 9, effective September 16, 2004. Subsection A of 16.30.5.9 NMAC was amended to provide that settlement agreements are subject to approval by the rules and regulations committee rather than the board.

**16.30.5.9 SETTLEMENT AGREEMENTS:** For all non-parental responsibility actions:

**A.** The enforcement subcommittee may enter into a settlement agreement prior to the subcommittee's vote for or prior to the issuance of a notice of contemplated action. The settlement agree-

ment is subject to approval by the ~~board~~ rules and regulations committee.

**B.** The board shall require an acknowledgement of disciplinary action for all violations.

**C.** The board shall require an admission of guilt in a settlement agreement for any non-minor violation.

**D.** The board may report the settlement agreement to the relevant computer database(s).

[16.30.5.9 NMAC - N, 9/6/2001; A, 9/16/2004]

**NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS**

This is an amendment to 16.30.6 NMAC, Section 8 and Section 9 effective September 16, 2004. The title of Section 9 and Subsection A of 16.30.6.8 NMAC were amended to indicate that these are the minimum standards for programming and construction administration, if either are required by the architectural contract.

**16.30.6.8 DESIGN AND CONSTRUCTION DOCUMENTS**

**A.** Programming, \_\_\_\_\_ if required by contract:

**(1)** Definition: To create or assist the owner in creating a project's design parameters and over-all scope including priorities, goals, budget, data, concepts and general needs.

**(2)** The architect must be able to:

**(a)** prepare a program, presentations, reports and periodic reviews for owners and consultants;

**(b)** summarize and evaluate data and requirements; and

**(c)** form an educated opinion of probable costs and adequacy of the owner's budget.

**B.** Site and environmental analysis:

**(1)** Definition: Site analysis includes land planning, urban design and environmental evaluation of the physical, economic and social impact of proposed land use including but not limited to on the environment, ecology, traffic and population patterns, zoning site constraints, adequacy of site for parking and loading, etc., and utility availability.

**(2)** The registrant must be able to select, organize and evaluate pertinent data that leads to a conceptual design in coordination with the owner's program while conforming to the project's requirements.

**C.** Schematic design:

**(1)** Definition: From the owner-approved program, the development of solutions to satisfy technical and aesthetic requirements with an updated opinion of

probable cost.

(2) The registrant must be able to prepare, from the program, alternative preliminary design concepts, presentation drawings and models and form an updated opinion of probable cost.

**D. Building cost analysis:**

(1) Definition: Evaluation of probable construction cost.

(2) The registrant must be able to:

(a) make computations based on area and volume and quantity surveys based on the project's specific requirements; and

(b) evaluate the proposed costs for accuracy and fairness.

**E. Code research:**

(1) Definition: Assurance of a project's compliance with federal, state and local regulation requirements.

(2) The registrant must be able to research and document codes and guidelines to assure a specific project's compliance with law and should be knowledgeable of procedures to obtain relief or variances.

**F. Design development:**

(1) Definition: Based on the owner-approved schematic design, creating the size and character of the entire project including selection of materials and engineering systems with an updated opinion of probable cost for the owner's further approval.

(2) The registrant must be able to:

(a) prepare detailed development drawings from schematic design documents;

(b) develop schedules and outline specifications, the project's systems, with estimates for construction time and construction cost; and

(c) form updated opinions of probable cost.

**G. Construction documents:**

(1) Definition: The description in graphic form of all the essentials of the work done in concurrence with the written specifications and the provision to the owner of an updated opinion of probable cost and, if relevant, the suggestion that alternative bids should be considered.

(2) The registrant must:

(a) be able to prepare accurate, consistent, complete and understandable construction documents and effectively coordinate consultant's drawings; and

(b) understand the responsibilities and liabilities arising from the issuance of construction documents.

**H. Engineering systems coordination:**

(1) Definition: Responsibility for coordinating with consulting engineers in the selection, design and/or coordination of all building systems including traditional engineering systems.

(2) The registrant must be knowl-

edgeable of how systems work, including system benefits and limitations, availability, cost and space requirements necessary, and must know when it is necessary to engage engineering professionals and other professionals or consultants.

**I. Specifications and materials research:**

(1) Definition: The evaluation and selection of materials or products, based on appropriateness, durability, aesthetic quality, initial cost, maintenance and the project's standard of quality.

(2) The registrant must:

(a) have the ability to assess materials, including familiar items in unusual applications; and

(b) be able to communicate in graphic and written form to all parties, in logical and orderly sequence, the requirements of the construction process.

**J. Document checking and coordination:**

(1) Definition: Cross-checking construction documents and drawings of other consultants for accuracy and compatibility.

(2) The registrant must be able to assure accuracy and compatibility of all construction documents for a project.

[16.30.6.8 NMAC - Rp 16 NMAC 30.6.8.1, 9/6/2001; A, 9/16/2004]

**16.30.6.9 CONSTRUCTION ADMINISTRATION (if required by contract):**

**A. Bidding and contract negotiation**

(1) Definition: Assist the client in establishing and administering bidding procedures, issuing addenda, evaluating proposed substitutions, reviewing the qualifications of bidders, analyzing bids or negotiating proposals and making recommendations for the selection of contractors.

(2) The registrant should make clear what the registrant's role shall be in each of the following steps:

(a) the bid/award process;

(b) the analysis and evaluation of bids;

(c) settling protests to bid acceptability; and

(d) the role of lending institutions.

**B. Construction - office phase**

(1) Definition: Processing contractor's applications for payment, preparing change orders, reviewing shop drawings and samples and interpreting construction documents.

(2) The registrant must be able to:

(a) timely process applications for payment;

(b) evaluate requests for changes and prepare change orders; and

(c) interpret and attempt to resolve conflicts relating to the contract documents and resolve disputes.

**C. Construction - observation phase**

(1) Definition: Assurance that contractor's work conforms to requirements of contract documents, that standards of workmanship are upheld, and that all work conforms to required codes. It includes the interpretation of contract documents, clarification of design intent, and the resolution of conflicts.

(2) The registrant must have an understanding of contract documents and must be able to:

(a) evaluate quality of materials and workmanship;

(b) analyze construction timetables and produce progress reports;

(c) interpret contract documents;

(d) evaluate dispute resolution alternatives;

(e) monitor and receive all data, warranties and releases required by the contract documents; and

(f) undertake a completion inspection with verification that the work was completed in accordance with the contract documents.

[16.30.6.9 NMAC - Rp 16 NMAC 30.6.8.2, 9/6/2001; A, 9/16/2004]

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

**JUVENILE JUSTICE DIVISION**

The New Mexico Children, Youth and Families Department is repealing 8 NMAC 14.4, Facility Medical Services, effective August 31, 2004 and replacing it with 8.14.4 NMAC Facility Medical and Mental Health Services, effective August 31, 2004.

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

**JUVENILE JUSTICE DIVISION**

**TITLE 8 SOCIAL SERVICES  
CHAPTER 14 JUVENILE JUSTICE  
PART 4 FACILITY MEDICAL AND MENTAL HEALTH SERVICES**

**8.14.4.1 ISSUING AGENCY:** New Mexico Children, Youth and Families Department.

[8.14.4.1 NMAC - Rp, 8 NMAC 14.4.1, 8/31/2004]

**8.14.4.2 SCOPE:** This rule applies to clients, facility staff, and health care providers administering care to the

clients in the facilities of the juvenile justice services of children, youth and families department.

[8.14.4.2 NMAC - Rp, 8 NMAC 14.4.2, 8/31/2004]

#### 8.14.4.3 STATUTORY

**AUTHORITY:** NMSA 1978 section 9A-2-7(D) authorizes the secretary of the children, youth and families department to adopt regulations as necessary to carry out the duties of the department. NMSA 1978 section 32A-2-19(B) provides that delinquent children may be committed to the legal custody of the department for placement, supervision and rehabilitation, and more generally NMSA 1978 section 32A-2-1 et seq., the Delinquency Act, contains various provisions relating to the commitment and custody of delinquent children.

[8.14.4.3 NMAC - Rp, 8 NMAC 14.4.3, 8/31/2004]

**8.14.4.4 DURATION:** Permanent.

[8.14.4.4 NMAC - Rp, 8 NMAC 14.4.4, 8/31/2004]

**8.14.4.5 EFFECTIVE DATE:** August 31, 2004 (unless a later date is cited at the end of a section).

[8.14.4.5 NMAC - Rp, 8 NMAC 14.4.5, 8/31/2004]

**8.14.4.6 OBJECTIVE:** To establish standards and procedures for providing medical and mental health care to clients in the facilities of the juvenile justice services of the children, youth and families department.

[8.14.4.6 NMAC - Rp, 8 NMAC 14.4.6, 8/31/2004]

#### 8.14.4.7 DEFINITIONS

**A. 15-day diagnostic evaluation** refers to the court-ordered evaluation of a child committed to the legal custody of CYFD for purposes of diagnosing the child and preparing a report to the court indicating what disposition appears most suitable when the interests of the child and the public are considered. See NMSA 1978 section 32A-2-17(D). 15-day diagnostic evaluations are conducted at YDDC.

**B. 15-day diagnostic evaluation report** refers to the written report prepared for the court incorporating the findings of the 15-day diagnostic evaluation.

**C. Central intake** refers to the entry point at YDDC, for clients who have at least a one-year commitment.

**D. Classification** refers to the system and procedure through which new clients are assessed and assigned to the appropriate facility and living unit.

**E. Client** refers to a person who is committed to the custody of CYFD's juvenile justice services and/or who is receiving services from CYFD's juvenile justice services.

**F. Continuum of behavior management** refers to the systematic analysis by staff of a threatening circumstance involving a client with the potential of causing injury or death and the systematic application of approved behavior management procedures.

**G. Contract staff** refers to persons who are under contract with CYFD to provide contractually-specified medical or mental health care services to juvenile justice facility clients.

**H. Core programming** refers to standardized programming required for all clients, including counseling and mental health programs as indicated.

**I. CYFD** refers to the New Mexico children, youth and families department.

**J. DCRC** refers to a department community residential center, including Albuquerque boys' reintegration center, Carlsbad reintegration center, Eagle Nest reintegration center, and LaPlacita reintegration center.

**K. Facility** refers to a facility operated by, or on behalf of, CYFD's juvenile justice services, for purposes of housing and providing care for clients committed to the custody of CYFD. The facilities include: J. Paul Taylor center, New Mexico boys' school, New Mexico girls' school, YDDC, the DCRCs.

**L. First aid** refers to care for a condition requiring immediate assistance from an individual trained in first aid care.

**M. HIPAA privacy officer** refers to the person designated by the secretary to implement compliance with the privacy provisions of the Health Insurance Portability and Accountability Act of 1996.

**N. Incident report** refers to notification to the juvenile justice services director of an incident, for review by the director. Medical and mental health-related incident reports are also copied to the facility level medical and/or mental health director.

**O. Intake mental health screening** refers to a system of structured observation/initial mental health assessment of newly-arrived clients, for purposes of determining mental health treatment needs and appropriate facility placement.

**P. Intake medical screening** refers to a system of structured observation/initial medical assessment of newly-arrived clients.

**Q. Isolation** refers to any instance in which a client is confined alone for over 1 hour; either in a room other than

the room in which the client usually sleeps, or in the client's room at a time when the client would otherwise be at liberty to leave the room. This does not include protective isolation for injured clients or clients whose safety is threatened, nor routine isolation at the time of client admission.

**R. Juvenile justice services** refers to the organizational unit within CYFD that operates juvenile justice facilities, and provides other services under the Delinquency Act, NMSA 1978 section 32A-2-1 et seq.

**S. Juvenile justice services director** refers to the designated director of CYFD's juvenile justice services.

**T. Living unit** refers to an area in a CYFD facility where clients are assigned to perform their daily activities and to sleep.

**U. Mechanical restraint** refers to a device approved through the behavior management program, used to limit the movement of a client's body for safety reasons.

**V. Medical staff** refers to employees assigned to the medical unit of a facility, including appropriately-licensed physicians, psychiatrists, physician's assistants, nurse practitioners, registered nurses (RNs), licensed practical nurses (LPNs), and EMTs.

**W. Mental health staff** refers to employees assigned to the mental health unit of a facility, including appropriately-licensed physicians, psychiatrists, psychologists, and social workers.

**X. Mid-level provider** refers to medical staff at the level of physician's assistant or nurse practitioner.

**Y. Pharmaceutical** refers to a medication of any chemical compound or narcotic (listed in the U.S. pharmacopeia or national formulary) that may be administered to humans as an aid in the diagnosis, treatment or prevention of disease or other abnormal condition; for the relief of pain or suffering; or to control or improve any medical or mental health condition.

**Z. Physical intervention** refers to physical contact of a client by staff to control or restrict the movement of the client to protect the health or safety of the client, staff or another person, using a technique approved by CYFD and taught in a CYFD-approved course.

**AA. Physician** refers to an individual with a medical degree (M.D. or D.O.) appropriately licensed to practice in New Mexico.

**BB. Psychiatrist** refers to a physician who is specialized to practice in the area of psychiatry and mental health, and appropriately licensed to practice in New Mexico.

**CC. Psychologist** refers to

an individual with a degree in psychology or a master's degree in a related field.

**DD. Receiving facility** refers to the facility to which a client is being transferred.

**EE. Secretary** refers to the secretary of CYFD.

**FF. Sending facility** refers to the facility from which a client is being transferred.

**GG. Social worker** refers to a person who is licensed by the New Mexico board of social work examiners.

**HH. Staff** refers to employee(s) of CYFD who are assigned to work at juvenile justice services facilities, and who are not medical nor mental health staff.

**II. Superintendent** refers to the chief facility administrator at the J. Paul Taylor center, New Mexico boys' school, or YDDC. Superintendent also refers to the chief facilities administrator for the DCRCS.

**JJ. Verbal de-escalation** refers to a non-physical dialogue with a client, about the concern or issue upsetting the client. The dialogue has no time limit.

**KK. YDDC** refers to the youth diagnostic and development center. [8.14.4.7 NMAC - Rp, 8 NMAC 14.4.7, 8/31/2004]

#### **8.14.4.8 MEDICAL DIRECTOR AND MENTAL HEALTH DIRECTOR**

##### **A. Medical director at department level, juvenile justice services level, and facility level**

(1) CYFD designates a department level medical director to oversee the provision of health care to all CYFD's clients, including the provision of medical services at juvenile justice services facilities. The department level medical director must be an appropriately-licensed physician.

(a) The department level medical director is CYFD's final authority on medical matters.

(b) The department level medical director annually reviews and approves all policies and procedures relating to the provision of medical care in juvenile justice services facilities.

(c) The department level medical director is the final decision-maker for any questions that arise regarding the application of medical policies and procedures in specific circumstances.

(d) The department level medical director may designate other persons to act on behalf of the medical director in specified circumstances.

(2) CYFD designates a medical director for juvenile justice services, who may also be the department level medical director, and who is responsible for over-

seeing medical care delivery within juvenile justice services. The juvenile justice services level medical director may be an appropriately-licensed mid-level provider or physician, health care administrator, or health care agency. The facilities inform the juvenile justice services level medical director of all hospitalizations, serious injuries, surgeries, deaths, serious suicide attempts, medication error, serious accidents, serious sudden illness, failure to follow medical procedures, and failure to implement medical care orders, as promptly as circumstances warrant, and in any event no later than the start of the next work day.

(3) CYFD may designate a facility level medical director, who may be an appropriately-licensed mid-level provider or physician, to oversee the on-site provision of medical care at one or more juvenile justice services facilities. The facility level medical director is designated to act on behalf of the medical director in administrative matters, and in such other matters as the medical director may decide. Staff informs the facility level medical director of all hospitalizations, serious injuries, surgeries, deaths, serious suicide attempts, medication error, serious accidents, serious sudden illness, failure to follow medical procedures, failure to implement medical care orders, and any use of force, as promptly as circumstances warrant, and in any event no later than the start of the next work day.

##### **B. Mental health director at department level, juvenile justice services level, and facility level**

(1) CYFD designates an appropriately-licensed department mental health director to oversee the provision of mental health care to all CYFD's clients, including the provision of mental health services at juvenile justice services facilities.

(a) The department level mental health director is CYFD's final authority on mental health matters.

(b) The department mental health director annually reviews and approves all policies and procedures relating to the provision of mental health care in juvenile justice services facilities.

(c) The department mental health director is the final decision-maker for any questions that arise regarding the application of mental health policies and procedures in specific circumstances.

(d) The department mental health director may designate other persons to act on behalf of the mental health director in specified circumstances.

(2) CYFD designates a mental health director for juvenile justice services, who may also be the department level mental health director, and who is responsible for overseeing mental health care delivery within juvenile justice services. The juvenile justice services level mental health

director may be an appropriately-licensed psychiatrist or psychologist, or social worker. The facilities inform the juvenile justice services level mental health director of all hospitalizations, serious injuries, surgeries, deaths, suicide attempts, medication error, accidents, sudden illness, failure to follow procedures, and failure to implement care orders, as promptly as circumstances warrant, and in any event no later than the start of the next work day.

(3) CYFD may designate a facility level mental health director, who may be an appropriately-licensed physician (including psychiatrist), psychologist, or social worker, to oversee the on-site provision of mental health care at one or more juvenile justice services facilities. The facility level mental health director is designated to act on behalf of the mental health director in administrative matters, and in such other matters as the mental health director may decide. Staff informs the facility level mental health director of all hospitalizations, serious injuries, surgeries, deaths, serious suicide attempts, medication error, serious accidents, serious sudden illness, failure to follow medical procedures, failure to implement medical care orders, and any use of force, as promptly as circumstances warrant, and in any event no later than the start of the next work day.

[8.14.4.8 NMAC - Rp, 8 NMAC 14.4.8, 8/31/2004]

#### **8.14.4.9 15-DAY DIAGNOSTIC EVALUATION**

**A.** Clients who are committed to undergo a 15-day diagnostic evaluation, pursuant to section 32A-2-17(D) of the Delinquency Act, report to YDDC where the evaluation is conducted.

**B.** The 15-day diagnostic evaluation process includes review of client history and previous evaluations, interviews with clients and others close to the case, substance abuse screening, psychopathology screening, and other screening appropriate to the client.

**C.** Mental health staff arrange for any crisis intervention that is needed during the 15-day stay, including on-site and off-site mental health care.

**D.** The 15-day diagnostic evaluation report is prepared and provided to the court.

[8.14.4.9 NMAC - N, 8/31/2004]

#### **8.14.4.10 INTAKE MEDICAL SCREENING:** Clients undergo medical screening when they first enter CYFD juvenile justice custody.

**A.** Clients who are committed to the custody of CYFD pursuant to the Delinquency Act, including clients committed for a 15-day diagnostic evaluation, are initially assigned to YDDC. Upon

arrival at YDDC, clients (including 15-day diagnostic evaluation clients), undergo a multi-level medical screening.

(1) Staff screening at YDDC. Upon arrival and prior to the client's admission to the general population, the client is first interviewed by (non-medical) staff who document medical history.

(2) Medical staff screening at YDDC. Within 72 hours of the client's arrival at YDDC, medical staff screen the client to determine needs for medical care.

(3) Mid-level provider or physician screening at YDDC. Within 14 days of arrival at YDDC, the client receives a physical examination from a mid-level provider or physician who may also collect specimens and order laboratory tests.

**B.** A small number of clients who have pre-identified medical and/or mental health needs, are not initially placed at YDDC, but are instead placed at a DCRC as a court-ordered condition of probation. DCRC clients undergo medical intake screening similar to that provided to clients at YDDC, except that the medical staff and mid-level provider or physician screening are performed by contract providers at an off-site location, within 72 hours of the client's admission.

[8.14.4.10 NMAC - Rp, 8 NMAC 14.4.12, 8/31/2004]

#### **8.14.4.11 POST-INTAKE MEDICAL NEEDS**

**A.** Medical needs may arise, or be identified, at any time during a client's stay at any of the facilities. Clients, and staff on behalf of clients, may request and obtain attention to medical needs.

**B.** During orientation, clients are instructed how to request medical attention.

**C.** Requests for medical attention are reviewed daily and appropriate response is provided.

[8.14.4.11 NMAC - Rp, 8 NMAC 14.4.9.1, 8/31/2004]

#### **8.14.4.12 INTAKE MENTAL HEALTH SCREENING (CENTRAL INTAKE)**

**A.** Clients undergo mental health screening and classification when they first enter YDDC on a one-year, or longer, commitment. Clients are housed in a separate living unit while they undergo the intake screening process. The goal of the classification process is to determine appropriate assignment and treatment for the client.

**B.** Upon arrival, intake clients complete a screening instrument to determine whether they are appropriate for admission to the general population, or instead require immediate on-site or off-site mental health care.

**C.** Within 2 business days of arrival, mental health staff meet with the client to begin mental health evaluation and identify immediate mental health needs. Mental health staff's evaluation includes clinical interviews and administration of mental health and substance abuse screening tools.

**D.** Approximately 14 days after the client's arrival, mental health staff and other staff involved in the classification process meet to recommend appropriate placement for the client. The client's input is considered.

**E.** The client is transferred to the assigned facility as soon as practicable.

[8.14.4.12 NMAC - N, 8/31/2004]

#### **8.14.4.13 POST-INTAKE MENTAL HEALTH CARE**

**A.** Mental health services are available, provided to clients, and any treatment is documented.

**B.** Core programming begins during the intake process.

**C.** During orientation, clients are instructed how to request counseling and mental health care.

**D.** There is a written suicide prevention plan and intervention program which is reviewed and approved by a qualified medical or mental health professional. Staff are trained in the implementation of the plan.

**E.** Mentally disordered and developmentally disabled clients are screened, treated, and referred for services as indicated.

[8.14.4.13 NMAC - Rp, 8 NMAC 14.4.10, 8/31/2004]

#### **8.14.4.14 MEDICAL AND MENTAL HEALTH ORDERS AND COMMUNITY REFERRALS:**

Clients are provided with medical and mental health care that is indicated. Staff, medical staff, and mental health staff provide care at the facilities according to the orders written for the client. Whenever necessary, clients are treated by community care providers, such as an obstetrician/gynecologist or hospital. Mid-level providers and physicians order medical and mental health care. Clinical and mental health workers, including social workers, may also enter orders for mental health care. Any questions about appropriate care in individual cases, are referred to the medical and/or mental health director.

[8.14.4.14 NMAC - N, 8/31/2004]

#### **8.14.4.15 VISION CARE**

**A.** Each facility contracts with an appropriately-licensed optometrist to provide vision care to clients.

**B.** New clients whose

vision screens at 20/40 or worse, are seen by the optometrist.

**C.** Clients who have corrected vision, are seen by the optometrist annually.

**D.** For clients requiring vision correction, if the client's parent/guardian has the means to purchase eyeglasses, they are asked to do so. Otherwise, the facility provides one pair of eyeglasses per year per client, unless a second pair is needed for medical or special education needs. The facility replaces unusable eyeglasses. However, clients who purposefully damage eyeglasses are subject to discipline.

**E.** Emergency eye care is provided as needed. Visits to an ophthalmologist are scheduled at the optometrist's recommendation.

[8.14.4.15 NMAC - N, 8/31/2004]

#### **8.14.4.16 DENTAL CARE**

**A.** Each facility contracts with an appropriately-licensed dentist to provide dental care to clients.

**B.** Any client who has not had a dental examination at another CYFD facility within the past six months, or who is complaining about dental pain, is scheduled to receive dental care.

**C.** Dental care and emergency dental care are provided as needed.

**D.** Orthodontic care will be provided if medically necessary for functionality. If a client is admitted with orthodontic correction in progress, the parents are required to pay for continuing orthodontic care.

[8.14.4.16 NMAC - N, 8/31/2004]

#### **8.14.4.17 PREGNANT CLIENTS**

**A.** All pregnant clients are housed at YDDC. YDDC contracts with an appropriately-licensed obstetrician/gynecologist to provide care for pregnant clients.

**B.** Female clients are screened for pregnancy at intake. If any staff member suspects pregnancy, or if a client self-reports suspected pregnancy to any staff person, the staff person notifies YDDC medical staff. Clients are encouraged to report any possibility of pregnancy, and are assured that appropriate medical care will be provided. The obstetrician/gynecologist provides confirmation of pregnancy. Living unit staff, food services, administrative staff, and the supervising physician are notified of pregnant clients so that they may provide appropriate observation, care and diet. Pregnant clients receive routine pre-natal care and high-risk treatment as necessary.

[8.14.4.17 NMAC - N, 8/31/2004]

#### **8.14.4.18 24-HOUR EMER-**

**GENCY MEDICAL AND MENTAL HEALTH CARE PLAN:** Each facility has a written plan, approved by the medical and mental health director, for providing 24-hour emergency medical, dental and mental health care to clients. The written plan includes:

- A. on-site emergency first aid and crisis intervention;
- B. emergency evacuation of clients from the facility;
- C. use of an emergency medical vehicle;
- D. use of one or more designated hospital emergency rooms or other appropriate health facilities;
- E. emergency on-call and/or on-site medical and mental health staff professional services;
- F. security procedures for the immediate transfer of clients when medically necessary.

[8.14.4.18 NMAC - Rp, 8 NMAC 14.4.9.4, 8/31/2004]

**8.14.4.19 FIRST AID:** All facilities are equipped with first aid kits. Staff are trained to provide first aid and crisis intervention.

[8.14.4.19 NMAC - Rp, 8 NMAC 14.4.13, 8/31/2004]

**8.14.4.20 BEHAVIOR MANAGEMENT AND CRISIS INTERVENTION**

A. CYFD seeks to manage clients in safety-sensitive situations, based on principles of behavior management. Staff, including medical staff and mental health staff, are trained to systematically analyze threatening circumstances that have potential for resulting in injury including death, and to systematically apply a continuum of behavior management techniques. Behavior management principles include applying the least restrictive means appropriate to control the situation, and de-escalation. Restraints are applied conservatively and according to approved procedure.

B. Crisis intervention includes appropriate measures to prevent self-harm, where indicated.

C. All uses of physical intervention or restraint are reported to the facility superintendent no later than the end of the work shift, and are reported to the juvenile justice services director as promptly as circumstances warrant, and in any event no later than the start of the next work day.

[8.14.4.20 NMAC - N, 8/31/2004]

**8.14.4.21 TREATMENT PROGRAMS**

A. **Substance abuse and chemical dependency**

- (1) Detoxification from alcohol,

opiates, barbiturates and other drugs with adverse or health threatening after-effects is managed under medical supervision. Detoxification is provided off-site for any clients who requires it.

(2) The responsible medical and/or mental health director approves methods for diagnosis, development of treatment plans, and monitoring for chemically dependent clients and other alcohol/drug abusers.

(3) Facilities have a written plan which provides for the clinical management of chemically dependent clients.

(4) All clients receive substance abuse education and individualized treatment as needed.

B. Instructions and assistance in personal hygiene, grooming and health care are provided to clients.

C. Clients are provided with family planning and health education services.

[8.14.4.21 NMAC - Rp, 8 NMAC 14.4.15, 8/31/2004]

**8.14.4.22 HOSPITALIZATION:**

Hospitalization is provided when necessary for medical and/or mental health. Clients are accompanied to the hospital by a staff member. Staff remains with the client for as long as a security need exists.

[8.14.4.22 NMAC - Rp, 8 NMAC 14.4.9.3, 8/31/2004]

**8.14.4.23 PHARMACEUTICALS:**

Pharmaceuticals are carefully managed. They are administered according to documented client treatment needs, pursuant to a drug administration protocol, and are not administered solely for purposes of population management and control, nor for purposes of experimentation or research.

[8.14.4.23 NMAC - Rp, 8 NMAC 14.4.11, 8/31/2004]

**8.14.4.24 RESEARCH AND PROCEDURES NOT YET APPROVED FOR GENERAL USE:**

CYFD does not permit medical, mental health, pharmaceutical or cosmetic research on facility clients. With approval of the juvenile justice services director, the medical and/or mental health director, office of general counsel, and the HIPAA privacy officer, data collection and analysis for research purposes may be permitted if the research study benefits clients, and if appropriate confidentiality protections are in place. If an individual client's medical or mental health situation is such that a therapy or treatment not yet approved for general use, may appear appropriate for the client, a request to approve the use of the therapy or treatment for the client is submitted to the medical and/or mental health director and juvenile justice services director; the child's parent/guardian must also

agree to the therapy or treatment.

[8.14.4.24 NMAC - N, 8/31/2004]

**8.14.4.25 CLIENT AND FAMILY PARTICIPATION; REFUSAL OF CARE**

A. Medical and mental health staff encourage client and family participation in medical and mental health care, as indicated.

B. Medical and mental health staff inform clients and participating family members of treatment options, risks, consequences, and patient rights. Whenever possible, consent to treatment is obtained and documented. In circumstances including a life-threatening situation, potentially permanently disabling condition, or impaired judgment rendering informed decision-making impossible, medical and/or mental health care is provided based on implied consent. Clients who participate and cooperate with recommended treatment are presumed to have consented to treatment regardless whether consent has been documented.

C. Whenever treatment is provided without documented consent, the reasons for providing the treatment are documented. However, consent is required to perform an HIV test in accordance with NMSA 1978 section 24-2B-2, and to administer medications.

D. Clients and/or parents/guardians who refuse medical or mental health care are requested to provide written acknowledgment of refusal.

E. When a client or the parent/guardian refuses treatment in a situation where consent is not implied, the superintendent/designee is notified. The medical or mental health staff provides the superintendent/designee with details of the client's condition, the proposed treatment, and the potential risks of not rendering care. The superintendent/designee contacts the director, who in turn contacts the secretary and the office of general counsel to determine the need to pursue court action to request a treatment guardian who will make a treatment decision based on medical case information. A court-appointed treatment guardian may provide consent for the treatment.

F. For facility clients who are at least 18 years old, the parent/guardian may not decide for the client whether to accept or refuse treatment, unless the client is mentally incapable.

G. For facility clients who are under age 18, medical practitioners follow specific statutory provisions or accepted practice guidelines for the age at which children may consent to specific medical or mental health treatments.

[8.14.4.25 NMAC - Rp, 8 NMAC 14.4.9.2, 8/31/2004]

**8.14.4.26 NOTIFICATION:** The facility notifies the client's parent/guardian of client illnesses, injuries, and other medical or mental health events that are serious enough to disrupt the client's daily activities. The facility also provides information as to treatment and progress.  
[8.14.4.26 NMAC - N, 8/31/2004]

**8.14.4.27 INCIDENT REPORTING AND REVIEW:** Certain medical and/or mental health-related events occurring at juvenile justice services facilities are reported to the juvenile justice services director, including suicide attempts, use of force for behavior management, use of chemical restraints, and sudden illness or injury requiring medical or EMS attention. Any event which medical/mental health staff believes to warrant review, is reported to the juvenile justice services director. Reports are made as promptly as circumstances warrant, and in any event no later than the start of the next work day.  
[8.14.4.27 NMAC - N, 8/31/2004]

**8.14.4.28 CLIENT TRANSFERS AND CONTINUITY OF CARE:** When a client is transferred to another facility, the medical and mental health record is also sent with the client in a secure container. Arrangements are made between the sending and receiving facility to provide for continuity of care and updated screening.  
[8.14.4.28 NMAC - Rp, 8 NMAC 14.4.12.5, 8/31/2004]

**8.14.4.29 SANITATION AND HYGIENE:** CYFD's facilities have house-keeping and maintenance procedures that conform with sanitation, fire and safety codes, and that maintain hygienic living conditions for clients.  
[8.14.4.29 NMAC - N, 8/31/2004]

**8.14.4.30 PRIVATE INSURANCE COVERAGE:** For clients who are covered by private medical and/or mental health insurance, medical and mental health staff arrange for the insurance carrier to pay for covered services rendered while the client is in the custody of CYFD.  
[8.14.4.30 NMAC - N, 8/31/2004]

#### **HISTORY OF 8.14.4 NMAC:**

**Pre-NMAC History:** The material in this part replaces the material that was previously filed with the State Records Center under:

YDDC/GS 17-01, Administration of Health Care Services, filed 5/23/90.  
YDDC/GS 17-06, Medical Records, filed 5/23/90.  
YDDC/GS 17-10, Management of Pharmaceuticals, filed 5/23/90.  
YDDC/GS 17-12, Communicable Diseases,

filed 5/23/90.  
YDDC/GS 17-14, Written Agreements with Off-site Health Care Providers, filed 5/23/90.  
YDDC/GS 17-18, Health Care Direct and Standing Orders, filed 5/23/90.  
YDDC/GS 17-22, Authority to Administer Medical Care, filed 5/23/90.  
YDDC/GS 17-25 Notification and Treatment of Special Medical Problems, filed 5/23/90.  
YDDC/GS 17-30, Screening, Care and/or Referral of Mentally Ill and Mentally Retarded Juveniles to Mental Health Facilities, filed 5/23/90.  
BS 67-33, Students Treatment Unit Medical Procedure, filed 5/23/67.  
BS 67-38, Professional Services Clinical Case Recording, filed 5/23/67.  
BS 67-46; Professional Services Clinical Emergency Medical Procedures, filed 5/23/67.  
BS 67-48, Students Treatment Unit Policy Program, filed 5/23/67.

#### **History of Repealed Material:**

8 NMAC 14.4, Family Medical Services, filed 11/2/98 - Repealed effective 8/31/2004.

### **NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION**

**This is an amendment to 19.15.5. NMAC, Section 307. The prior rule material has been deleted and replaced with new rule material.**

**19.15.5.307 [USE OF VACUUM PUMPS:** Vacuum pumps or other devices shall not be used for the purpose of creating a partial vacuum in any stratum containing oil or gas.] **OPERATION AT BELOW ATMOSPHERIC PRESSURE:**

**A. A well operator may use vacuum pumps, gathering system compressors or other devices to operate a well or gathering system at below atmospheric pressure only if that operator has:**

**(1) executed a written agreement with the operator of the downstream gathering system or pipeline to which the well or gathering system so operated is immediately connected allowing operation of the well or gathering system at below atmospheric pressure; and**

**(2) filed a sundry notice in the appropriate district office of the division for each well operated at below atmospheric pressure or served by a gathering system operated at below atmospheric pressure, within ninety (90) days before beginning operation at below atmospheric pressure,**

**notifying the division that the well or gathering system serving the well is being operated at below atmospheric pressure.**

**B. A gathering system operator may use vacuum pumps, gathering system compressors or other devices to operate a gathering system at below atmospheric pressure, or may accept gas originating from a well operated at below atmospheric pressure or that has been carried by any upstream gathering system operated at below atmospheric pressure, only if that operator has executed a written agreement with the operator of the downstream gathering system or pipeline to which the gathering system is immediately connected allowing delivery of gas from a well or gathering system that has been operated at below atmospheric pressure into the downstream gathering system or pipeline.**

[1-1-50...2-1-96; 19.15.5.307 NMAC - Rn, 19 NMAC 15.E.307, 5-15-00; Repealed, 08/31/04; N, 08/31/04]

### **NEW MEXICO DEPARTMENT OF GAME AND FISH**

This is an emergency amendment to 19.31.6 NMAC, Sections 4 and 5, effective August 29, 2004.

**19.31.6.4 DURATION:** [~~August 29, 2003 - March 31, 2004~~] August 29, 2004 - March 31, 2005.

[19.31.6.4 NMAC - Rp, 19.31.6.4 NMAC, 8-29-2004; A/E, 8-29-2004]

**19.31.6.5 EFFECTIVE DATE:** [~~August 29, 2003~~] August 29, 2004 unless later date is cited at end of individual sections.

[19.31.6.5 NMAC - Rp, 19.31.6.5 NMAC, 8-29-2004; A/E, 8-29-2004]

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

This is an amendment to 8.351.2 NMAC, Section 13, which will be effective on September 1, 2004. The Medical Assistance Division amended the section to formalize the audit procedure that has been accepted as a standard auditing procedure.

**8.351.2.13 RECOVERY OF OVERPAYMENTS:** HSD can seek recovery of overpayments through the recoupment or repayment process. "Overpayments" are amounts paid to medicaid providers in excess of the medicaid allowable amount. Overpayment amounts must be collected within twenty-four (24) months of the initiation of recovery.

**A. AUDITING PROCEDURE:**

**DURES**

(1) **Prima facie evidence:** The audit findings generated through the audit procedure shall constitute prima facie evidence in all department proceedings of the number and amount of requests for payment as submitted by the provider.

(2) **Use of statistical sampling techniques:** The department's procedures for auditing medicaid providers may include the use of random sampling and extrapolation. When this procedure is used, all sampling will be performed using generally accepted statistical methods and will yield statistically significant results at a confidence level of at least 90% (ninety percent). Findings of the sample will be extrapolated to the universe for the audit period.

(3) **Burden of proof:** When the department's final audit findings have been generated through the use of sampling and extrapolation, and the provider disagrees with the findings based on the sampling and extrapolation methodology that was used, the burden of proof of compliance rests with the provider. The provider may present evidence to show that the sample was invalid. The evidence must include a one hundred percent (100%) audit of the universe of provider records used by the department in the drawing of the department's sample. Any such audit must:

(a) be arranged and paid for by the provider;

(b) be conducted by a certified public accountant;

(c) demonstrate that a (statistically) significantly higher number of claims and records not reviewed in the department's sample were in compliance with program regulations, and

(d) be submitted to the department with all supporting documentation.

**[A-] B. Repayment process:** A provider can repay all or part of an overpayment with a lump sum payment or a series of payments based on a schedule developed and mutually agreed to by MAD and the provider. If a provider fails to comply with the schedule, HSD will recover the overpayment and interest or initiate other collection efforts.

**[B-] C. Recoupment process:** Upon written notice, HSD may withhold all or a portion of provider payments on pending and subsequently received claims, to recover an overpayment, or may suspend payment on all pending or subsequently submitted claims pending a final determination of the amount of overpayment. All amounts must be recouped within twenty-four (24) months.

**[C-] D. Combination of processes:** HSD can use both recoupment and repayment process to collect an overpayment if:

(1) the provider is unlikely to remain a medicaid provider long enough for full recovery using recoupment alone; or

(2) the average monthly payment to a provider is so low that recoupment within twelve (12) months is not feasible.

**[D-] E. Prepayment review:** HSD may require pre-payment review of claims submitted during a recoupment or repayment process to ensure that subsequent claims are not inflated to compensate for amounts recovered during the recoupment or repayment process. Prepayment review may also be conducted as part of MAD's administrative responsibilities. [11/1/96; 8.351.2.13 NMAC - Rn, 8 NMAC 4.MAD.964, 7/1/03; A, 9/1/04]

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

### TITLE 6            PRIMARY            AND SECONDARY EDUCATION CHAPTER 19      PUBLIC      SCHOOL ACCOUNTABILITY PART 3            UNSAFE      SCHOOL CHOICE OPTION

**6.19.3.1            ISSUING AGENCY:**  
Public Education Department  
[6.19.3.1 NMAC - N, 08-31-04]

**6.19.3.2            SCOPE:** This rule applies to all school districts and public schools, including charter schools.  
[6.19.3.2 NMAC - N, 08-31-04]

**6.19.3.3            S T A T U T O R Y  
AUTHORITY:** Subsection B of Section 22-2-1, NMSA 1978 and Section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001.  
[6.19.3.3 NMAC - N, 08-31-04]

**6.19.3.4            D U R A T I O N :**  
Permanent  
[6.19.3.4 NMAC - N, 08-31-04]

**6.19.3.5            EFFECTIVE DATE:**  
August 31, 2004, unless a later date is cited at the end of a section.  
[6.19.3.5 NMAC - N, 08-31-04]

**6.19.3.6            OBJECTIVE:** The rule establishes the definitions and requirements to implement the mandate of the No Child Left Behind Act that a student attending a persistently dangerous school, as determined by the State in consultation with a representative sample of local educational agencies, or who becomes a victim of a violent criminal offense, as determined by state law, while in or on the grounds of a public school that the student attends, to be

allowed to attend a safe public school within the school district, including a public charter school.

[6.19.3.6 NMAC - N, 08-31-04]

### 6.19.3.7            DEFINITIONS:

A. "Safe public school" means a school that has developed and successfully implemented a public education department ("department") approved safe schools plan and does not meet the definition of a persistently dangerous school.

B. "Persistently dangerous public school" means a school, in which for three (3) consecutive school years, the school has experienced expulsions for greater than five percent (5%) of the student enrollment for incidents reported in the school district's "safe schools report," as required by Section 22-10A-33, NMSA 1978, under the violence and vandalism codes and definitions - violence codes 01 through 06 "assault and battery," and has expelled one or more student (s) for knowingly bringing a weapon to school in violation of Section 22-5-4.7, NMSA 1978, and/or any policy of the district implementing this provision (violence and vandalism codes and definitions - firearms possession codes 61 through 63).

C. "Timely implementation" means:

(1) that parents and guardians of each student attending the school shall be notified within ten (10) school days from the time that the district has been notified by the department that the school has been designated as persistently dangerous and that students are offered the opportunity to transfer to a safe public charter school, within the district;

(2) that a student who is a victim of a violent criminal offense shall be offered the opportunity to transfer to a safe public school, including a safe public charter school, within the district within ten (10) calendar days, subject to space availability.

(3) that the corrective action plan shall be developed and implemented within twenty (20) school days from the time that the district has been notified by the department that the school has been designated as persistently dangerous; and

(4) that transfers of students shall be within thirty (30) school days after the district is notified that the school has been designated as persistently dangerous and/or after a student has become a victim of a violent criminal offense.

D. "Corrective action plan" means a written document that explains what changes/new actions will be taken at the school to ensure that the school will become a safe public school.

E. "Violent criminal offenses" mean the following offenses



when committed against a student while in or on the grounds of a public school that the student attends:

(1) Criminal sexual penetration in the first degree, as provided in Subsection C of Section 30-9-11, NMSA 1978; or

(2) Criminal sexual penetration in the second degree, as provided in Subsection D of Section 30-9-11, NMSA 1978; or

(3) Kidnapping, as provided in Section 30-4-1, NMSA 1978; or

(4) Aggravated battery, as provided in Subsection C of Section 30-3-5, NMSA 1978; or

(5) Assault with the intent to commit a violent felony, as provided in Section 30-3-3, NMSA 1978; or

(6) Dangerous use of explosives, as provided in Section 30-7-5, NMSA 1978; or

(7) Robbery, as provided in Section 30-16-2, NMSA 1978; or

(8) Aggravated burglary, as provided in Section 30-16-4, NMSA 1978; or

(9) Aggravated arson, as provided in Section 30-17-6, NMSA 1978.  
[6.19.3.7 NMAC - N, 08-31-04]

#### **6.19.3.8 IMPLEMENTATION:**

A. Identifying persistently dangerous schools: The department is responsible for identifying persistently dangerous schools in New Mexico, will utilize the criteria described above for this purpose and will send an annual report of persistently dangerous schools to the United State department of education.

(1) The district shall send the department the persistently dangerous school corrective action plan (s) for approval within twenty (20) school days from the date that the district has been notified by the department that the school has been designated as persistently dangerous.

(2) The district shall identify appropriate state and local funds to be used to help implement corrective action plans.

(3) The department shall annually review relevant data and corrective action plans that have been approved to reassess the status of public schools identified as persistently dangerous.

B. Providing a safe public school choice option to students attending persistently dangerous schools: A school district having one or more public schools identified as persistently dangerous shall:

(1) Within ten (10) school days from the date that the district has been notified by the department that the school has been designated as persistently dangerous, notify the parents or guardians of each student attending the school that the school has been identified as persistently dangerous and simultaneously offer all students the

opportunity to transfer to a safe public school, including a safe public charter school, within the school district that is making adequate yearly progress (AYP) and that has not been identified as being in school improvement, corrective action, or restructuring. A student who seeks to transfer to a charter school within the district may do so, subject to the Charter Schools Act, the department's rules, and/or federal guidelines and restrictions.

(2) Complete the transfer (s) within thirty (30) school days after the district is notified that the school has been designated as persistently dangerous for the student (s) who accept the offer. Transfers may be temporary or permanent, but will be in effect as long as the student's original school is identified as persistently dangerous.

(3) Develop and implement a corrective action plan within twenty (20) school days from the time that the department has notified the district that the school has been designated as persistently dangerous.

C. Providing a safe public school choice option to students who have been victims of a violent criminal offense: A school district shall:

(1) Within ten (10) school days from the date a student has become the victim of a violent criminal offense while in or on the grounds of a public school that the student attends, offer a student the opportunity to transfer to a safe public school, including a safe public charter school, within the school district that is making adequate yearly progress (AYP) and that has not been identified as being in school improvement, corrective action, or restructuring. A student who seeks to transfer to a charter school within the district may do so, subject to the Charter Schools Act, the department's rules, and/or federal guidelines and restrictions.

(2) Complete the transfer within thirty (30) school days of the criminal incident. Transfers may be temporary or permanent, but will be in effect until such time as the parents of the victim and the school determine a permanent placement of the student.

[6.19.3.8 NMAC - N, 08-31-04]

History of 6.19.3 NMAC: [Reserved]

## **NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

**This is an amendment to Sections 1, 3, 7, 8, and 9 of 6.19.1 NMAC (PUBLIC SCHOOL ACCOUNTABILITY: GENERAL PROVISIONS). Section 1 (ISSUING AGENCY) is amended to reflect the**

**Public Education Department as the issuing agency. Section 3 is amended to reflect current statutory authority. Section 7 (DEFINITIONS) is amended to add new definitions and clarify existing definitions. Sections 8 (INDICATORS AND MEASUREMENTS) and 9 (SCHOOL RATINGS) are amended. References throughout are changed to reflect the current governance structure pursuant to the amended Article XII, Section 6 of the Constitution of New Mexico and Laws 2004, Chapter 27. Numerous words and punctuation throughout the rule have also been changed to conform to the state records center and archives' requirements with respect to use of the upper case and lower case and punctuation.**

**6.19.1.1 ISSUING AGENCY:**  
[~~State Board of Education~~] Public Education Department

[6.19.1.1 NMAC - N, 03-29-02; A, 08-31-04]

**6.19.1.3 STATUTORY AUTHORITY:** Subsections A and B of Section 22-2-1 NMSA 1978, [~~Subsections A and I of Section 22-1-6 NMSA 1978, Subsection W of~~] Section 22-2-2 NMSA 1978, and Section 22-2-14 NMSA 1978.

[6.19.1.3 NMAC - N, 03-29-02; A, 08-31-04]

**6.19.1.7 DEFINITIONS:**  
A. "Accountability rating system" means the categories of performance ratings and the methodology for determining these categories established by the [~~State Board of Education~~] [~~"State Board"~~] public education department ("department"):

(1) "Exemplary" means a district/school rating on the five statewide indicators demonstrating that the district/school has at least 50% of its data points in exemplary and 0% of its data points in probationary.

(2) "Exceeds standards" means a district/school rating on the five statewide indicators demonstrating that the school/district has at least 50% of its data points in exceeds standards or higher, allowing the greater of up to 5% or one (1) probationary data point.

(3) "Meets standards" means a district/school rating on the five statewide indicators demonstrating that the district/school has more than 50% of all data points in meets standards or higher.

(4) "Probationary" means a district/school rating on the five statewide indicators demonstrating that the district/school has 50% or more of all data points in probationary.

B. "Adequate yearly

progress" ("AYP") means the percent of students that must be proficient from year to year within a subject area, grade, whole group and subgroup as specified by state defined annual measurable objectives.

(1) AYP is based primarily on academic assessments. All whole groups and subgroups will have the same starting points and are required to make the same amount of progress each year. In the norm referenced accountability system there are five (5) academic assessments (reading, language arts, mathematics, science, and social studies) in the English language for which data points are assigned. There are three (3) academic assessments (reading, language arts, and mathematics) in the Spanish language for which status accountability indicators or data points are assigned. Starting in 2004-2005, AYP will be based on the criterion referenced test in grades 3 through 9 and 11. Criterion referenced tests in either language will contain reading/language arts, mathematics, and science assessments.

(2) As it applies to meeting annual measurable objectives on the criterion referenced test, AYP will apply to grades 4, 8, and 11 in school year 2003-2004 and to grades three through 9 and 11 in school year 2004-2005 and every year thereafter. If a school fails to meet the specified amount of AYP for two (2) consecutive years in the same grade, same subject in any group, or subgroups, that school will be placed in the school improvement cycle.

C. "Annual measurable objectives" ("AMO") means the minimum annual percentage required for all students in the same grade, same subject, and any group to be proficient and be considered to have made AYP. Also, intermediate objectives are expected in consecutive years. In New Mexico, annual measurable objectives and intermediate objectives will be the same such that each school, grade, subject area, group and subgroup will have the same required percent proficient from year to year as determined by the starting point based on baseline percentages of proficient.

[B-] D. "Attendance" means students who are in class or in a school-approved activity. If a student is in attendance up to one half the total instructional time during a school day, the student will be counted as having attended one-half of a school day. If the student attends school for more than one-half of the total instructional time, the student will be counted as having attended for the full day.

[C-] E. "Cohort group" means a group of students in one grade in one school who participated in statewide testing one year and the same exact group that participated in statewide testing in the following year(s).

[D-] F. "Corrective action" means action taken by or at the direction of

the [~~State Board~~] department intended to improve a corrective action school's rating.

[E-] G. "Corrective action school" means a school improvement school that has failed to attain a performance rating of meets standards or higher for two consecutive years or fails to meet the criteria the [~~State Board~~] department has for an additional year of school improvement.

H. "Criterion referenced test" ("CRT") means a standardized test whose results are aligned with the content standards with benchmarks set forth in 6.30.2 NMAC (Standards for Excellence). This assessment will be given in grades 4, 8, and 11 in school year 2003-2004 and in grades 3 through 9 and 11 in school year 2004-2005 and thereafter.

I. "Disaggregate" means the division of a whole group into five subgroups. The No Child Left Behind Act (NCLB) and Section 22-2C-5, NMSA 1978 require student results by ethnic groups (Caucasian/White, not of Hispanic origin; Black, not of Hispanic origin; Hispanic; Asian/Pacific Islander; American Indian/Alaskan native) Economically Disadvantaged; Students with Disabilities; and English Language Learners (ELL.)

[F-] J. "District" means a public school district or a charter school district.

[G-] K. "Dropout" means an individual who:

(1) was enrolled in school at some time during the previous school year;

(2) was not enrolled at the beginning of the current year;

(3) has not graduated from high school or completed a state- or district-approved educational program; and

(4) does not meet any of the following two exclusionary conditions:

(a) transfers to another public school district, private school, or state- or district-approved education program, or

(b) is temporarily absent due to suspension or illness, or death.

[H-] L. "Educational standards commission" [~~("Commission")~~] means that commission created [~~by the State Board~~] in 6.2.2 NMAC whose purpose shall be to advise the [~~State Board~~] department on issues relating to educational standards and accountability for New Mexico public schools.

M. "Graduation rate" means the percentage of the students who graduated from a high school divided by the number of students who were enrolled in the schools 40th day of the same year. This calculation will be used until four-year cohort data can be collected. The 9th grade students from school year 2003-2004 will be the first cohorts, graduating in school year 2006-2007.

[I-] N. "Intervention" means

the process established by the [~~State Board of Education~~] department to assist a public school that is rated probationary.

[J-] O. "New school" means a school not established for a sufficient time to have gathered two years of results on the five statewide indicators.

P. "95% participation rate" means all whole groups and subgroups are expected to test at least 95% of all students. To determine the 95% participation rate, the total students enrolled on the accountability data system transmission date closest to the assessment window will be used as the denominator. For the New Mexico high school competency examination and the New Mexico high school criterion referenced test, the 80th day will be used for whole groups and subgroups. For the New Mexico achievement assessment program, the 120th day will be used for whole groups and subgroups.

Q. "Norm referenced test" ("NRT") means a standardized test whose results are based on a national group of like students. This assessment is given in grades where no criterion referenced test is available until a criterion referenced test is available.

[K-] R. "Rating cycle" means the annual rating that triggers performance warned action and culminates in corrective action or removes a school from intervention at any point in time.

[L-] S. "Rolling averages" means that all statewide test scores for the most current three consecutive school years in a subject area in a small school regardless of what grades they represent will be used to attain the median percentile rank for the NRT or the median scale score for the New Mexico high school competency examination. The median derived from this calculation will be used to determine the rating of each data point.

T. "Safe harbor" means a process that will be applied to a school in any year to determine if AYP has been met. Operationally, if the percentage of students in the subgroup meeting proficient levels of performance represents a decrease of at least 10 percent in the percent of students not meeting proficient levels of performance in the previous year, and the subgroup makes progress on one or more of the other indicator (s) or is at or above the target, the subgroup will be considered to have met AYP.

[M-] U. "School" means [a] any public school, including a charter school.

[N-] V. "Standard deviation" means a quantitative measure that indicates how far away numbers on a list are from their average.

[O-] W. "Statewide indicators" are [~~those indicators established in Subsection A of Section 22-1-6 NMSA~~]

~~1978:]~~ student achievement, attendance, dropout rate for middle and high schools, parent and community involvement, and school safety.

~~[P.] X.~~ "Typical growth" means the typical increase in scale score points from one year to the next as established by the test publisher.

~~Y.~~ "Whole groups" means population of students at a school who were assessed and "subgroups" means the whole group divided into the required subgroups. For the norm referenced test, whole group means all students at a school that took the norm referenced test. For the criterion referenced test, whole group means the specific grade level of all students that took the criterion referenced test or the test area. [6.19.1.7 NMAC - N, 03-29-02; A, 08-31-04]

### 6.19.1.8 INDICATORS AND MEASUREMENTS:

The ~~[State Department of Public Education~~ ~~["Department"]~~ department shall annually measure public schools on the five statewide indicators (student achievement, attendance, dropout rate for middle and high schools, school safety, parent and community involvement) and high school graduation rate. All scores, rates, and other measures used in the accountability rating system shall be verified by the department. Groups of students are denoted by grade levels and subpopulations of grade levels. Assessment data shall be considered for accountability ratings only when a group represents 10 or more students for the norm referenced test and 25 for the criterion referenced test. Each school generates data points which have been identified as either exemplary, exceeds standards, meets standards, or probationary.

A. The student achievement indicator will utilize results from the state-mandated norm referenced achievement test (s) ("NRT") in Spanish or English. Students will be tested using the ~~[NRF]~~ criterion referenced tests in Spanish or English or other assessments, when appropriate, as defined by federal guidelines. Likewise, all exemptions to statewide testing requirements and all accommodations provided in statewide testing must be in compliance with federal guidelines.

(1) The NRT will be represented at a rate proportionate to the number of students taking each of the subtests in English or Spanish. Each subtest - reading, language arts, mathematics, science, and social studies - will provide one data point per ~~[grade]~~ whole group or subgroup at the school for a total of five data points per ~~[grade]~~ group. These data points shall be referred to as "status data points."

(a) The test results of the students who have been in attendance on or prior to

the 40-day attendance count shall be used to determine the rating of each status data point.

(b) A status data point is rated exemplary if the median percentile rank is above the 70th percentile, exceeds standards if the percentile rank is above the 60th percentile to the 70th percentile, meets standards if it is at the 40th through the 60th percentile, and probationary if it is below the 40th percentile.

(2) The results of the NRT shall also be utilized to determine the growth in student performance.

(a) Growth is determined by the number of scale score points a cohort group within the same school achieves from one year to the next for whole group and subgroups.

(b) Growth shall be measured for one, two and three years when available in a school.

(c) "Typical growth" shall be utilized to determine if a cohort group has achieved the growth expectations set by the ~~[Board]~~ department. Each grade and each subject has varying scale score points to achieve in order to meet "typical growth."

(d) When all of the growth data are configured, the number of data points for growth shall be weighted to equal the status data points. The number of students contributing to the growth data shall contribute proportionately to the growth data.

(e) Students who take the ~~[tests]~~ assessments with accommodations shall be considered as a proportion of the total number of students ~~[in cohort groups]~~ subgroups.

(f) Each growth data point shall be determined to be either high, middle, or low range, prior to measuring the growth, by the median percentile. If the median percentile is below the 40th percentile, the data point is considered low range. If it is at the 40th percentile through the 60th percentile, the data point is considered middle range. If the data point is above the 60th percentile, the data point is considered high range.

(g) Utilizing the standard determined by the test publisher to represent "typical growth" scales, a low range data point must increase:

(i) by 1.75 or higher times typical growth to achieve exemplary;

(ii) by 1.5 to 1.74 times typical growth to achieve exceeds standards;

(iii) by 1.25 to 1.4 times typical growth to achieve meets standards; and,

(iv) below 1.25 times typical growth to achieve probationary.

(h) Utilizing the same standard determined by the test publisher to represent "typical growth" scales, a middle range data point must achieve:

(i) 1.5 or higher times typical growth to achieve exemplary;

(ii) 1.25 to 1.4 times typical growth to achieve exceeds standards;

(iii) 1.0 to 1.24 times typical growth to achieve meets standards; and,

(iv) less than typical growth to achieve probationary.

(i) Utilizing the same standard determined by the test publisher to represent "typical growth" scales, a high range data point must achieve:

(i) 1.25 or higher times typical growth to achieve exemplary;

(ii) 1.0 to 1.24 times typical growth to achieve exceeds standards,

(iii) less than typical growth to achieve meets standards;

(iv) and show a decline for probationary.

(3) Achievement results for small schools shall be rated by utilizing the concept of "rolling averages." For purposes of rating schools, a school is considered to be a small school if it has any one grade level with fewer than a total of 10 students enrolled. Once identified as a small school, a school will continue to be rated as a small school for three years before considering whether to rate it as a larger school. These data are configured by using all the students in attendance at the school that have statewide test results. All the scores for all the students for the past three years are considered as if they represented one class. The median percentile is then determined and a status data point assigned based on this median. There are no growth data points for small schools.

(4) In addition to the results from the required testing described in Subsection A of 6.19.1.8 NMAC, the New Mexico high school competency examination shall be used to provide achievement data points for schools that have 10th grade in attendance. There are five subtests that shall be used - reading, language arts, mathematics, science, and social studies. Each subtest shall generate a data point by using results of tenth grade first time test-takers by whole group and subgroup as follows:

(a) A data point shall be exemplary if it has an average scale score value of 205 or higher.

(b) A data point shall be exceeds standards if the average scale score is 180 to 204.9.

(c) A data point shall be meets standards if the average scale score is 175 to 179.9.

(d) A data point shall be probationary if the average scale score is below 175.

B. The attendance indica-

tor utilizes the definition of a full day of attendance as established in the accountability data system ("ADS") and data will be collected through the ADS mechanism to establish an attendance rate for each public school.

(1) Attendance is assigned one data point per school.

(2) The ~~[State Board]~~ department defines:

(a) exemplary attendance as 94% or higher;

(b) exceeds standards attendance as 93% to 93.9%;

(c) meets standards attendance as 92% to 92.9%; and,

(d) probationary attendance as below 92%.

C. The dropout indicator utilizes the National Center for Education Statistics ("NCES") definition and includes grades 7 through 12.

(1) Dropout rate is assigned one data point per school.

(2) The ~~[State Board]~~ department delineates dropout data for grade levels 9 - 12 as:

(a) exemplary when it is 1.0% or less;

(b) exceeds standards when it is 1.1% to 4.0%;

(c) meets standards when it is 4.1% to 7.0%; and,

(d) probationary when it is higher than 7.0%.

(3) For grades seven and eight, the dropout data is:

(a) exemplary when it is less than 0.1%;

(b) exceeds standards when it is 0.1% to 1.0%;

(c) meets standards when it is 1.1% to 2.5%; and,

(d) probationary when it is higher than 2.5%.

(4) When a school has a rate for 7th and/or 8th grade, and also has a rate for grade 9 or higher, the data point rating will be determined by an average of the two rates.

D. The parent and community involvement indicator will utilize the school's department-approved parent and community involvement plan and the six national standards for parent-community involvement.

E. The safe school indicator will utilize the school's department-approved safe school plan.

[6.19.1.8 NMAC - N, 03-29-02; A, 12-30-02; A, 08-31-04]

#### 6.19.1.9 SCHOOL RATINGS:

A. A school's rating will determine when intervention is appropriate.

B. A school's rating is determined by the percentage of data points

that are rated as exemplary, exceeds standards, meets standards, and probationary.

C. The ratings shall be publicized each year and provided by the department to districts and to schools.

D. New schools are not rated.

E. With regard to the accountability system utilizing the norm referenced or criterion referenced assessments or any combination thereof, a school that receives an overall rating of probationary for a first or second time and will enter either the performance warned or the first year of school improvement categories may appeal the rating to the educational standards commission. The appeal must be made to the ~~[State Superintendent of Public Instruction ("State Superintendent")]~~ department in writing within twenty days of the school's receipt of official notice of the school rating. ~~[The State Superintendent will designate staff to coordinate and process the appeal.]~~ If the ~~[educational standards commission]~~ department determines that additional data substantiates the appeal, a recommendation ~~[from the educational standards commission]~~ that the school should be rated meets standards will be forwarded to the ~~[State Board of Education]~~ secretary. ~~[The educational standards commission will make the recommendation, based on findings of fact, to the State Board of Education that]~~ The secretary will have final approval of the possible change of a school's rating from probationary to meets standards.

[6.19.1.9 NMAC - N, 03-29-02; A, 12-30-02; A, 08-31-04]

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

**Explanatory paragraph: This is an amendment to Sections 1, 3, and 10 of 6.30.2 NMAC (STANDARDS FOR EXCELLENCE). Section 1 (ISSUING AGENCY) is amended to reflect the Public Education Department as the issuing agency. Section 3 is amended to reflect current statutory references. Subsection D of Section 10 is amended to require that disciplinary records with respect to suspension and expulsion be included in the records of transferring students. Paragraph (7) of Subsection J of Section 10 is amended to conform to statutory language requiring that elective credit courses must meet PED content standards with benchmarks. A technical amendment is made to subparagraph (f) of paragraph (8) of Subsection J of Section 10 to require that the accountability data system numbers ("ADS") be included with the course title placed on**

**student transcripts. References throughout Section 10 are changed to reflect the current governance structure pursuant to the amended Article XII, Section 6 of the Constitution of New Mexico and Laws 2004, Chapter 27. Statutory references throughout Section 10 have been updated.**

**6.30.2.1 ISSUING AGENCY:**  
~~[State Board of Education]~~ Public Education Department

[10-31-96, 07-30-99; 6.30.2.1 NMAC - Rn, 6 NMAC 3.2.1, 11-14-2000; A, 08-31-04]

**6.30.2.3 STATUTORY AUTHORITY:**

A. ~~[Subsections J and V of]~~ Section 22-2-2 NMSA 1978, grants the authority and responsibility for the assessment and evaluation of public schools, including charter schools, and state supported educational institutions.

B. ~~[Subsections J and V of]~~ Section 22-2-2 NMSA 1978, directs the ~~[state board of education]~~ public education department to set graduation expectations and hold schools accountable. ~~[Section 22-2-8.6 NMSA 1978, further directs the state board of education to identify measurable essential competencies and determine criteria for mastery.]~~ Section 22-2C-3 NMSA 1978 requires the public education department to adopt academic content and performance standards and to measure the performance of public schools in New Mexico.

C. ~~[Subsection E of]~~ Section 22-2-8.4 NMSA 1978 grants the authority to the state board of education to establish policy, to provide for administrative interpretation, and to clarify curricular and testing provisions of the Public School Code. ~~[Subsection E of Section 22-13-1.1 NMSA 1978 authorizes the public education department to establish a policy for administrative interpretations to clarify curricular and testing provisions of the Public School Code.]~~

D. Section 22-5-13 NMSA 1978, ~~amended by Laws 2003, Chapter 153, Section 22-5-13,~~ grants authority to the ~~[state department of]~~ public education department to develop mandatory training of local school board members. [10-31-96, 02-14-00; 6.30.2.3 NMAC - Rn, 6 NMAC 3.2.3 & A, 11-14-00; A, 10-30-03; A, 08-31-04]

**6.30.2.10 PROCEDURAL REQUIREMENTS**

A. The local board of education shall:

(3) employ and evaluate the local superintendent ~~[on an annual basis in accordance with Section 22-10-3.1 NMSA 1978];~~

(4) ensure that each member of the board participates in a planned program

of training which will assist in the performance of specified duties. All local school board members must receive a total of five hours of annual training.

(a) For newly elected or appointed local school board members who are in office for less than a year, they shall receive three of the five hours from attending a training course developed by the ~~[SDE]~~ public education department ("PED") and sponsored by the New Mexico school boards association ("NMSBA"). This course shall be offered no later than three months after a local school board election. The ~~[SDE]~~ PED will periodically announce the dates of these courses which will cover numerous topics including ~~[SDE]~~ PED policies and procedures, statutory powers and duties of local boards, legal concepts pertaining to public schools, finance and budget. For the additional two hours of annual training for these new board members, these board members shall attend sessions sponsored by the NMSBA, approved by the ~~[SDE]~~ PED.

(b) For all existing local school board members, they shall attend five hours of annual training sponsored by the NMSBA, approved by the ~~[SDE]~~ PED.

(c) In order to be credited with attendance at these courses, each attendee must comply with written attendance procedures established by the ~~[SDE]~~ PED. Prior to September 1st, the NMSBA shall provide each local superintendent with a list of training hours earned annually by each local school board member.

(7) review, revise as needed, and submit policies to ~~[SDE]~~ PED on an annual basis;

C. Licensed staff and administrators

(1) The licensed staff shall exercise duties specified in ~~[Section 22-10-5 NMSA 1978]~~ law, and those assigned by the local district.

(2) All licensed staff and administrators shall be evaluated on an annual basis ~~[(Subsection B of Section 22-10-6 and Section 22-10-21 NMSA 1978)]~~ (Section 22-10A-19 NMSA 1978.)

(3) All certified school personnel and school nurses shall be required to complete training in the detection and reporting of child abuse and neglect and substance abuse. This requirement shall be completed within the person's first year of employment by a school district in the state as specified in ~~[Section 22-10-3.2 NMSA 1978]~~ Section 22-10A-32 NMSA 1978.

D. Records and reports

(3) Transcripts and copies of pertinent records, including disciplinary records with respect to suspension and expulsion, of students transferring from one school to another shall be forwarded promptly upon written request by the

receiving school.

E. School facilities and grounds. Each school district must provide school facilities and grounds, which are:

(4) Use of pesticides will be governed by the following standards:

(b) Districts will develop procedures for the implementation of pest management with consideration for reducing the possible impact of pesticide use on human health and the environment, including people with special sensitivities to pesticides. Procedures will include, but are not limited to the following:

(vii) The ~~[state department of public education]~~ PED may coordinate technical assistance for implementation of paragraph (4) of subsection E of 6.30.2.10. NMAC.

F. Organization of grade levels and establishing/closing schools. Any change in a school district's organizational pattern, including the establishment or closing of a school, shall have the ~~[state superintendent of public instruction's]~~ secretary of education's approval prior to implementation. Requests for change shall be in writing and outline the expected educational benefits. These requests shall be submitted by July 1 of the year prior to the proposed change if the district's equalization/transportation formula allocation will be affected.

G. Class loads

(1) Class loads shall be in compliance with the most current class load requirements in ~~[Section 22-2-8.2 NMSA 1978]~~ Section 22-10A-20 NMSA 1978.

(f) The ~~[state superintendent]~~ secretary of education may waive the individual school class load requirements established in this section. Waivers shall be applied for annually and a waiver shall not be granted for more than two consecutive years. Waivers may only be granted if a school district demonstrates:

(h) Each school district shall report to the ~~[department of education]~~ PED the size and composition of classes subsequent to the fortieth day and the December 1 count. Failure to meet class load requirements within two years shall be justification for the disapproval of the school district's budget by the ~~[state superintendent]~~ secretary of education.

(i) The ~~[department of education]~~ PED shall report to the legislative education study committee by November 30 of each year regarding each school district's ability to meet class load requirements imposed by law.

(j) Notwithstanding the provisions of subparagraph (f) of paragraph (1) of subsection G of 6.30.2.10 NMAC, the ~~[state board]~~ secretary of education may waive the individual class load and teaching load requirements established in this section

upon a demonstration of a viable alternative curricular plan and a finding by the ~~[state board]~~ PED that the plan is in the best interest of the school district and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff. The ~~[department of education]~~ PED shall evaluate the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee.

H. Length of school day and year

(4) Districts may request a waiver from the ~~[state superintendent]~~ secretary of education if the minimum length of school day requirement creates an undue hardship. Such requests shall be in writing and provide documentation that the following conditions exist; the educational, societal, or fiscal consequences of operating the minimum length of a school day/year significantly impede the district's ability to provide a quality educational program, and the district has thoroughly investigated alternatives other than shortening the length of a school day/year in order to address the identified concerns.

(5) When an emergency arises and the emergency affects the required hours, the local superintendent must request subsequent approval from the ~~[state superintendent]~~ secretary of education for an exemption from the required instructional hours.

I. Subject areas. The district shall be in compliance with subject area requirements as specified in ~~[Section 22-2-8.3 NMSA 1978]~~ Section 22-13-1 NMSA 1978.

(1) The ~~[state board]~~ PED shall require instruction in specific subject areas as provided in paragraphs (2) through 6 of subsection I of 6.30.2.10 NMAC. Any public school or school district failing to meet these minimum requirements shall not be accredited by the ~~[state board]~~ PED.

(7) The electives authorized in paragraphs (5) and (6) of subsection I of 6.30.2.10 NMAC are art, industrial arts, chorus, band, home economics, typing, creative writing, speech, drama, Spanish, computer literacy, American sign language and other electives approved by the ~~[state board]~~ PED.

J. Graduation requirements

(1) The district shall be in compliance with requirements as specified in ~~[Section 22-2-8.4 NMSA 1978]~~ Section 22-13-1.1 NMSA 1978, and subsection L of Section 66-7-506 NMSA 1978 (Offering Driver Education as an elective). As specified by the ~~[state board of education]~~ PED, in order to be eligible for a diploma as a result of having met all graduation requirements, students must pass the New Mexico

high school competency examination with a minimum scale score of 175 on each of five subtests (reading, language arts, mathematics, science, and social studies) and with a minimum holistic score of 3 on the writing subtest for those students entering the 10th grade in the 2000-2001 school year.

(2) For students enrolling or re-enrolling in public schools, local school boards will establish policies as follows:

(c) Acceptance of credits earned through correspondence extension study, foreign study, home study courses, or non-[SBE] PED accredited non-public schools is determined by local school board policy.

(7) Other elective credit: ~~[The SBE is granted the authority to approve other electives not specified in statute. Elective credit not specified in statute must be approved by the local board.]~~ Elective credit courses must meet PED content standards with benchmarks and must:

(8) Alternative credit: Local districts may design courses, known as alternative credit, to satisfy any of the 14 specified credits required for graduation. For notification, the district must submit documentation to [SBE] PED describing these courses. The criteria listed under elective credit of paragraph (7) of subsection J of 6.30.2.10 NMAC must be met. Requirements for alternative credit must include:

(f) determine the course title and accountability data system ("ADS") number to be placed on the transcript; and

(g) send a letter of information to the [SBE] PED.

(9) Receipt of diploma or certificate: Governing principles that will guide the development, program of study, and the granting of a diploma or certificate for students with disabilities receiving special education services are as follows:

(a) The ~~[individualized education program (IEP)]~~ IEP team is responsible for determining whether the student has completed a planned program of study making him/her eligible to receive a diploma or certificate. Upon completion of a planned program of study that meets the following requirements, the student will be awarded a diploma.

(b) A student may be awarded a diploma ~~[(Section 22-2-8.4 NMSA 1978)]~~ using any of the following programs of study:

(i) A standard program of study is based upon meeting or surpassing all requirements for graduation based on New Mexico Standards for Excellence with or without reasonable modification of delivery and assessment methods. To earn a diploma on the standard pathway, a student must pass all sections of the current state graduation examination(s) administered pursuant to ~~[NMSA 1978, Sec. 22-2-8.4(D)]~~ Section 22-13-1.1 NMSA 1978 under stan-

dard administration or with state-approved accommodations and meet all other standard graduation requirements.

(ii) A career readiness program of study is based upon meeting the ~~[state board of education's]~~ PED's Career Readiness Standards with Benchmarks as defined in the IEP with or without reasonable modifications of delivery and assessment methods. To earn a diploma on the career readiness pathway, a student must take the current state graduation examination(s) administered pursuant to NMSA 1978, ~~[Sec. 22-2-8.4(D)]~~ Section 22-13-1.1 and achieve a level of competency to be determined by the student's IEP team; earn the number of credits required for graduation through standard or alternative courses as determined by the IEP team; and achieve competency in all areas of the Career Readiness Standards with Benchmarks as determined by the IEP team.

(iii) An ability program of study is based upon meeting or surpassing IEP goals and objectives, with or without reasonable modifications of delivery and assessment methods, referencing skill attainment at a student's ability level, which may lead to meaningful employment. To earn a diploma on the ability pathway, a student must take either the current state graduation examination(s) administered pursuant to NMSA 1978, ~~[Sec. 22-2-8.4(D)]~~ Section 22-13-1.1 or the state-approved alternate assessment, achieving a level of competency to be determined by the student's IEP team, and meet all other graduation requirements established by the IEP team.

(d) Graduation plans must be a part of all IEPs:

(iv) these graduation plans will follow the student in all educational settings. Receiving institutions that fall under the [SBE] PED jurisdiction will recognize these graduation plans, subject to revision by new IEP teams, if appropriate, to meet a student's changing needs.

(j) Excuses from physical education: The physical education graduation requirement may be waived by the ~~[state superintendent of public instruction]~~ secretary of education, based on a request by the local superintendent with documentation from a licensed medical doctor, osteopath, certified nurse practitioner with prescriptive authority, or chiropractor, that the student has a permanent or chronic condition that does not permit physical activity. A student with a disability pursuant to the Individuals with Disabilities Education Act and/or Section 504 of the Rehabilitation Act may also be eligible to request this waiver when appropriate documentation is provided in the individualized education program.

K. Statewide accountability program. All public schools shall partic-

ipate in the statewide accountability system which includes the following:

(1) The statewide student assessment system: All public school students, with the exceptions indicated below, shall participate in the New Mexico achievement assessment program which includes a reading assessment in grades 1 and 2, norm-referenced standardized testing in grades 3 through 9, writing assessment in grades 4 and 6, and the New Mexico high school competency examination (NMHSCE) in grade 10. Exceptions:

(a) Language exemptions: Students who have limited English skills as determined by the local education agency's language assessment instrument may be exempted from the statewide testing program, provided all such exemptions are reported to [SBE] PED.

(c) Waiver of the New Mexico high school competency examination for other students: With the approval of the local board of education, the local superintendent may request written approval from the ~~[state superintendent]~~ secretary of education to award a diploma to a student who has not passed the competency examination and who is not covered under subparagraph (b) of paragraph (1) of subsection K of 6.2.30.10 above regarding students with disabilities. The district must document student attainment of required competencies through an alternative assessment procedure.

L. Indigent identification and guidelines. ~~[Section 22-2-8.6 NMSA 1978]~~ Section 22-2C-6 NMSA 1978, requires that the cost of summer and after school remediation programs offered in grades 9-12 shall be born by the parent or guardian. Subsection B of Section 22-15-10 requires parents, guardians or students to be responsible for the loss, damage, or destruction of instructional materials. Both statutes provide exemptions from these requirements for students determined to be indigent through guidelines established by the [SBE] PED. A child who has been deemed eligible for free or reduced price school meals, or a child who has been identified by the children, youth, and families department as being in the custody of the state will be deemed indigent for the purpose of the above named statutes. The parent or guardian of a child who has not applied for free or reduced price school meals shall be notified in writing by the local school board of the availability of remediation at no charge upon an eligibility determination for free or reduced price school meals. The provisions of this paragraph shall not be construed to diminish the responsibility of local education agencies to provide a free appropriate public education.

[10-31-96, 12-31-98; 6.30.2.10 NMAC - Rn, 6 NMAC 3.2.9 & A, 11-14-00; A, 08-

15-03; A, 10-30-03; A, 08-31-04]

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

**Explanatory paragraph:** This is an amendment to Sections 1, 7, 9, and 13 of 6.31.2 NMAC (CHILDREN WITH DISABILITIES/GIFTED CHILDREN). Section 1 (ISSUING AGENCY) is amended to reflect the Public Education Department as the issuing agency. Section 3 (DEFINITIONS) is amended to reflect the current governance structure pursuant to the amended Article XII, Section 6 of the Constitution of New Mexico and Laws 2004, Chapter 27 and to further reflect current statutory references. Section 9 (PUBLIC AGENCY RESPONSIBILITIES) is amended to delete the language referencing accessing benefits under public insurance programs from paragraph (3) of Subsection B and adding a new paragraph (4) to Subsection B addressing the use of insurance benefits. The current paragraph (4) is renumbered. References in Section 9 to the "SDE" are changed to the "PED" in accordance with the amendment to Article XII, Section 6 of the Constitution of New Mexico and Laws 2004, Chapter 27. Subparagraph (d) of paragraph (3) of Subsection L of Section 13 is amended to clarify transfer of educational records and include the requirement that disciplinary records with respect to current or previous suspensions or expulsions be transferred. References throughout Section 13 are changed to reflect the current governance structure pursuant to the amended Article XII, Section 6 of the Constitution of New Mexico and Laws 2004, Chapter 27.

**6.31.2.1 ISSUING AGENCY:**  
[~~New Mexico State Board of Education~~  
Public Education Department  
[6.31.2.1 NMAC - Rp 6 NMAC 5.2.1,  
8/14/2000; A, 8/31/2004]

**6.31.2.7 DEFINITIONS:**  
C. Additional definitions.  
The following terms shall have the following meanings for purposes of these rules:

(1) "**Board**" means the [~~state board of education~~] public education department;

(4) "**Department**" means the [~~state department of~~] public education department;

(7) A "**free appropriate public education (FAPE)**" means special education and related services which meet all requirements of 34 CFR Sec. 300.13 and which, pursuant to Sec. 300.13(b), meet all applicable [~~state board of education~~] depart-

ment rules and standards, including but not limited to these rules (6.31.2 NMAC) and the Standards for Excellence (6.30.2 NMAC) and [~~SBE~~] department rules governing school personnel preparation, licensure and performance (6.60 NMAC through 6.64 NMAC), student rights and responsibilities (6.11.2 NMAC) and student transportation (6.41.3 and 6.41.4 NMAC). [~~See the annotation at the end of this section for former NMAC numbers.~~]

(13) "**SBE**" or "**state board**" means the [~~state board of education~~] public education department;

(14) "**SDE**" or "**PED**" means the [~~state department of~~] public education department;

(17) "**USC**" means the United States Code, including future amendments. [~~As of August 2000 the state board rules referred to in paragraphs C(7) and C(8) above were in the process of being re-promulgated under the NMAC numbers given there. The prior numbers were 6 NMAC 3.2 for the Standards for Excellence; 6 NMAC 4.2 and 4.3 for SBE rules governing school personnel preparation, licensure and performance; 6 NMAC 1.4 for the rule governing student rights and responsibilities; and 6 NMAC Chapter 9 for the rules governing student transportation.~~]  
[6.31.2.7 NMAC - Rp 6 NMAC 5.2.7, 8/14/2000; A, 8/15/2003; A, 8/31/2004]

### 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES

**B.** Public agency funding and staffing

(1) Each public agency that provides special education or related services to children with disabilities shall allocate sufficient funds, staff, facilities and equipment to ensure that the requirements of the IDEA and all [~~SBE~~] PED rules and standards that apply to programs for children with disabilities are met.

(2) The public agency with primary responsibility for ensuring that FAPE is available to a child with a disability on the date set by the [~~SBE~~] PED for a child count or other report shall include that child in its report for that date. Public agencies with shared or successive responsibilities for serving a particular child during a single fiscal year are encouraged to negotiate equitable arrangements for sharing the funding and other resources available for that child.

(3) Educational agencies may seek payment or reimbursement from non-educational agencies or public or private insurance for services or devices covered by those agencies that are necessary to ensure FAPE to children with disabilities. Claims for payment or reimbursement shall be subject to the procedures and limitations established in 34 CFR Secs. 300.142(b) and 300.142(e) through (h), and any laws, reg-

ulations, executive orders, contractual arrangements or other requirements governing the noneducational payor's obligations. [~~Pursuant to Sec. 300.142(e), an educational agency may not use a child's benefits under a public insurance program if the use would decrease available lifetime benefits; result in additional costs to the family; or adversely affect the availability of public insurance or health benefits for the child. Pursuant to Sec. 300.142(f), an educational agency must obtain a parent's informed written consent for each proposed use of private insurance benefits and must inform parents that their refusal to permit the use of their private insurance will not relieve the educational agency of its responsibility to ensure that all required services are provided at no cost to the parents.~~]

(4) Pursuant to 34 CFR Sec. 300.142 (e), a public agency may use the medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under the IDEA Part B regulations, as permitted under the public insurance program, except as provided in (a) below:

(a) With regard to services required to provide FAPE to an eligible child, the public agency:

(i) may not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the IDEA;

(ii) may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to the IDEA Part B regulations, but pursuant to 34 CFR Sec. 300.142 (g)(2), may pay the cost that the parent otherwise would be required to pay; and

(iii) may not use a child's benefits under a public insurance program if that use would: (A) decrease available lifetime coverage or any other insured benefit; (B) result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school; (C) increase premiums or lead to the discontinuation of insurance; or (D) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

(b) Pursuant to 34 CFR Sec. 300.142 (f), an educational agency must obtain a parent's informed written consent for each proposed use of private insurance benefits and must inform parents that their refusal to permit the use of their private insurance will not relieve the educational agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(c) Pursuant to 34 CFR Sec.



300.142(g):

(i) if a public agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under the IDEA Part B regulations, to ensure FAPE the public agency may use its Part B funds to pay for the service; and

(ii) to avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

(4) (5) Each public agency is responsible for ensuring that personnel serving children with disabilities are qualified under state licensure requirements and are adequately prepared for their assigned responsibilities, pursuant to 34 CFR Sec. 300.221. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable [SBE] PED licensure rules or written [SDE] PED policy may be used to assist in the provision of special education and related services to children with disabilities under Part B of the IDEA. A public agency that is unable to recruit and hire enough qualified personnel despite ongoing good-faith efforts may apply to the department case by case for authorization to fill positions with the most qualified individuals who are making satisfactory progress toward completing the applicable licensure requirements, pursuant to 34 CFR Sec. 300.136(g).

C. IDEA applications and assurances. Each New Mexico public agency that desires to receive IDEA flow-through funds shall file an annual application with the department in the form prescribed by the department. Each application shall:

(2) demonstrate to the department's satisfaction that the agency is in compliance with all applicable requirements of 34 CFR Secs. 300.180-300.192 and 300.220-300.250 and these or other [SBE] PED rules and standards; [6.31.2.9 NMAC - Rp 6 NMAC 5.2.8, 8/14/2000; A, 8/15/2003; A, 8/31/2004]

### 6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES

A. General responsibilities of public agencies. Each public agency shall establish, implement and maintain procedural safeguards that meet the requirements of 34 CFR Secs. 300.500-300.576 and all other applicable requirements of these or other [SBE] PED rules and standards.

B. Examination of

records. Each public agency shall afford the parents of a child with a disability an opportunity to inspect and review all education records related to the child in compliance with 34 CFR Secs. 300.501(a), 300.562-300.569, 34 CFR Part 99 and any other applicable requirements of these or other [SBE] PED rules and standards.

C. Parent and student participation in meetings. Each public agency shall afford the parents of a child with a disability and, as appropriate, the child, an opportunity to participate in meetings with respect to the identification, evaluation and educational placement or the provision of FAPE to the child, in compliance with 34 CFR Secs. 300.345, 300.501(b)-(c) and any other applicable requirements of these or other [SBE] PED rules and standards.

H. State complaint procedures

(1) Scope. This Subsection H of 6.31.2.13 NMAC prescribes procedures to be used: (a) in filing and processing complaints alleging the failure of the [state department of education] PED or a public agency to comply with state or federal laws or regulations governing programs for children with disabilities under the Individuals with Disabilities Education Act (IDEA) or with state statutes or regulations governing educational services for gifted children; and (b) in reviewing an appeal from a decision of a public agency with respect to such a complaint.

(2) Requirements for complaints

(a) The [SDE] PED shall accept and investigate complaints from organizations or individuals that raise issues within the scope of this procedure as defined in the preceding paragraph H(1). The complaint must: (a) be in writing; (b) be signed by the complainant or a designated representative; (c) include a statement that the [SDE] PED or a public agency has violated a requirement of an applicable state or federal law or regulation; and (d) contain a statement of the facts on which the statement is based, including any efforts the complainant has made to resolve the complaint with the agency.

(b) Pursuant to 34 CFR Sec. 300.662(c), the complaint must allege a violation that occurred not more than one year prior to the date the complaint is received by the [SDE] PED unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received by the [SDE] PED.

(3) Complaints and due process hearings on same issues. Pursuant to 34 CFR Sec. 300.661(c):

(a) The [SDE] PED shall set aside any part of a written complaint that is also

the subject of a due process hearing under Subsection I of 6.31.2.13 NMAC until the conclusion of the hearing and any appeal. Any issue in the complaint that is not a part of the due process action or appeal will be resolved by the [SDE] PED as provided in this Subsection H.

(b) If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the [SDE] PED must inform the complainant to that effect.

(c) A complaint alleging a public agency's failure to implement a due process decision will be resolved by the [SDE] PED as provided in this subsection H.

(4) Complaints against public agencies

(a) Impartial review. Upon receipt of a complaint that meets the requirements of paragraph H(2) above, the [SDE] PED shall: (i) acknowledge receipt of the complaint in writing; (ii) notify in writing the public agency against which the violation has been alleged; (iii) undertake an impartial investigation which shall include complete review of all documentation presented and may include an independent on-site investigation, if determined necessary by the [SDE] PED; (iv) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and (v) review all relevant information and make an independent determination as to whether the public agency is violating a requirement of an applicable state or federal statute or regulation.

(b) Decision. A written decision which includes findings of fact, conclusions, and the reasons for the decision and which addresses each allegation in the complaint shall be issued by the [state superintendent of public instruction] secretary of education or designee and mailed to the parties within sixty (60) days of receipt of the written complaint. Such decision shall further include procedures for effective implementation of the final decision, if needed, including technical assistance, negotiations, and if corrective action is required, such action shall be designated and shall include the time line for correction and the possible consequences for continued noncompliance.

(c) Failure or refusal to comply. If the public agency fails or refuses to comply with the applicable law or regulations, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance may be effected by the [SDE] PED by any means authorized by state or federal laws or regulations. The [SDE] PED shall retain jurisdiction over the issue of noncompliance with the law or regulations and shall retain jurisdiction over



the implementation of any corrective action required. Nothing herein shall preclude the availability of an informal resolution between the complainant and the public agency, nor shall these rules preclude or abrogate the availability of any administrative hearing opportunities as provided for by state or federal laws or regulations.

(5) Complaints against the [SDE] PED. If the complaint concerns a violation by the [SDE] PED and meets the applicable requirements of paragraph H(2) above, the [state superintendent of public instruction] secretary of education or designee shall appoint an impartial person or impartial persons to conduct an investigation.

(a) Investigation. The person or persons appointed shall: (i) acknowledge receipt of the complaint in writing; (ii) undertake an impartial investigation which shall include a complete review of all documentation presented and may include an independent onsite investigation, if necessary; (iii) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and (iv) review all relevant information and make an independent determination as to whether the [SDE] PED is violating a requirement of an applicable state or federal statute or regulation.

(6) Extension of time limit. An extension of the time limit under paragraph 4(b) or 5(b) above shall be permitted by the [state superintendent of public instruction] secretary of education or designee only if exceptional circumstances exist with respect to a particular complaint.

(7) Conflicts with federal laws or regulations. If any federal law or regulation governing any federal program subject to this regulation affords procedural rights to a complainant which exceed those set forth in this Subsection H of 6.31.2.13 NMAC for complaints within the scope of these rules, such statutory or regulatory right(s) shall be afforded to the complainant. In acknowledging receipt of such a complaint, the [state superintendent of public instruction] secretary of education shall set forth the procedures applicable to that complaint.

I. Due process hearings and appeals

(2) Definitions. In addition to terms defined in 34 CFR Part 300 and 6.31.2.7 NMAC, the following definitions apply to this section I:

(c) "Transmit" means to mail, transmit by electronic mail or telecopier (facsimile machine) or hand-deliver a written notice or other document and obtain written proof of delivery by one of the following means: (i) a return receipt showing delivery by the U.S. postal service, to whom the article was delivered and the date of delivery; (ii) an electronic mail system's

confirmation of a completed transmission to an e-mail address that is shown to be valid for the individual to whom the transmission was sent; (iii) a telecopier machine's confirmation of a completed transmission to a number which is shown to be valid for the individual to whom the transmission was sent; (iv) a receipt from a commercial carrier showing to whom the article was delivered and the date of delivery; or (v) a written receipt signed by the [state superintendent of public instruction] secretary of education or designee showing to whom the article was hand-delivered and the date delivered.

(5) Request for hearing. A parent requesting a due process hearing shall transmit written notice of the request to the public agency whose actions are in question and the [state superintendent of public instruction] secretary of education. A public agency requesting a due process hearing shall transmit written notice of the request to the parent and to the [state superintendent of public instruction] secretary of education. The written request shall state with specificity the nature of the dispute and shall include:

(14) Duties of the hearing officer. The hearing officer shall excuse himself or herself from serving in a hearing in which he or she believes a personal or professional bias or interest exists which conflicts with his or her objectivity. The hearing officer shall:

(c) transmit the decision to the parties and to the [state superintendent of public instruction] secretary of education within 45 days of the receipt of the request for hearing by the [state superintendent] secretary of education, unless a specific extension of time has been granted by the hearing officer at the request of a party to the hearing. For an expedited hearing, no extensions or exceptions beyond the 45-day deadline are permitted.

(d) The hearing officer may reopen the record for further proceedings at any time prior to reaching a final decision after transmitting appropriate notice to the parties. The hearing is considered closed and final when the written decision is transmitted to the parties and to the [state superintendent of public instruction] secretary of education.

(15) Rules for expedited hearings. The rules in paragraphs (5) through (14) above shall apply to expedited due process hearings with the following exceptions:

(a) The department and the hearing officer shall ensure that a hearing is held and a written decision is mailed to the parties and the [state superintendent of public instruction] secretary of education within 45 days of the department's receipt of the request for the hearing, without exceptions or extensions.

(16) Administrative appeal

(a) The decision of the hearing officer is binding upon the parent and upon the public agency, its officers, employees and agents unless a party aggrieved by the findings and decision in the hearing appeals the decision to the [state superintendent of public instruction] secretary of education for an administrative review as provided in this section.

(b) A written request for administrative review must be transmitted to the [state superintendent of public instruction] secretary of education not later than 30 days after receipt of the hearing officer's decision by the appealing party. The request must state or otherwise show that a copy of the request is being transmitted to the other party.

(c) The [state superintendent] secretary of education shall appoint an administrative appeal officer who meets the requirements of 34 CFR Sec. 300.508.

(d) In conducting an impartial review, the administrative appeal officer shall: (i) examine the entire hearing record; (ii) ensure the procedures at the hearing were consistent with the requirements of due process; (iii) seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in Paragraphs (10) through (13) above apply; (iv) afford the parties an opportunity for oral or written argument, or both, at the discretion of the administrative appeal officer. If oral arguments are allowed, they shall be conducted at a time and place reasonably convenient to the parents and the child involved; (v) make an independent decision on completion of the review; (vi) prepare a written decision which shall include findings of fact, conclusions of law and reasons for the findings and conclusions of the administrative appeal officer; and (vii) transmit the written decision and, at the option of the parents, electronic copies of the written decision to the parties and the [state superintendent of public instruction] secretary of education not later than thirty (30) days after the receipt of the request for review by the [state superintendent of public instruction] secretary of education, unless a specific extension of time has been granted by the administrative appeal officer in response to a request from a party to the hearing.

K. Transfer of parental rights to students at age 18

(1) Pursuant to Secs. 12-2A-3 and 28-6-1 NMSA 1978, a person's age of majority begins on the first instant of his or her 18th birthday and a person who has reached the age of majority is an adult for all purposes not otherwise limited by state law. A guardianship proceeding under the Probate Code is the only way an adult in New Mexico can legally be determined to

be incompetent and have the right to make his or her own decisions taken away. Public agencies and their IEP teams are not empowered to make such determinations under New Mexico law. Accordingly, pursuant to 34 CFR Sec. 300.517, when a student with a disability reaches age 18 and does not have a court-appointed general guardian, limited guardian or other person who has been authorized by a court to make educational decisions on the student's behalf:

(b) all other rights accorded to parents under Part B of the IDEA, New Mexico law or [SBE] PED rules and standards transfer to the student; and

L. Confidentiality of information

(3) Transfer of student records

(d) ~~Pursuant to 34 CFR Sec. 300.576, a public agency may adopt a policy of including in all students' records a statement of any current or previous disciplinary action, or disciplinary action above a specified level of seriousness, that has been taken against a student and transmitting the statement when it transfers student records. A public agency which has adopted such a policy shall include disciplinary information in the records of a child with a disability to the same extent that the information is included in, and transmitted with, the student records of non-disabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If a public agency adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any statement of current or previous disciplinary action that has been taken against the child.] Pursuant to Paragraph (3) of Subsection D of 6.30.2.10 NMAC, 34 CFR Sec. 300.576 and the federal No Child Left Behind Act at 20 USC 7165, any transfer of educational records to a private or public elementary or secondary school in which a child with disabilities seeks, intends, or is instructed to enroll must include the following:~~

(i) transcripts and copies of all pertinent records as normally transferred for all students;

(ii) the child's current individualized education program with all supporting documentation, including the most recent multidisciplinary evaluations and any related medical, psychological or other diagnostic or service information that was consulted in developing the IEP; and

(iii) disciplinary records with respect to current or previous

suspensions or expulsions of the child.

[6.31.2.13 NMAC - Rp 6 NMAC 5.2.9.1.1-9.1.4, 5.2.9.1.6-9.1.8, 5.2.10, 8/14/2000; A, 8/15/2003; A, 8/31/2004]

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.3 NMAC, Sections 1, 6, 8 through 11, effective August 31, 2004.

**6.60.3.1 ISSUING AGENCY:**  
~~[State Board of Education]~~ Public Education Department  
[07-01-00; 6.60.3.1 NMAC - Rn, 6 NMAC 4.2.2.1.1, 06-14-01; A, 08-31-04]

**6.60.3.6 OBJECTIVE :**  
Through this regulation the New Mexico ~~[State Board of Education (hereinafter the "State Board")]~~ public education department (hereinafter the "department") implements a state law that provides alternative routes to New Mexico teacher licensure for persons who hold at least a baccalaureate degree but have not completed a traditional educator preparation program.  
[07-01-00; 6.60.3.6 NMAC -Rn, 6 NMAC 4.2.2.1.6, 06-14-01; A, 08-31-04]

**6.60.3.8 REQUIREMENTS FOR ALTERNATIVE LICENSURE:** To receive a level 1, three-year alternative license, an applicant must meet the following requirements:

A. Degree requirements - An applicant for alternative licensure must meet the provisions of Subsection A, Paragraphs (1), (2), and (3) of 6.60.3.8 NMAC.

(1) must possess a bachelor of arts or science degree from a regionally accredited college or university including completion of a minimum of thirty semester hours of graduate or undergraduate credit in a particular field that appertains and corresponds to the subject area of instruction and level of instruction that will enable the applicant to teach in a competent manner as determined by the ~~[state board]~~ department; or

(2) must possess a master of arts or science degree from a regionally accredited college or university including completion of a minimum of twelve graduate credit hours in a particular field that appertains and corresponds to the subject area of instruction and level of instruction that will enable the applicant to teach in a competent manner as determined by the ~~[state board]~~ department; or

(3) must possess a doctor's degree from a regionally accredited college or university; the degree shall correspond to the

subject area of instruction and particular grade level that will enable the applicant to teach in a competent manner as determined by the ~~[state board]~~ department.

B. Professional teacher education requirements - An applicant for alternative licensure must meet the provisions of Subsection B, Paragraphs (1) and (2) of 6.60.3.8 NMAC, and

(1) For those persons seeking either early childhood B-3, elementary K-8, or special education K-12 licensure, must complete various semester hours of credit earned through a regionally accredited college or university that has a state board-approved alternative licensure program containing no less than twelve (12) nor more than twenty-one (21) semester hours of credit.

(a) the credits must include six (6) semester hours of reading courses; and

(b) the credits must include the state board's competencies for entry level teachers that correspond to the license being sought; and

(c) the credits must be in a program approved by the state board; and

(d) the program must include a student teaching or field-based component.

(2) For those persons seeking either middle level 5-9, or secondary 7-12 licensure, must complete various semester hours of credit earned through a regionally accredited college or university that has a ~~[state board]~~ department approved alternative licensure program containing no less than twelve (12) nor more than eighteen (18) semester hours of credit.

(a) the credits must include three (3) semester hours of reading courses; and

(b) the credits must include the state board's competencies for entry level teachers that correspond to the license being sought; and

(c) the credits must be in a program approved by the ~~[state board]~~ department; and

(d) the program must include a student teaching or field-based component; or in lieu of complying with Paragraph (1) or (2) of Subsection B above,

(3) Must successfully demonstrate the ~~[state board's]~~ department's approved competencies for entry level teachers that correspond to the license being sought by way of a portfolio assessment pursuant to 6.2.4 NMAC. Such applicants shall also complete the reading courses set forth at Subsection B of 6.60.3.8 NMAC above prior to being granted a portfolio review. Pursuant to 6.2.4 NMAC, under no circumstance shall an individual be granted a portfolio review unless that person has passed all sections of the current ~~[state board required]~~ department-required New Mexico teacher test.

C. Must pass all of the

New Mexico teacher assessments, including any applicable content knowledge assessment required by 6.60.5 NMAC, prior to receiving alternative licensure, and

D. Must be a highly qualified, beginning early childhood, elementary, middle level, secondary, K-12, or special education teacher, or be a highly qualified beginning middle or junior high school teacher holding alternative elementary K-8 licensure.

[07-01-00; 6.60.3.8 NMAC - Rn, 6 NMAC 4.2.2.1.8, 06-14-01; A, 06-01-02; A, 06-30-03; A, 08-31-04]

### 6.60.3.9 REQUIREMENTS FOR INTERNSHIP LICENSURE

A. A candidate for alternative licensure teaching the core academic subjects and special education, who is enrolled in an alternative route to licensure by way of taking required coursework, may be permitted to assume the functions of a teacher prior to completion of licensure requirements and be issued a one-year internship license, if he/she is a highly qualified teacher candidate for level I alternative licensure, as defined in this rule; or

B. A candidate for alternative licensure who is a highly qualified teacher candidate for level I alternative licensure, is teaching in the core academic subjects or in special education, and who is pursuing an alternative path to licensure by way of portfolio assessment under Subsection A and Paragraph (3) of Subsection B of 6.60.3.8 NMAC, may as described below assume teaching duties prior to successfully demonstrating the ~~[state board's]~~ department's approved competencies for entry level teachers.

(1) Such a candidate may be issued a one-year internship license to allow time to complete the teacher competency testing requirements of 6.60.5.8 NMAC, and the reading coursework requirement set forth in Paragraphs (1) or (2) of Subsection B of 6.60.3.8 NMAC, and to present a portfolio.

(2) At the time of licensure application, the candidate must:

(a) present proof of registration for the New Mexico teacher assessments at the next available testing date, and

(b) present proof of enrollment in the required coursework for the teaching of reading.

(3) If a candidate for this licensure is not successful in demonstrating competency by way of portfolio assessment, he/she may still proceed by way of the alternative route set forth in Subsection A of 6.60.3.9 above, provided that the one-year internship license previously held under this subsection shall count toward the total period of time of three years the candidate is permitted to hold internship licenses

under Subsection C, below.

C. Renewal of internship licenses

(1) An internship license issued under Subsection A may be renewed two times for a total period not to exceed three school years, if the candidate meets the requirements of Paragraphs (2); and (3) ~~and (5)~~ of Subsection E of 6.60.3.7 NMAC.

(2) An internship license issued under Subsection B of 6.60.3.9 NMAC may be renewed one time for a total period not to exceed two school years, if the candidate meets the requirements of Paragraphs (2) and (3) of Subsection E of 6.60.3.7 NMAC, provided that he/she has, within the effective period of the first internship license passed all applicable portions of the New Mexico teacher assessments and completed all required reading coursework.

(3) Any renewal of an internship license must include verification by the superintendent of the employing school district that the candidate is making adequate progress toward demonstrating the competencies of level I licensure.

D. A candidate enrolled in a ~~[state board of education]~~ department approved post-baccalaureate teacher preparation program or advanced degree program with a teacher preparation component may be considered to be participating in an alternative route to licensure and be issued internship licenses under Subsection A and Paragraph (1) of Subsection C of 6.60.3.9 NMAC. Upon the completion of approved teacher preparation program requirements, the candidate may be issued a standard level I license if, in addition, the candidate meets the requirements for standard licensure within the three-year period allowed to complete an alternative route to licensure.

E. After June 30, 2003, the time that a person provides services under an internship license shall not be counted toward or considered for advancement to level two or level three licensure

[07-01-00; 6.60.3.9 NMAC - Rn, 6 NMAC 4.2.2.1.9, 06-14-01; 6.60.3.9 NMAC - N, 06-30-03; A, 08-31-04]

### 6.60.3.10 REQUIREMENTS FOR STANDARD LICENSURE:

To receive a standard license, an applicant must meet all of the following requirements:

A. Successfully complete requirements set forth in 6.60.3.8 NMAC for an alternative license.

B. Satisfactorily complete a one to three year mentorship program approved by the ~~[state board]~~ department. Each local board of education shall adopt policies governing a mentorship program. The local mentorship program shall:

(1) align with and support the dis-

trict's long range plan for student success;

(2) align with the ~~[state board's]~~ department's teaching competencies;

(3) be mandatory for all teachers holding alternative licensure;

(4) establish a definitive separation between mentorship activities and formal staff evaluation processes;

(5) include training activities and programs for mentors;

(6) establish the structure and content of the mentorship program;

(7) describe the process for selection, training, and evaluation of mentors;

(8) describe incentives for mentors and beginning teachers;

(9) describe the method for evaluating the effectiveness of the mentorship program; and

(10) establish a process for addressing disputes or grievances between mentors and beginning teachers.

C. Obtain verification from the superintendent of the local school district or the governing authority of the nonpublic school where the applicant has most recently been employed that the applicant has satisfactorily demonstrated the ~~[state board's]~~ department's competencies for the level of license and type sought in accordance with 6.69.3 NMAC, "Specific Performance Evaluation Requirements."

[07-01-00; 6.60.3.10 NMAC - Rn, 6 NMAC 4.2.2.1.10, 06-14-01; 6.60.3.10 NMAC - Rn, 6.60.3.9 NMAC, 06-30-03; A, 08-31-04]

### 6.60.3.11 SAVINGS CLAUSE:

A. All persons already holding alternative licensure who by June 30, 2000 have satisfactorily completed all requirements for that licensure shall be entitled to a standard license at level 2.

B. All persons for whom an alternative licensure program has already been approved by the ~~[state board]~~ department on or prior to June 30, 2000 but have not yet completed all requirements of that program will be permitted to continue toward licensure in accordance with their approved program.

C. All persons holding valid distinguished scholar licensure who by June 30, 2000 have passed all portions of either the core battery of the national teachers examination or the New Mexico teacher assessments shall be entitled to a three-year alternative license. During the three-year alternative licensure period, the alternative licensee shall complete all provisions set forth in Subsections B and C of 6.60.3.9 NMAC for standard licensure.

[6.60.3.11 NMAC - Rn, 6.60.3.10 NMAC, 06-30-03; A, 08-31-04]

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.6 NMAC, Sections 1, and 8 through 12, effective 08-31-04.

### 6.60.6.1 ISSUING AGENCY: ~~[State Board of Education]~~ Public Education Department.

[6.60.6.1 NMAC - Rp 6.60.6.1 NMAC, 09-30-03; A, 08-31-04]

### 6.60.6.8 REQUIREMENTS FOR ADVANCEMENT AND RENEW- AL OF TEACHING LICENSES PRIOR TO JULY 1, 2004:

A. A person holding a valid level I license and seeking a level II license prior to July 1, 2004 pursuant to the provisions of this regulation shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director of the professional licensure unit (hereinafter referred to as the "director");

(2) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the ~~[state board of education]~~ public education department for a level II license of the type sought;

(3) successfully complete the three-year level I license.

B. A person holding a valid level II license and seeking a level III license pursuant to the provisions of this regulation shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the applicant must hold a master's degree from a regionally accredited college or university or hold certification from the national board for professional teaching standards;

(3) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant was most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the ~~[state board of education]~~ public education department for a level III license; ~~or~~ and

(4) ~~[The applicant must hold a~~

~~valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type.] has been a level II teacher for at least three years.~~

C. A person holding a valid level II and/or level III license and seeking continuing licensure pursuant to the provisions of this regulation shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated those level II and/or level III competencies required by the ~~[state board of education]~~ public education department.

[6.60.6.8 NMAC - Rp 6.60.6.8 NMAC, 09-30-03; A, 08-31-04]

### 6.60.6.9 REQUIREMENTS FOR ADVANCEMENT AND RENEW- AL OF TEACHING LICENSES AFTER JUNE 30, 2004:

A. A teacher holding a valid level I license and after June 30, 2004, seeking a level II license pursuant to the provisions of this regulation shall meet the following requirements, which may not be waived or substituted by any other experience:

(1) complete three full school years of teaching experience at level I New Mexico licensure with successful annual evaluations, except that a teacher who has completed two full school years of teaching experience in another state or country and has obtained level I New Mexico teaching licensure through reciprocity in 6.60.4 NMAC and who is seeking advancement to level II must still complete at least two full years of teaching experience in New Mexico before being eligible for licensure advancement to level II; and

(2) submit, in a form acceptable to the director, a completed licensure application and professional development dossier (PDD), as provided in 6.69.4.11 NMAC ~~[or]~~ only between February 1st and March 1st, and October 15th and November 15th of any year; the PDD may be submitted up to three months in advance of the completion of the requirement in Paragraph (1) of Subsection A of 6.60.6.9 NMAC with final PDD approval dependent upon the completion of three full years of teaching experience at level I licensure.

B. A teacher holding a valid level II license and seeking a level III-A license pursuant to the provisions of this regulation shall meet the following require-

ments, which may not be waived or substituted by any other experience:

(1) complete three full school years of teaching experience at level II New Mexico licensure with successful annual evaluations, except that a teacher who has four or more full school years of teaching experience in another state or country and has obtained level II New Mexico teaching licensure through reciprocity in 6.60.4 NMAC and who is seeking advancement to level III must still complete at least two full years of teaching experience in New Mexico before being eligible for licensure advancement to level II; and

(2) hold a post-baccalaureate degree from a regionally accredited college or university or hold certification from the national board for professional teaching standards; and

(3) submit, in a form acceptable to the director, a completed licensure application and professional development dossier (PDD), as provided in 6.69.4.11 NMAC only between February 1st and March 1st, June 1st and July 1st, and October 15th and November 15th of any year, beginning in 2005, where the PDD may be submitted up to three months in advance of the completion of the requirement in Paragraph (1) of Subsection B of 6.60.6.9 NMAC with final PDD approval dependent upon the completion of three full years of teaching experience at level II licensure.

C. A teacher holding a valid level II license and seeking licensure renewal pursuant to the provisions of this regulation shall meet the following requirements:

(1) submit a completed application for level II licensure renewal to the director; and

(2) submit to the director a verification from the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal that the applicant has satisfactorily demonstrated the competencies for level II licensure and met other requirements of the high objective uniform standard of evaluation for level II licensure renewal as is evidenced by the teacher's annual evaluations.

(3) if a level II teacher does not satisfactorily demonstrate the competencies of level II licensure or other requirements of the high objective uniform standard of evaluation for level II licensure renewal, the applicant, depending on the outcome of any due process proceeding under the Uniform Licensing Act, sections 61-1-1 through 61-1-31, NMSA 1978, might not be issued a license.

D. A person holding a

valid level III-A license and seeking licensure renewal pursuant to the provisions of this regulation shall meet the following requirements:

(1) submit a completed application for level III licensure renewal to the director; and

(2) submit to the director a verification from the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal that the applicant has satisfactorily demonstrated the competencies for level III licensure and met other requirements of the high objective uniform standard of evaluation for level III licensure renewal as is evidenced by the teacher's annual evaluations; or

(3) if a level III teacher does not satisfactorily demonstrate the competencies of level III licensure or other requirements of the high objective uniform standard of evaluation for level III licensure renewal, the applicant, depending on the outcome of any due process proceeding under the Uniform Licensing Act, sections 61-1-1 through 61-1-31, NMSA 1978, might not be issued a level III license.

E. A person holding a valid level III-A license may choose to not renew his or her level three-A license and apply for a level II license. The superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure must submit to the director a verification that the applicant has satisfactorily met the high objective uniform standard of evaluation for level two license as is evidenced by the teacher's annual evaluations.

F. If a level III-A teacher does not satisfactorily meet the high objective uniform standard of evaluation for level III-A licensure renewal, the applicant, depending on the outcome of any due process proceeding under the Uniform Licensing Act, sections 61-1-1 through 61-1-3-1, NMSA 1978, might not be issued a level III-A license. In that case, the applicant may be issued a level II license if the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, submits to the director a verification that the applicant has satisfactorily met the high objective uniform standards of evaluation for level II licensure as is evidenced by the teacher's annual evaluations. [6.60.6.9 NMAC - N, 09-30-03; A, 08-31-04]

#### **6.60.6.10 REQUIREMENTS FOR RENEWAL AND ADVANCEMENT FOR EDUCATORS OTHER THAN TEACHERS:**

A. A person holding a valid level I license and seeking a level II license pursuant to the provisions of this regulation shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the ~~[state board of education]~~ public education department for a level II license of the type sought.

B. A person holding a valid level II license and seeking a level III license pursuant to the provisions of this regulation shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the applicant must hold a master's degree from a regionally accredited college or university;

(3) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant was most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the ~~[state board of education]~~ public education department for a level III license.

C. A person holding a valid level II and/or level III license and seeking continuing licensure pursuant to the provisions of this regulation shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated those level II and/or level III competencies required by the ~~[state board of education]~~ public education department.

[6.60.6.10 NMAC - N, 09-30-03; A, 08-31-04]

#### **6.60.6.11 EXCEPTIONS:**

A. Exceptions for "exigent circumstances":

(1) The provisions of this paragraph shall apply to an individual holding a valid New Mexico license who, in exigent circumstances, is unable to secure a verification of the required competencies for licensure renewal.

(2) As used in this paragraph, "exigent circumstance" means:

(a) the non-availability of the superintendent of the local school district or of an authorized representative of the state institution or private school by which the applicant has been most recently employed; or

(b) the licensed individual has not been employed in elementary or secondary education during the term of the license (s) ~~[sought]~~ or when a level I teacher has been employed and completes less than three full school years in a New Mexico school district or combination of school districts.

(3) A person seeking to renew his or her current level of licensure who, in exigent circumstances, is unable to secure verification of the required competencies shall submit a sworn statement asserting the exigent circumstance(s). In this situation, an applicant may be granted a three-year level I license.

B. Exceptions for persons unable to demonstrate "exigent circumstances": A person seeking licensure renewal pursuant to this regulation and who cannot show exigent circumstances for the lack of verification of the satisfactory demonstration of the competencies required by the ~~[state board of education]~~ public education department may, upon the expiration of a period of three years from the date of expiration of the valid New Mexico license, apply to the director for a level I license. Level I licenses granted pursuant to this paragraph shall be subject to advancement at level II in the same manner as other such licenses.

C. A person seeking level II, III-A, or III-B licensure renewal pursuant to this regulation who has worked in education but not in an elementary or secondary school setting under a New Mexico license during the effective period of the license shall submit a sworn statement asserting that he or she has not worked in an elementary or secondary school setting during the effective period of the license, and may renew the license at the current level he or she holds.

[6.60.6.11 NMAC - Rp 6.60.6.9 NMAC, 09-30-03; A, 08-31-04]

**6.60.6.12 IMPLEMENTATION:** Persons meeting these requirements may obtain a license at the level and for the duration as adopted by the ~~[state~~

~~board of education~~ public education department.

A. Absent the exceptions provided in 6.60.6.11, a level I license shall not be renewed.

B. Continuing level II and level III licenses granted pursuant to 6.60.6.8 NMAC of this regulation shall be granted for nine years.

C. Applications and requirements for licensure advancement or renewal must be completed no later than June 30 of the year following expiration of the license. After that date the license is deemed to have lapsed.

D. Notwithstanding the provisions of Subsection C of 6.60.5.8 NMAC, a license that has lapsed may be renewed at the same level of the lapsed license if the applicant submits evidence of having satisfactorily carried out his duties as previously authorized by the lapsed license for five complete school years and submits a verification from the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has satisfactorily demonstrated the competencies for his level of lapsed licensure as evidenced by annual evaluations. If the applicant cannot provide both the verification of five years experience and competency from the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed, the applicant shall be issued only a level I license.

[6.60.6.12 NMAC - Rp 6.60.6.11 NMAC, 09-30-03; A, 08-31-04]

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.7 NMAC, Sections 1, 3, 7, 8, and 10 effective 08-31-04.

**6.60.7.1 ISSUING AGENCY:** ~~[State Board of Education]~~ Public Education Department

[6-15-98, 7-30-99; 6.60.7.1 NMAC - Rn, 6 NMAC 4.2.4.7.1, 10-13-00; A, 08-31-04]

**6.60.7.3 STATUTORY AUTHORITY:** Sections 22-2-1, NMSA 1978, ~~22-8-44, NMSA 1978~~ and 22-10A-3, NMSA 1978.

[6-15-98; 6.60.7.3 NMAC - Rn, 6 NMAC 4.2.4.7.3, 10-13-00; A, 09-30-03; A, 08-31-04]

**6.60.7.7 DEFINITIONS:** "indigency" means the inability, as determined by the professional licensure unit of the ~~[State Department of Public Education (SDE)]~~ public education department (PED), to pay a licensure fee from available present income and assets without due hardship. [6-15-98; 6.60.7.7 NMAC - Rn, 6 NMAC 4.2.4.7.7 & A, 10-13-00; A, 08-31-04]

**6.60.7.8 REQUIREMENTS:**

A. Applicants seeking an initial educator license shall pay by money order or certified check or other form acceptable to the ~~[state department of education]~~ public education department the following fees prior to or at the time of submission of their applications:

(1) all applicants, except those described in Paragraphs (2) ~~[-]~~ or (3) ~~[and (4)]~~ below, shall pay an application fee of \$50.00.

(2) applicants for educational assistant, school health assistant licensure or substitute teacher certification shall pay an application fee of \$15.00.

(3) applicants for athletic coaching licensure who are seeking ~~[only]~~ a coaching license only shall pay a fee of \$15.00.

B. Applicants seeking the renewal of an existing educator license shall pay by money order or certified check or other form acceptable to the public education department the following fees at the time of submission of their applications:

(1) all applicants, except those described in Paragraphs (2) ~~[-]~~ or (3) ~~[and (4)]~~ below, shall pay an application fee of \$25.00.

(2) applicants for educational assistant, school health assistant licensure or substitute teacher certification shall pay an application fee of \$15.00.

(3) applicants for athletic coaching licensure who are seeking ~~[only]~~ a coaching license only shall pay a fee of \$15.00.

C. Applicants seeking the advancement to higher levels of teacher licensure by submission of a professional development dossier (PDD) as provided in 6.69.4.11 NMAC shall pay by money ~~[order or certified check \$175.00 to the state department of education]~~ order, certified check or other payment method acceptable \$175 to the public education department or its contractor at the time of submission of their PDD. If submission of the PDD corresponds with the renewal of licensure, the fee for renewal in Subsection B of this section shall be waived.

[6-15-98; 6.60.7.8 NMAC - Rn, 6 NMAC 4.2.4.7.8 & A, 10-13-00; A, 09-30-03; A, 08-31-04]

**6.60.7.10 EXEMPTIONS:**

A. An application fee shall not be charged for adding endorsements, changing name or address, replacing lost or misplaced licenses and for waivers of assignment.

B. An application fee shall not be charged to an individual who qualifies as being indigent. An applicant can qualify for relief from the application fee on the grounds of indigency by providing the ~~[SDE]~~ PED with documentation which establishes that the applicant is not now, nor was in the previous year, the dependent of another person and that the fee represents more than three percent of the applicant's total income for the previous year.

[6-15-98; 6.60.7.10 NMAC - Rn, 6 NMAC 4.2.4.7.10, 10-13-00; A, 08-31-04]

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.63.3 NMAC, Sections 1, 3, and 6 through 11, effective 08-31-04.

**6.63.3.1 ISSUING AGENCY:** ~~[State Board of Education]~~ Public Education Department

[11-14-98, 07-30-99; 6.63.3.1 NMAC - Rn, 6 NMAC 4.2.3.8.1, 03-31-01; A, 08-31-04]

**6.63.3.3 STATUTORY AUTHORITY:** Sections ~~22-2-1~~ 22-1-2(F), NMSA 1978, ~~[and]~~ 22-2-2, NMSA 1978, and 22-10A-17, NMSA 1978 (being Laws 2003, Chapter 153, Section 48, as amended).

[11-14-98; 6.63.3.3 NMAC - Rn, 6 NMAC 4.2.3.8.3, 03-31-01; A, 08-31-04]

**6.63.3.6 OBJECTIVE:** This regulation governs ~~[related service licensure in ancillary]~~ licensure of instructional support providers for those persons seeking such licensure on or after July 1, 1989.

[11-14-98; 6.63.3.6 NMAC - Rn, 6 NMAC 4.2.3.8.6 & A, 03-31-01; A, 08-31-04]

**6.63.3.7 DEFINITIONS:** "Instructional support providers" formerly referred to as related service or ancillary providers, shall mean anyone who provides services for a public school or state institution as an educational assistant, school counselor, school social worker, school nurse, speech-language pathologist, psychologist, physical therapist, physical therapy assistant, occupational therapist, occupational therapy assistant, recreational therapist, interpreter for the deaf, and diagnostician.

[6.63.3.7 NMAC - N, 08-31-04]

**6.63.3.8 REQUIREMENTS:**

All persons who perform any ~~[related services]~~ duties as instructional support provider identified in Subsections A through ~~[G]~~ H of this section in public schools, including charter schools, or in those special state-supported schools within state agencies, must hold valid ~~[standard]~~ licensure issued by the ~~[state board]~~ secretary. A person seeking an initial, ~~[related service]~~ instructional support provider license shall file a completed application for an initial license with the ~~[professional licensure unit ("professional licensure") of the state department of public education]~~ professional licensure bureau (PLB) of the public education department, and shall provide ~~[professional licensure with]~~ a copy of their current license from their respective licensing ~~[body together with]~~ authority or a copy of any optional certification listed below, and an official transcript of their coursework. A person seeking instructional support provider licensure shall hold the licensure or certification issued by the named authority as follows:

A. Interpreter for the deaf:  
~~[(1) National registry for interpreters for the deaf; or~~

~~(2) National association for the deaf national interpreter certification at levels III, IV, or V; OR]~~

(1) Professional interpreter

~~(a) obtain certification from the national registry for interpreters for the deaf; or~~

~~(b) obtain certification from the national association for the deaf national interpreter certification at levels III, IV, or V;~~

~~(2) Education interpreter: Attain educational interpreter performance assessment levels 3.5 or above.~~

B. Orientation and mobility specialists:

~~(1) obtain certification from the association for education and rehabilitation of the blind and visually impaired, or [American association of workers for the blind, or]~~

~~(2) obtain certification from the academy for certification of vision rehabilitation and education professionals [; OR].~~

C. Physical therapist:  
Obtain licensure from the New Mexico physical therapy licensing board [; OR].

D. Occupational therapist:

~~(1) obtain licensure from the New Mexico occupational therapy licensing board; [OR] or~~

~~(2) obtain certification from the American occupational therapy certification board [; OR].~~

E. Certified occupational therapy assistant:

~~(1) obtain licensure from the New Mexico occupational therapy licensing~~

board; ~~[OR] or~~

~~(2) obtain certification from the American occupational therapy certification board [OR].~~

F. Physical therapy assistant:  
obtain licensure from the New Mexico physical therapists licensing board [; OR].

G. Recreational therapist:  
obtain national council for therapeutic recreation certification.

H. Speech language pathologist: obtain licensure from the New Mexico speech language pathology and audiology board.

[11-14-98; 6.63.3.8 NMAC - Rn, 6 NMAC 4.2.3.8.8 & A, 03-31-01; A, 08-15-03; A, 08-31-04]

**6.63.3.9 IMPLEMENTATION:**

All persons holding a valid New Mexico license in those ~~[related service]~~ areas covered in this regulation on or after June 30, 1989 shall be entitled to licensure in the respective ~~[related service area]~~ instructional support provider area. Licenses for instructional support providers shall be issued at level 1, provisional licensure, for those providers with less than three years of school experience, level 2, professional licensure, for those providers with three to five years of school experience, and at level 3, instructional support leader, for those with six or more years of school experience. Such licensure may be further continued pursuant to regulation(s) as established by the ~~[State Board]~~ secretary of education. Endorsements in bilingual education and teaching english to speakers of other languages may be added to the speech language pathologist license if the candidate meets the requirements for those endorsements.

[11-14-98; 6.63.3.9 NMAC - Rn, 6 NMAC 4.2.3.8.9 & A, 03-31-01; A, 08-31-04]

**6.63.3.10 DURATION OF LICENSURE:**

A. All initial licenses shall be ~~[considered to be]~~ level 1 licenses and shall be valid for three (3) years.

B. All renewed licenses shall be ~~[considered to be]~~ level 2 or 3 licenses and shall be valid for nine (9) years.

C. Regardless of their level, all ~~[related service]~~ instructional support provider licenses shall commence on July 1st in the year of issuance and expire June 30th in the year of their expiration.

[6.63.3.10 NMAC - N, 03-31-01; A, 08-31-04]

**6.63.3.11 NOTIFICATION**

**REQUIREMENT:** All persons issued an instructional support provider license by the secretary who are also required to hold a valid license or certificate issued by his/her respective licensing or certifying authority,

shall continuously hold such underlying licensure or certification for so long as they hold licensure issued by the secretary.

A. Should this underlying professional license or certificate expire, be suspended or revoked, or its renewed or initial issuance denied, a person seeking or holding instructional service provider licensure from the secretary shall notify the local school superintendent and professional licensure in writing within fourteen (14) calendar days of such suspension, revocation, denial or expiration.

B. Suspension, revocation, denial or expiration of an underlying professional license or certificate shall constitute just cause for discharge or termination from employment, and for suspension, revocation or denial of renewed or initial issuance of an instructional support provider license.

[6.63.3.11 NMAC - N, 08-31-04]

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.63.10 NMAC, Sections 1, 6, 7, 8, 12, and 14, effective 08-31-04.

**6.63.10.1 ISSUING AGENCY:**  
~~[State Board of Education]~~ Public Education Department.

[6.63.10.1 NMAC - N, 09-29-00; A, 08-31-04]

**6.63.10.6 OBJECTIVE:** This regulation establishes licensure requirements for substitute teachers who provide temporary instructional services when an assigned licensed instructor is absent from class. This regulation also seeks to comply with amended legislation that set a minimum age requirement and allowed the ~~[state board of education]~~ public education department to establish the duration of a substitute teaching license.

[6.63.10.6 NMAC - N, 09-29-00; A, 08-31-04]

**6.63.10.7 DEFINITIONS:**

A. "High school diploma equivalency" means a New Mexico high school diploma issued after a person has passed all five (5) subtests of the general education diploma ("GED"), a GED issued by the proper authority from any other state, an international baccalaureate ("IB"), and any other diploma issued by any schools accredited by the ~~[state board of education]~~ public education department, the north central accreditation ("NCA") or western states accreditation ("WSA").

B. "Teaching experience" means any person as of the effective date of

this rule, who shall have taught a minimum of 3 hours per day for 60 days as a paid substitute teacher in any school classroom in New Mexico during a regular school year. [6.63.10.7 NMAC - N, 09-29-00; A, 08-31-04]

### 6.63.10.8 REQUIREMENTS:

Unless otherwise stated in this rule, any person seeking to perform services as a substitute teacher must hold a certificate authorizing that person to perform the duties of a substitute teacher. Substitute teacher certificates shall be issued by [~~local school districts~~] the public education department to persons who at a minimum meet the requirements of this section. [~~The local school district shall be responsible for issuing substitute teacher certificates and for maintaining a pool or list of qualified and certified substitute teachers whose certificates will authorize them to provide substitute teacher services within any local school or charter school located within the issuing district. A charter school may provide training and experience verification similar to that provided by the school district by issuing a letter from the governing body of the charter school.~~] Such certificates authorize the substitute teacher to work [~~in the issuing district only~~] as a substitute teacher in any public school district or charter school in New Mexico. At the very minimum, all applicants for initial substitute teacher licensure shall have attained eighteen (18) years of age for those seeking to perform instructional services in grades K-8, and twenty-one (21) years of age for those seeking to perform instructional services in grades 9-12, and have earned a high school diploma or high school diploma equivalency. Any such certificate issued by [~~a local school district~~] the public education department shall be in writing. Additionally, each applicant shall meet the requirements of either Subsection H or I below, or shall meet the requirements of two or more of Subsections A through G. [~~A local school board may provide for additional qualifications or requirements.~~]

A. have, within 12 months of their date for initial employment with a local district, received on the job training by serving as a voluntary assistant to a licensed teacher in a school classroom for a minimum of three hours during three days;

B. have observed 3 hours or more of teaching in a school system and at the grade level of students in which the substitute will serve;

C. have completed a substitute teacher workshop conducted by or acceptable to the local school district in which the substitute teacher is employed or seeking employment;

D. have, within the past three school years of application for

employment or licensure, performed at least three hours of instructional services as a substitute teacher in any school accredited or recognized by the New Mexico [~~state board of education~~] public education department;

E. have engaged in any paid employment in the three years prior to applying for substitute teaching licensure or employment, which, after verification by and in the opinion of the superintendent of the local district, invests that applicant with relevant work or life experience;

F. have completed at least 60 hours of college-credit courses in a regionally accredited college;

G. have completed or currently be enrolled in an approved college course or program from a regionally accredited college, where the course or program is structured to provide primary/secondary school teacher preparation;

H. have completed an approved teacher preparation program from a regionally accredited college or university;

I. is in possession of a current substitute or standard teaching license issued by another state's educator licensure issuing agency.

[6.63.10.8 NMAC - N, 09-29-00; A, 09-30-03; A, 08-31-04]

**6.63.10.12 CONTINUING CERTIFICATION:** An initial substitute teaching certificate is considered to be a level I certificate and all renewed certificates are considered to be level II certificates.

A. An initial substitute teacher certificate is valid for three (3) years and commences on July first of a year and expires the 30th of June three years thereafter.

B. A renewed substitute teacher certificate is valid for nine (9) years and commences on July first of a year and expires the 30th of June nine years thereafter.

C. Local school districts and state institutions that utilize substitute teachers shall each develop and promulgate substitute teacher advancement policies for level II certification that requires substitutes at a minimum:

(1) to complete with a passing grade three (3) semester hours of credit from a regionally accredited college or university in areas related to the school's long range plan, student standards, or the substitute teacher's classroom assignment; or,

(2) to complete forty-eight (48) contact hours in professional development activities approved by the local school district, state educational institutions, or non-public schools in areas related to the school's long range plan, student standards, or the substitute teacher's classroom assign-

ment; or,

(3) obtain written verification from the superintendent of a local district, or from the governing authority of the state institution or nonpublic school where that substitute is employed that he/she has satisfactorily completed at least 270 hours of providing instructional services.

D. Substitute teachers who, on the effective date of this rule, hold valid, current [~~state board of education~~] school district or charter school issued certificates, [~~may~~] shall present the certificates [~~to local school districts~~] along with an application for state certification and application fee to the public education department and be issued new certificates by the [~~districts~~] department.

[6.63.10.12 NMAC - N, 09-29-00; A, 09-30-03; A, 08-31-04]

### 6.63.10.14 EXCEPTIONS:

[~~Until a local school board enacts a policy providing for additional qualifications or requirements, no~~] No person holding valid New Mexico teaching or administrative licensure is required to obtain substitute teacher certification in order to perform instructional services as a substitute teacher. [6.63.10.14 NMAC - N, 09-29-00; A, 09-30-03; A, 08-31-04]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.400 NMAC, Sections 10, 30 and 40, effective August 31, 2004.

### 2.80.400.10 MEMBER COVERAGE UNDER PERA

A. Full-time employees who work 40 or more hours in a week and part-time employees who work 20 or more hours but fewer than 40 hours in a week shall be members.

B. The following employees are excluded from coverage:

(1) Retired members [~~of~~] of PERA or retired members from any other state system as defined in subsection D of 2.80.100.7 NMAC who subsequently become employees of affiliated public employers. This exclusion does not apply to a previously retired member whose pension has been suspended.

(2) Independent contractors. Persons who render services to an affiliated public employer as independent contractors are not employees who are entitled to PERA membership unless the employment contract provides that they are "employees" for federal and state taxation purposes, or the IRS had determined that they are "employ-



ees” under the contract.

(3) Seasonal or student employees.

(a) “Seasonal employee” or “temporary employee” means an employee who works in a position designated by the affiliated public employer as seasonal or temporary and created to last no more than 9 consecutive months. Retired members returning to work with an affiliated public employer shall not be re-employed under this subsection ~~[3(b)]~~ 3(a).

(b) “Student employee” means an employee who during at least 8 months in any calendar year, or during the period of employment, is enrolled at an educational institution whose academic credits would be accepted by a state educational institution or a public school district and carrying at least 12 credit hours or is enrolled in an educational institution’s graduate studies program and carrying at least 9 credit hours. Any person who is a regular full-time employee is not a “student” for purposes of exclusion from PERA membership.

(4) Elected officials who file with the association a written application for exemption from membership using the form prescribed by the association within twenty-four (24) months of taking office. Prior to filing the application for exemption, the elected official shall be a member. An application for exemption may be subsequently withdrawn by filing with PERA an executed PERA membership application form.

(5) A retired member who is appointed a chief of police of an affiliated public employer, other than the employer from which the member retired, or is appointed undersheriff, and who files an irrevocable exemption from membership within thirty days of appointment.

(6) A retired member employed by the legislature for legislative session work.  
[10-15-97; 12-15-99; 2.80.400.10 NMAC - Rn & A, 2 NMAC 80.400.10, 12-28-00; A, 8-15-01; A, 9-30-03; A, 8-31-04]

2.80.400.30 ADDRESS UPDATE: The member is responsible for providing in writing to the association any change of the member’s address.  
[1-15-99; 2.80.400.30 NMAC - Rn, 2 NMAC 80.400.30, 12-28-00; A, 8-31-04]

2.80.400.40 MEMBERSHIP REQUIRED: All employees of an affiliated public employer are required to be members of PERA, except for those employees excluded by statute. Except in the case of elected officials who file with the association a written application for exemption from membership using the form prescribed by the association within twenty-four (24) months of taking office as provided in para-

graph 4 of subsection B of 2.80.400.10 NMAC, within thirty (30) days of hire, job change, or change to a part-time, seasonal or student employee, employers shall file with PERA an executed PERA membership application form or PERA exclusion from membership form on all employees.

[12-15-99; 2.80.400.40 NMAC - Rn, 2 NMAC 80.400.40, 12-28-00; A, 12-28-01; A, 8-31-04]

**NEW MEXICO  
PUBLIC EMPLOYEES  
RETIREMENT  
ASSOCIATION**

This is an amendment to 2.80.500 NMAC, Section 9, effective August 31, 2004.

2.80.500.9 REMITTANCE OF CONTRIBUTIONS FOR RE-EMPLOYED ~~[RETIRED]~~ RETIRED MEMBERS

A. ~~[In accordance with the Public Employees Retirement Act each state agency or]~~ Each affiliated public employer shall be responsible for deducting ~~[the]~~ applicable ~~[contribution]~~ contributions from the salary or wages paid to each re-employed retired member for each payroll period. The affiliated public employer shall make employer contributions in the amount specified in the Public Employees Retirement Act, or in an amount adjusted for the full actuarial cost as determined annually by the association, until the subsequent employment is terminated. Retired member contributions shall be separately tracked, but shall not be posted to the retired member’s account or refunded to the retired member or the employer upon termination of employment.

B. The employer shall transmit to PERA ~~[the retired member]~~ applicable employee and employer contributions for every retired member in its employ for each pay period on or before the fifth working day following the payday applicable to the pay period. The contributions shall be accompanied by a transmittal report in a format designated by PERA, which shall clearly set forth the amount of employer and retired member contributions, and adjustments for prior pay periods if applicable, transmitted.

C. Except as provided in subsection ~~[D]~~ E below, interest will be assessed on any remittance of retired member and employer contributions not made by the due day of the remittance. The rate of interest shall be set annually by the board at a July meeting and shall be effective beginning the next succeeding January 1st. Any interest paid on unremitted contributions shall not be posted to the member’s account or refunded to the member or the employer.

D. Except as provided in subsection F below, a penalty of fifty dollars (\$50) per day shall be assessed for any employee and employer contribution transmittal report that is untimely. For purposes of this subsection, “untimely” is defined as fifteen (15) days after the end of the month in which the transmittal report was due.

E. In the event the employer fails to make the necessary deductions, the employer shall be responsible to remit to PERA the total amount due for both the retired member and employer contributions plus interest as provided in subsection C above.

F. If an employer, for good cause, is unable to timely transmit retired member employee and employer contributions or transmittal report, the employer shall notify PERA in writing at least twenty-four (24) hours prior to the due date, and may request waiver of the interest and/or penalty that would otherwise be assessed. The executive director may waive interest and/or penalty for up to thirty-one (31) calendar days. Interest shall thereafter be charged at the rate set in subsection C above.

G. Notwithstanding the provisions of this section, no retired member employee or employer contributions shall be remitted in the case of the following re-employed retired members:

(1) a retired member who is appointed a chief of police of an affiliated public employer, other than the employer from which the member retired, or is appointed undersheriff, and who files an irrevocable exemption from membership within thirty days of appointment;

(2) a retired member employed by the legislature for legislative session work who files an irrevocable exemption from membership within thirty days of employment.

[2.80.500.9 NMAC - N, 9-30-03; A, 8-31-04]

**NEW MEXICO  
PUBLIC EMPLOYEES  
RETIREMENT  
ASSOCIATION**

This is an amendment to 2.80.600 NMAC, Section 20, effective August 31, 2004.

2.80.600.20 SERVICE CREDIT

A. In order to claim service credit for service rendered prior to August 1, 1947 or for a period prior to the employer becoming an affiliated public employer, a member shall:

(1) file a claim for the period of employment showing specific beginning and ending dates of employment;

(2) provide certification of

employment to the association for the period or periods claimed as prior service;

(3) file an affidavit, to be certified and signed by two other persons who know of the employment, together with any additional documentary evidence available which may be required by the board if no records are available for the period of prior service claimed;

(4) provide payroll records, personnel action forms showing hire date(s), term of employment, full-time or part-time, job classification, salary amounts and dates of personnel actions, job description, if any;

(5) contribution history from the federal social security administration for the claimed period of employment, if applicable.

B. Forfeited service credit may be reinstated by repayment of withdrawn member contributions, together with interest from the date of withdrawal to the date of repayment at the rate or rates set by the board, under the following conditions:

(1) Service credit may be reinstated in one-year increments, beginning with the most recently forfeited service credit. A one-year increment is 12 consecutive but not necessarily continuous months of service credit. For the purpose of eligibility to retire only, less than one year of service credit may be purchased. After reinstatement of all 12-month "years" as defined herein, any remaining service credit that totals less than 12 months may be reinstated by payment in one lump sum as provided herein.

(2) All forfeited service credit may also be reinstated by repayment of the total amount of all member contributions withdrawn from each period of service together with interest from the date of withdrawal to the date of repayment at the rate set by the board.

(3) A former member who is employed by an employer covered under the Educational Retirement Act must provide evidence of current contributing membership in the educational retirement association; such evidence shall be either certification by the employer, in the form prescribed by the association, or certification by the educational retirement association (ERA).

(4) Payment for reinstated service credit must be received by the association prior to the member's effective date of retirement.

(5) Interest received to reinstate forfeited service credit under this subsection shall not be refunded to the member. The purchase cost received to reinstate forfeited service credit which is determined to be unnecessary to provide the maximum pension applicable to the member and which is purchased in reliance on information provided by PERA shall be refunded to

the member.

C. "Actual credited service" for purposes of NMSA 1978, Section 10-11-27 means only that service credit earned during periods of employment with the New Mexico state police in the positions of patrolman, sergeant, lieutenant, ~~or~~ captain[-] or ~~as an~~ aircraft division pilot, ~~or~~ with the corrections department or its successor agency after July 1, 2004 in the positions of adult correctional officer or adult correctional officer specialist, or as a municipal detention officer member pursuant to NMSA 1978, Section 10-11-115.1. No permissive service credit which is purchased by state police members or adult correctional officer members shall be increased by 20% as provided in NMSA 1978, Section 10-11-27. With respect to service credit acquired for periods of military service, only that service credit which is acquired for intervening military service during a period of employment as a state police ~~members or as~~ member, an adult correctional officer ~~members~~ member after July 1, 2004 or as a municipal detention officer member shall be increased by 20% as provided in NMSA 1978, Section 10-11-27.

D. Military service credit is free in some cases and may be purchased in other cases as provided by statute.

(1) Where a member wishes to claim service credit pursuant to NMSA 1978, Section 10-11-6 the association shall, upon the member's request, furnish that member a form of affidavit for completion and certification of such service. The affidavit shall be accompanied by documentary evidence of the member's entry and discharge from service in a uniformed service of the United States.

(2) The affiliated public employer by whom the member was employed immediately prior to entering a uniformed service of the United States shall certify in writing the date ~~of termination of employment of~~ the member stopped rendering personal service to the employer. This requirement may be waived if PERA records contain sufficient documentation ~~of the date of termination of such prior employment~~ to support the date the member stopped rendering personal service.

(3) The affiliated public employer by whom the member was employed immediately after discharge from a uniformed service of the United States shall certify in writing to the association the ~~member's date of return to employment within thirty days of reemployment~~ date the member started rendering personal service to the employer. This requirement may be waived if PERA records contain sufficient documentation of the date of return to employment. Members who are not reemployed by an affiliated public employer within ninety

days following termination of the period of intervening service but who nevertheless claim reemployment rights under federal law shall provide to the association written certification from the affiliated public employer that the member is entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

(4) The affidavit, employer certifications, and documentary evidence of uniformed service shall be presented to the association for approval.

(5) Service credit for periods of intervening service in the uniformed services following voluntary enlistment, reenlistment or appointment shall be awarded only upon compliance by the member and the affiliated public employer with the provisions of NMSA 1978, Section 10-11-6, as amended, and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, including but not limited to the payment to the association of contributions required from the member and the employer.

(6) PERA members who are also members of the military service reserve components who are activated pursuant to a federal call to duty, deployment or peacekeeping mission or other declared national emergency may receive free service credit subject to the conditions of this section. The member must provide a form DD 214 or other documentation as required by PERA to support an award of free service credit.

E. A member who claims service credit for one or more periods of employment for which an employer failed to remit the required contributions to the association may receive service credit only after receipt by the association of payment by the employer of the delinquent contributions plus applicable interest and penalties, if any, along with the following documentation:

(1) payroll records for the claimed periods of employment, indicating the salary for the claimed employment dates;

(2) personnel action forms showing hire date(s), term of employment, job classification, salary amounts and dates of personnel actions;

(3) job description;

(4) contribution history from the federal social security administration for the claimed period of employment, if applicable;

(5) explanation from the employer as to why contributions were not withheld or paid to the association;

(6) any other information requested by the association; if original records have been lost or destroyed, affidavits in a form acceptable to the association may be

submitted for the purpose of substantiating the employment; the association may accept such affidavits in lieu of original records if it deems them sufficient to establish the required employment information.

F. At any time prior to retirement, a member may purchase ~~up to one year of~~ permissive service credit at its full actuarial present value as determined by the association, under the following conditions:

(1) Service credit may be purchased in one-month increments.

(2) The amount of service credit purchased under this Subsection (F) shall not exceed one year ~~reduced by any other period of permissive service credit purchased~~.

(3) Service credit purchased cannot be used for the purpose of calculating final average salary~~;~~ or eligibility for pension factor of a coverage plan ~~or achieving the pension maximum~~ for pension calculation and retirement purposes.

(4) For members employed in part-time positions, for purposes of calculating the full actuarial present value purchase cost of service credit under this Subsection (F), the member's hourly salary shall be annualized as if the member was employed full-time.

(5) Payment for service credit under this subsection must be received within sixty (60) days of the date the member is informed in writing of the purchase price of the service credit.

(6) The purchase cost received to purchase service credit under this subsection shall not be refunded to the member. [10-15-97; 11-15-97; 1-15-99; 12-15-99; 2.80.600.20 NMAC - Rn & A, 2 NMAC 80.600.20, 8-15-01; A, 12-28-01; A, 9-30-03; A, 8-31-04]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.700 NMAC, Section 10, effective August 31, 2004.

### 2.80.700.10 PROCEDURE FOR RETIREMENT

#### A.

(1) The member shall request an application for retirement from PERA. To insure that the member may retire on the date the member has chosen, the completed application should be returned to PERA, with the required documents described in subsection B below, at least 60 days prior to the selected date of retirement. The completed application and all supporting documentation must be filed with PERA no later

than the close of business on the last working day of the month prior to the selected date of retirement. Any changes to an application for retirement that has already been submitted to PERA, including, but not limited to, retirement date, designation of survivor beneficiary or form of payment option, must be in writing and filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement.

(2) PERA shall furnish the member an estimate of retirement pension payable under form of payment A within a reasonable time of receipt of the properly completed application and required documents. If the member also desires an estimate of retirement pension payable under forms of payment B, C and D, the member shall request such an estimate in writing.

(3) When the application is filed, PERA shall furnish the member's last affiliated public employer with an employer's certification of earnings form to be completed and returned to PERA. The final calculation of pension cannot be processed until PERA receives the properly completed employer's certification form.

(4) PERA will furnish the member a final calculation of retirement pension based on the information provided by the affiliated public employer.

(5) The completed application form must either include or be accompanied by a signed notarized statement of consent by the member's spouse to the form of payment and beneficiary elected by the member or an affidavit that the member is not married. An affidavit naming all former spouses must also accompany the final application form.

(6) The application shall be considered to be "filed" when PERA receives the completed application as evidenced by a writing on the application indicating the date of receipt by PERA.

(7) Retirement will be effective on the first day of the month following: a) the filing with PERA of the completed, signed application with all required documentation; b) the member's qualifying for retirement based on service and age; and c) the member's termination of non-exempt employment with all affiliated public employers.

(8) The retirement of the member shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

B. The retiring member shall furnish the following documents to PERA:

(1) Proof of age of the member and any designated beneficiary or beneficiaries. Acceptable documents are a birth certificate, a baptismal certificate or religious record of birth established before age 5

years, or any two of the following documents showing the date of birth of the member or designated beneficiary or beneficiaries:

- (a) copy of a life insurance policy;
- (b) certified copy of voter registration issued over ten years prior;
- (c) tribal census record;
- (d) childhood immunization record made prior to age eighteen (18) years;
- (e) military record;
- (f) birth certificate of child showing age of parent;
- (g) physician's or midwife's record of birth;
- (h) passport;
- (i) immigration record;
- (j) naturalization record.

(2) A copy of a marriage certificate or other proof of marital status acceptable in a court of law for any designated beneficiary to be identified as a spouse.

(3) Complete endorsed copies of all court documents necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's benefits. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment with an affiliated public employer. If the member's only divorce was prior to becoming a PERA member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a PERA member, then only the most recent final decree is required.

(4) Any member with an effective retirement date after December 31, 1998 shall provide authorization to the association for the electronic transfer of pension payments to the retiree's banking institution, or a waiver in lieu thereof. Such authorization or waiver shall be executed, in writing, in the form prescribed by the association.

C. No adjustments to the pension based on failure to claim free service credit may be made after the first pension payment.

D. If a member has three or more years of service credit under each of two or more coverage plans, the pension factor and pension maximum provided under the coverage plan which produces the highest pension shall apply. The coverage plan from which the member was last employed shall govern the age and service requirements for retirement. Permissive service credit purchased pursuant to NMSA 1978, Section 10-11-7(H) cannot be used to determine final average salary, pension factor or pension maximum for pension calculation purposes.

E. Upon meeting the membership requirements in 2.80.400 NMAC, a member shall combine concurrent salaries received from two affiliated public employers. In the case of concurrent full-time and part-time employment or full-time and elected official service, service credit shall be earned only for the full-time employment. In the case of two part-time employments, service credit shall be earned only for the employment which has the lowest pension factor and pension maximum. In the case of concurrent employment, termination from all affiliated public employers is required before retirement. No combining of concurrent salary may occur for employees who are on extended annual or sick leave until retirement.

F. A member is vested in his or her accrued benefits when the member reaches normal retirement age of the plan in which he or she is a member at the time of retirement or was last a member. If there is a termination of the PERA retirement system, or if employer contributions to the PERA fund are completely discontinued, the rights of each affected member to the benefits accrued at the date of termination or discontinuance, to the extent then funded, are non-forfeitable.

G. A member who retires must remain unemployed by an employer covered by any state system for a period of at least 90 days before returning to public employment. If the retired member is re-employed by an employer covered by any state system within 90 days of retirement, the member shall be immediately removed from retirement and any pension amounts paid since the member's retirement shall be considered an overpayment that must be reimbursed to PERA by the member. A retired member who performs work for an employer covered by any state system as an independent contractor under a contract approved by PERA is not subject to the provisions of this section. A retired member who works for an employer covered by the Judicial Retirement Act or the Magistrate Retirement Act and who is exempt or excluded from membership in that system under the applicable retirement act is not subject to the provisions of this section. A retired member who works for an employer affiliated with the educational retirement association is not subject to the provisions of this section.

[10-15-97; 11-15-97; 1-15-99; 12-15-99; 2.80.700.10 NMAC - Rn & A, 2 NMAC 80.700.10, 12-28-00; A, 8-15-01; A, 12-28-01; A, 9-30-03; A, 8-31-04]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.1100 NMAC, Sections 6, 20, 30 and 50, effective August 31, 2004. Section 50 is new language.

2.80.1100.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for the payment [~~removal from retirement~~], suspension and reinstatement of pensions of retired members; to establish notification and reporting requirements for post-retirement employment; and to establish conditions for retired members who work for affiliated public employers as independent contractors. [10-15-97; 2.80.1100.6 NMAC - Rn, 2 NMAC 80.1100.6, 12-28-00; A, 9-30-03; A, 8-31-04]

2.80.1100.20 POST-RETIREMENT EMPLOYMENT: When a retired member is subsequently employed by an affiliated public employer, the retired member shall notify PERA immediately on the form prescribed by the association of the hire date, position and salary of the subsequently employed retired member.

A. If a retired member returns to work within ninety (90) days of [~~their~~] the retired member's effective date of retirement, the retired member will be [~~removed~~] suspended from retirement and will be required to repay PERA any pension amounts erroneously paid, plus interest at the rate set by the board for collecting overpayments. If erroneously paid pension payments have not been repaid when the subsequent employment is terminated and the retired member has applied for reinstatement of the pension, the erroneously paid amount must be repaid in full before the pension may be reinstated, or the subsequently employed retired member must make arrangements acceptable to PERA for the erroneously paid amount to be withheld from the reinstated pension until fully repaid.

B. A retired member re-employed by an affiliated public employer shall not be eligible to accrue service credit or eligible to acquire or purchase service credit for the retired member's period of post-retirement public affiliated employment.

C. [~~A retired member re-employed by an affiliated public employer shall be required to make non-refundable employee contributions as required by statute.~~] Effective the first day of the month following the month in which a retired member's earnings total twenty-five thousand dollars (\$25,000) during a calendar

year, retired member employee contributions shall be remitted as specified in the Public Employees Retirement Act, provided that calculations of a retired member's earnings for calendar year 2004 shall be based upon salary or wages received beginning with the first full pay period commencing after March 4, 2004. Once a retired member's earnings total twenty-five thousand dollars (\$25,000) during a calendar year, employee contributions shall continue until the retired member terminates employment with the affiliated public employer for which the retired member was employed at the time the earnings limit was exceeded. Effective January 1, 2007, no retired member employee contributions shall be remitted. Retired member employee contributions are nonrefundable.

[10-15-97; 11-15-97; 2.80.1100.20 NMAC - Rn & A, 2 NMAC 80.1100.20, 12-28-00; A, 12-28-01; A, 9-30-03; A, 8-31-04]

2.80.1100.30 REINSTATEMENT OF PENSION: When a retired member is subsequently employed by an affiliated public employer within ninety (90) days of [~~their~~] the retired member's effective retirement date, causing [~~removal~~] suspension from retirement and resulting in re-establishment of PERA membership, that person will be eligible to reinstate his or her pension at the termination of the subsequent employment period under the following conditions:

A. The member files an application for retirement in accordance with the provisions of 2.80.700.10 NMAC.

B. The recomputed pension, under form of payment A, shall not be less than the amount of the previous pension under form of payment A.

[10-15-97; 2.80.1100.30 NMAC - Rn, 2 NMAC 80.1100.30, 12-28-00; A, 9-30-03; A, 8-31-04]

2.80.1100.50 VOLUNTARY SUSPENSION OF PENSION: A retired member who is subsequently employed by an affiliated public employer and who has not been suspended from retirement pursuant to subsection A of 2.80.1100.20 NMCA may request suspension of the retired member's pension and re-establishment of PERA membership at any time. The previously retired member will be eligible to reinstate his or her pension at the termination of the subsequent employment period under the following conditions:

A. The member files an application for retirement in accordance with the provisions of 2.80.700.10 NMAC.

B. The recalculated pension, under form of payment A, shall not be less than the amount of the suspended pension under form of payment A.

C. If the re-retiring mem-

ber acquires three or more years of service credit during the subsequent employment with an affiliated public employer, the following provisions apply:

(1) the re-retiring member may re-retire under the coverage plan applicable at the time of re-retirement;

(2) the pension payment shall be made employing the form of payment selected by the re-retiring member upon the member's application for re-retirement;

(3) the re-retiring member may designate any person as survivor beneficiary, subject to the provisions of NMSA 1978, Section 10-11-116.

[2.80.1100.50 NMAC - N, 8-31-04]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.1200 NMAC, Sections 5 and 10, effective August 31, 2004.

2.80.1200.5 EFFECTIVE DATE: June 15, 1996 unless a later date is cited at the end of a section.

[6-15-96; 2.80.1200.5 NMAC - Rn, 2 NMAC 80.1200.5, 12-28-00; A, 8-31-04]

2.80.1200.10 SERVICE CREDIT:

A. Service under state legislator member coverage plan 1 or state legislator member coverage plan 2 shall be credited by the calendar year.

B. One year of service credit may be earned for each calendar year during which the member fulfilled the obligations of the position of legislator or lieutenant governor for more than six months of the calendar year, including the legislative session. No service credit may be posted to a member's file until member contributions plus interest, if any, have been paid to PERA and the legislative council service has verified legislative service for the years claimed.

C. If a legislative member has service credit under PERA, other than as a legislative member, the legislative service credit and the regular PERA service credit may be combined for retirement purposes, provided that:

(1) the legislative member has at least five years of service credit under a coverage plan other than state legislator member coverage plan 1 or state legislator member coverage plan 2; and

(2) the legislative member meets the age requirement for normal retirement in the other coverage plan; in computing the benefits for the combined service, the pension shall be the sum of the benefits under state legislator member coverage plan

1 or state legislator member coverage plan 2 for the service as a legislator and the benefits for the remaining service under the applicable coverage plan.

D. In accordance with NMSA 1978, Section 10-11-7(E), the purchase cost for each year of credited military service under a state legislator coverage plan is equal to three times the normal member contribution per year under the state legislator coverage plan applicable to the member.

E. In order to post or adjust service credit for increased retirement benefits available to members under state legislator member coverage plan 1 for one or more calendar years after December 31, 1959 and prior to January 1, 2004, PERA must receive the required member contributions totaling two hundred dollars (\$200.00) per year on or before December 31, 2003.

F. In order to post or adjust service credit for increased retirement benefits available to members under state legislator member coverage plan 2 for one or more calendar years after December 31, 1959 and prior to January 1, 2003, PERA must receive the required member contributions totaling five hundred dollars (\$500.00) per year on or before December 31, 2004. No survivor, estate, heir, personal representative or beneficiary of a deceased legislator or lieutenant governor may post or adjust service credit under the plan.

[11-19-81; 8-1-87; 6-15-96; 2.80.1200.10 NMAC - Rn & A, 2 NMAC 80.1200.10, 12-28-00; A, 9-30-03; A, 8-31-04]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.1400 NMAC, Section 10, effective August 31, 2004.

2.80.1400.10 GENERAL PROVISIONS

A. "Salary" is defined by each state system for that state system. Each system shall certify the member's salary as defined by that system to the payor system, and the payor system shall accept that salary for pension calculation purposes where applicable.

B. The Public Employees Retirement Reciprocity Act applies to normal retirement only, and does not apply to disability retirement or pre-retirement survivor pensions.

C. PERA retiree: If a retired member whose service credit at retirement was acquired only under PERA is:

(1) subsequently employed by an employer covered under another state system, and

(2) the retired member becomes a contributing member of that system, and

(3) the retired member's PERA pension is suspended for the period of membership under that system, and

(4) the retired member acquires service credit under that system, then the subsequently acquired service credit is eligible reciprocal service credit; when the member terminates the subsequent employment and retires again, the subsequent retirement shall be governed by the provisions of the Public Employees Retirement Reciprocity Act.

~~(C)~~ D. Retiree under another state system: If a retired member whose service credit at retirement was acquired only under another state system is:

(1) subsequently employed by an employer covered under PERA, and

(2) the retired member becomes a contributing member of PERA, and

(3) the retired member's pension is suspended for the period of membership under PERA, and

(4) the retired member acquires service credit under PERA, then the subsequently acquired service credit is eligible reciprocal service credit; when the member terminates the subsequent employment and retires again, the subsequent retirement shall be governed by the provisions of the Public Employees Retirement Reciprocity Act.

~~(D)~~ E. Overlapping service credit.

(1) If a member has service credit for the same period of time for employment by public employers covered under different state systems, service credit may only be acquired under one state system for the period of overlapping service credit.

(2) If a member retires with service credit under more than one state system for an overlapping period, the member shall be granted service credit for this overlapping period as follows:

(a) PERA, JRA or MRA shall grant service credit earned for the months the member was employed by an employer covered under one or more of these systems in accordance with all applicable statutes and rules.

(b) ERA shall grant service credit for the quarters of ERA service credited to the member in accordance with all applicable ERA statutes and rules less the amount of service credit granted by PERA, JRA or MRA in subparagraph 2(a) above. In no case shall a member be credited with more than one month of service credit for all service in any calendar month.

~~(E)~~ F. Free or purchased military service credit under any state system

may only be considered eligible reciprocal service credit under one state system for reciprocity retirement purposes.

[F] G. When a member retires according to the provisions of the Public Employees Retirement Reciprocity Act, each state system under which the member has acquired eligible reciprocal service credit shall furnish the payor system with a certified statement of the member's service credit, and other pertinent data necessary to compute the member's pension.

[G] H. A member retired according to the provisions of the Public Employees Retirement Reciprocity Act shall receive the same cost of living adjustments provided by each state system under which the retired member acquired eligible reciprocal service credit. Each state system shall pay the cost of living adjustment due under the provisions of that state system for the portion of the total pension attributable to service credit acquired under that state system.

[H] I. Amendments to this rule shall be effective only if adopted by the educational retirement board and the public employees retirement board.

[10-15-97; 11-15-97; 2.80.1400.10 NMAC - Rn, 2 NMAC 80.1400.10, 12-28-01; A, 9-30-03; A, 8-31-04]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.1500 NMAC, Section 10, effective August 31, 2004.

### 2.80.1500.10 GENERAL PROVISIONS

A. The denial of any claim for retirement benefits may be appealed by a claimant. The appeal shall be initiated by receipt by PERA of a notice of appeal within ninety (90) days of the date of the letter in which the written notification to the claimant of the denial. The notice of appeal must state the reasons for claiming the denial is improper. If the claimant fails to submit a notice of appeal as provided herein, the initial denial of any claim shall constitute the final order of the board.

B. The appeal shall be heard by a hearing officer designated to represent the board unless otherwise provided by the board or board rules.

#### C. Procedure.

(1) PERA's office of general counsel will establish internal procedures for processing appeals, within the parameters set by this rule [for handling appeals].

#### (2) Discovery and evidence.

(a) Following the filing of an appeal, the parties must submit to the hear-

ing officer, with a copy to the other parties, including PERA, at least fifteen (15) days prior to the scheduled hearing, any documentary evidence he or she may wish to present for consideration at the de novo hearing. The hearing officer may grant a request for extension of time to submit documentary evidence for good cause, if such extension is not prejudicial to another party. This documentary evidence shall include all documents that will be introduced as exhibits at the hearing. Failure to comply with the requirements of this paragraph may result in the consideration of the appeal without the documentary evidence.

(b) At the same time documentary evidence is due to be submitted, PERA may, but is not required to file a written response to claimant's notice of appeal.

(c) Upon written request of any party, the parties shall provide to the other parties the names and addresses of persons that may be called as witnesses at the hearing.

(d) Pre-hearing discovery permitted by the rules of civil procedure for the district courts in New Mexico shall be allowed as authorized by the hearing officer. Upon the request of any party in writing, the hearing officer may authorize depositions.

(e) Upon request, the claimant shall provide to the attorney for the association authorizations for the release of records regarding the claimant's health care and employment (whether self-employed or as an employee or an independent contractor).

(f) The rules of evidence do not apply, but the hearing officer may admit all relevant evidence, which in the opinion of the hearing officer, is the best evidence most reasonably obtainable, having due regard to its necessity, competence, availability and trustworthiness. Such evidence shall be given the weight the hearing officer deems appropriate.

(g) The hearing officer may, upon good cause shown, remand the matter back to the disability review committee or the association for reconsideration.

#### (3) Hearing.

(a) A hearing shall be held within sixty (60) days of receipt of the notice of appeal unless the parties mutually agree to an extension of time and the extension is approved in writing by the hearing officer. The parties shall be given at least thirty (30) days written notice of the scheduled hearing.

(b) The board's authority to issue subpoenas is delegated to the hearing officer for the purpose of obtaining evidence or testimony not otherwise available.

(c) The board's authority to administer oaths is delegated to the hearing officer for the purpose of conducting the hearing.

(d) The parties have the right to

present argument and evidence orally, to present or cross-examine witnesses, and to be accompanied by counsel.

(e) Failure of the claimant or his or her representative to appear at the hearing, without prior approval from the hearing officer, shall result in automatic final denial of any claims previously asserted.

(f) If the claimant or his or her representative requests rescheduling of a hearing so late that additional costs are incurred, any additional costs incurred shall be assessed against the claimant.

(4) Burden of persuasion. Unless otherwise established by law, the claimant has the burden of proving by a preponderance of the evidence the facts relied upon to show he or she is entitled to the benefit denied.

(5) Record. The hearing shall be recorded by a certified court reporter, and copies of all evidence offered shall be maintained by the association for a period of not less than five (5) years. Any party desiring a copy of the transcript of the proceedings shall be responsible for paying the cost, if any, of preparing such copy. The appellant shall make arrangements with the association for the preparation of transcripts for appeal to the district court.

#### (6) Recommended decision.

(a) The hearing officer's recommended decision shall be based upon the evidence adduced at the hearing and shall be issued by the hearing officer within sixty (60) days following the close of the record.

(b) The hearing officer shall propose findings of fact and conclusions of law as part of the recommended decision to the board.

(7) Exceptions to recommended decision.

(a) The parties to a proceeding may file with the board exceptions to the hearing officer's recommended decision within fifteen (15) days of the date of issuance of the recommended decision. Upon the written request of a party, and for good cause shown, the hearing officer may extend the time to file exceptions.

(b) Copies of such exceptions and any briefs shall be served on all parties and the hearing officer, and a statement of such service shall be filed with the exceptions.

(c) Exceptions to a hearing officer's recommended decision shall cite the precise substantive or procedural issue to which exceptions are taken and shall be based only on the evidence and arguments presented at the hearing.

(d) Any exception not specifically made shall be considered waived. Any exception that fails to comply with the foregoing requirements may be disregarded.

(e) The hearing officer may file with the board a response to any exceptions filed within fifteen (15) days of the date of

filing of the exceptions and shall serve copies on all parties.

D. Final action by the board.

(1) The board shall consider the hearing officer's recommended decision, exceptions and any supporting briefs to the recommended decision, and the hearing officer's response to the exceptions, if any. The board may review all of the record made before the hearing officer.

(2) The board shall not consider any additional oral argument, evidence or affidavits not in the record before the hearing officer, or pleadings not filed in accordance with these rules.

(3) The board may request that the hearing officer be present at the time the board reviews a recommended decision issued by a hearing officer and may discuss the recommended decision with the hearing officer. The board members may also discuss the recommended decision among themselves and with legal counsel to the board.

(4) The board's final action shall be rendered no later than 180 days from the date of the hearing officer's recommended decision. Board members who need additional time to review the record before taking final action may request of the board chair that additional time for review be given. If additional time is requested, the deadline for the board's final action shall be extended for one month.

(5) Ex parte communication with board members or hearing officers concerning a decision that is on appeal is prohibited.

(6) The board may remand a recommended decision to the hearing officer for additional findings, conclusions, clarification and/or the taking of additional evidence. Such a remand shall restart the time frames contained in this rule.

(7) The board shall approve, disapprove or modify the recommended decision, and shall enter a final order concerning the matter being appealed. The board may modify the proposed conclusions of law based on the proposed findings of fact. If the board wishes to modify the proposed findings of fact, it may do so only after review of the record before the hearing officer. The board shall provide a reasoned basis for changing the hearing officer's recommendation.

[10-15-97; 11-15-97; 12-15-99; 2.80.1500.10 NMAC - Rn, 2 NMAC 80.1500.10, 12-28-01; A, 9-30-03; A, 8-31-04]

## NEW MEXICO RACING COMMISSION

This is an amendment to 16.47.1 NMAC, Section 12, effective 08/31/2004.

### 16.47.1.12 JOCKEYS

#### A. ELIGIBILITY:

~~[(1)] No person under 18 years of age will be licensed by the Commission as a jockey, except those who have previously been licensed.~~

[(2)] (1) A jockey must pass a physical examination given within the previous twelve months by a licensed physician affirming fitness to participate as a jockey. The stewards may require that any jockey be reexamined and may refuse to allow any jockey to ride pending completion of such examination.

[(3)] (2) An applicant must demonstrate by prior licensing, or demonstration of riding ability and temporary participation in races with the stewards' prior approval, riding competence and ability. The stewards may authorize a temporary license to ascertain the applicant's riding competence and ability.

[(4)] (3) A jockey shall not be an owner or trainer of any horse competing at the race meeting where the jockey is riding.

#### B. APPRENTICE JOCKEYS:

(1) An apprentice jockey must be 16 years of age and if less than the age of 18, a parent or guardian must sign the license application assuming full financial responsibility for the applicant.

(2) An applicant for an apprentice jockey license shall provide a certified copy of the applicant's birth certificate or other satisfactory evidence of date of birth.

[(4)] (3) An apprentice jockey license does not apply to quarter horse racing.

[(2)] (4) An applicant with an approved apprentice certificate may be licensed as an apprentice jockey.

[(3)] (5) An apprentice certificate may be obtained from the stewards on a form provided by the commission.

[(4)] (6) An apprentice jockey shall ride with a five pound weight allowance beginning with his/her first mount and for one full year from the date of his/her fifth winning mount. If after riding one year from the date of his/her fifth winning mount, the apprentice jockey has failed to ride a total of forty winners, he/she shall continue to ride with a five pound weight allowance for one more year from the date of his/her fifth winning mount or until he/she has ridden forty winners, whichever comes first. In no event may a weight allowance be claimed for more than two

years from the date of the fifth winning mount unless an apprentice jockey is unable to ride for a period of seven consecutive days or more after the date of his/her fifth winning mount because of service in national armed forces, enrollment in high school or an institution of secondary education, or because of physical disablement, or restriction on racing or other valid reasons, the commission may extend the time during which such apprentice weight allowance may be claimed for a period not to exceed the period such apprentice jockey was unable to ride. The stewards or commission may issue apprentice extensions with proper documentation.

[(5)] (7) An apprentice jockey must meet the conditions set forth in Subsection A of 16.47.1.12 NMAC.

#### C. FOREIGN JOCKEYS:

Whenever a jockey from a foreign country rides in this jurisdiction, the jockey must declare that he/she is a holder of a valid license in his/her country and currently not under suspension. To facilitate this process, the jockey shall present a declaration sheet in a language recognized in this jurisdiction to the Commission. The jockey must complete a license application and be fingerprinted to be maintained in the files of the Commission.

#### D. JOCKEYS RESPONSIBILITY:

(1) A jockey shall not have a valet-attendant except one provided and compensated by the association.

(2) No person other than the licensed contract employer, or a licensed jockey agent, may make riding engagements for a rider, except that a jockey not represented by a jockey agent may make his own riding engagements.

(3) A jockey shall have no more than one jockey agent

(4) No revocation of a jockey agent's authority is effective until the jockey notifies the stewards in writing of the revocation of the jockey agent's authority.

#### E. JOCKEY BETTING:

A jockey shall only be allowed to wager on a race in which he/she is riding. A jockey shall only be allowed to wager if: the owner or trainer of the horse which the jockey is riding makes the wager for the jockey; the jockey only wagers on his/her own mount to win or finish first in combination with other horses in multiple type wagers; and records of such wagers are kept and available for presentation upon request by the stewards.

[16.47.1.12 NMAC - Rp, 16 NMAC 47.1.12, 03/15/2001; A, 08/31/2004]



## NEW MEXICO REAL ESTATE APPRAISER'S BOARD

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 62 REAL ESTATE APPRAISERS PART 11 APPLICATION FOR RECIPROCITY

**16.62.11.1 ISSUING AGENCY:** Regulation and Licensing Department, NM Real Estate Appraisers Board, P. O. Box 25101, Santa Fe, NM 87504.  
[16.62.11.1 NMAC - N, 09/13/2004]

**16.62.11.2 SCOPE:** All apprentice real estate appraisers, licensed real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed real estate appraisers.  
[16.62.11.2 NMAC - N, 09/13/2004]

**16.62.11.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the real estate appraisers board, Sections 61-30-1 and 20 NMSA 1978 as amended.  
[16.62.11.3 NMAC - N, 09/13/2004]

**16.62.11.4 DURATION:** Permanent.  
[16.62.11.4 NMAC - N, 09/13/2004]

**16.62.11.5 EFFECTIVE DATE:** 09/13/2004, unless a later date is cited at the end of a section.  
[16.62.11.5 NMAC - N, 09/13/2004]

**16.62.11.6 OBJECTIVE:** This part provides requirements for making application for reciprocity.  
[16.62.11.6 NMAC - N, 09/13/2004]

**16.62.11.7 DEFINITIONS:** [RESERVED]  
[16.62.11.7 NMAC - N, 09/13/2004]

**16.62.11.8 APPLICATION FOR RECIPROCITY:**  
A. Applications for New Mexico state licensed appraiser, residential or general certified appraisers must hold an appraisers license or certificate in another state and that state must extend the privilege of licensure or certification to New Mexico licensed or certified appraisers.

B. Applicants for reciprocity in the state of New Mexico must:  
(1) meet or exceed the New Mexico board of real estate appraisers requirements;  
(2) complete an application for New Mexico state licensed appraiser or cer-

tified appraiser, including the first page, the personal history questionnaire, three letters of verification, a 2" X 2" photograph;

(3) letter of verification and good standing from applicant's home state or other state where applicant holds a current license or certificate; verification of the state's required educational hours and experience hours, issuance and expiration date, and discipline record; verification and good standing must have original signature, notarized, and the state's seal;

(4) copy of license;

(5) payment of the appropriate fee by check or money order;

(6) file an irrevocable consent in accordance with the provisions of NMSA 1978 Section 61-30-20.B. in that suits and actions may be commenced against the applicant under the process so described;

(7) comply with all the New Mexico board of real estate appraisers statutes, rules and regulations.

[16.62.11.8 NMAC - N, 09/13/2004]

**HISTORY OF 16.62.11 NMAC:** [RESERVED]

## NEW MEXICO REAL ESTATE APPRAISER'S BOARD

This is an amendment to 16.62.1 NMAC, Sections 2, 5, 6, 7 and 8. In accordance with the current NMAC requirements, this action also renumbers, reformats and replaces 16 NMAC 62.1, General Provisions (filed 12/29/99) with 16.62.1 NMAC, General Provisions, effective 09/13/2004.

**16.62.1.2 SCOPE:** All apprentice real estate appraisers, licensed real estate appraisers, ~~registered real estate appraisers~~ residential certified real estate appraisers, general certified real estate appraisers and temporary licensed real estate appraisers.

[1/14/00; 16.62.1.2 NMAC - Rn & A, 16 NMAC 62.1.2, 09/13/2004]

**16.62.1.5 EFFECTIVE DATE:** January 14, 2000, unless a later date is cited at the end of a section ~~or paragraph~~.  
[1/14/00; 16.62.1.5 NMAC - Rn & A, 16 NMAC 62.1.5, 09/13/2004]

**16.62.1.6 OBJECTIVE:** This part provides definitions used in the regulations, adopts FIRREA and the uniform standards professional appraisal practice (USPAP), provides for inspection of board records and telephonic attendance at meetings by board members.  
[1/14/00; 16.62.1.6 NMAC - Rn & A, 16 NMAC 62.1.6, 09/13/2004]

**16.62.1.7 DEFINITIONS:** The following rules and regulations are for the purpose of implementing the provisions of the New Mexico Real Estate Appraisers Act.

~~[H]~~ A. "Acceptable" appraisal experience includes, but is not limited to the following: fee and staff appraisal, ad valorem tax appraisal, review appraisal, market analysis, real estate counseling/consulting, highest and best use analysis, feasibility analysis, and teaching of appraisal courses. All experience claimed after December 1, 1990, must be in conformance with applicable ~~[uniform standards of professional appraisal practice]~~ USPAP. Appraisal experience acceptable toward licensing or certification must have been gained under the supervision of an appraiser who is ~~licensed or~~ certified at a level equal to or greater than the license or certificate the applicant is seeking.

B. "Appraisers Act" or "act" means the New Mexico Real Estate Appraisers Act as defined in Section 61-30-1 NMSA 1978.

C. "C o m p l a i n t Committee" shall be appointed by the board. The chairperson of the committee shall be an appraiser board member. The board appointed complaint committee is for the purpose of review of complaints and shall make recommendations to the board as to its findings. No real estate appraiser organization shall have a majority membership on the committee.

~~[K]~~ D. "Duly made application" means an application to the New Mexico real estate appraisers board including items 1-7 set out below, in addition to any other requirements of the board.

(1) completed application on the form provided by the board; the form must be signed by the applicant attesting to the truthfulness of the information provided in the application;

(2) letters of verification from at least three individuals who are not related to the applicant but who are acquainted personally and professionally with him/her and who can attest that the applicant is of good moral character; and is competent;

(3) a statement attesting that he/she is a native, a naturalized citizen or a legal resident of the United States;

(4) transcripts or certificates or statements showing successful completion of the required appraisal courses;

(5) a recent photograph of the applicant in which the applicant clearly is discernible; the photograph must be at least two inches by three inches in size;

(6) a check or money order for the fees set out in ~~[Part 12]~~ 16.62.12.8 NMAC;

(7) an appraiser experience log recorded on the forms approved by the board or on another approved form, if



required.

~~[D-]~~ E. "Education advisory committee" shall be appointed by the board for the purpose of review of applications for course approval and sponsorship approval of appraiser educational offerings and shall make recommendations to the board as to its findings. Membership in a professional organization or association shall not be a prerequisite to serve on the committee. No real estate appraiser organization shall have a majority membership on the committee.

~~[C-]~~ F. "Ethics provision" emphasizes the personal and professional obligations and responsibilities of the individual appraiser.

G. "Experience" is defined as verifiable time spent in performing tasks in accordance with the definition of "appraisal" and "appraisal assignment", as stated in the act, Section 61-30-3 NMSA 1978. Such tasks include inspecting and analyzing properties; assembling and analyzing relevant market data; forming objective opinions as to the value, quality or utility of such properties; and preparing reports or file memoranda showing data, reasoning and conclusions. Professional responsibility for the valuation function is essential for experience credit.

~~[H-]~~ H. "Experience" will be submitted to the board in the form of a log, which indicates assignment information and type, compensation status, time spent on the assignment and whether the applicant signed the report. Experience credit claimed on the log must be attested to by the supervising appraiser. Experience logs are subject to review and request for supporting documentation.

~~[J-]~~ I. "Experience review process" is the method by which appraiser experience is approved for credit toward licensure or certification. The process includes the review of the experience log submitted by the applicant; selection of three or more entries for review of the reports and any additional file memoranda; and approval of experience hours claimed and conformance of reports with applicable USPAP standards.

~~[E-]~~ J. "FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and its amendments.

~~[A-]~~ K. "Location" means the offices of the New Mexico real estate appraisers board will be located in Santa Fe, New Mexico

L. "Non-complex" means one to four residential units having a transaction value less than \$1,000,000 and complex one to four residential units having a transaction value less than \$250,000. Complex one to four family residential property appraisal means one in which the property to be appraised, the form of own-

ership, or the market conditions are atypical (Bank Holding Company Supervision Manual, 1999, page 10, section 2231.0.9.3).

M. "Nonresident" for the purposed of 61-30-20 of the New Mexico Real Estate Appraisers Act, nonresident applicants; reciprocity, means an individual who holds a current apprentice registration, license, or certificate, and is good standing, in another state.

N. "Supervising appraiser" means a certified residential or certified general appraiser in good standing in the training jurisdiction and not subject to any disciplinary action within the last two (2) years that effects the supervisor's legal eligibility to engage in appraisal practice.

~~[E-]~~ O. "The board" may reject any application for an ~~[appraiser's]~~ apprentice [registration] license or certificate for:

- (1) incomplete, inaccurate or fraudulent application;
- (2) application not submitted on the proper board-approved form;
- (3) failure to pay the fees in full in a form acceptable to the board.

~~[F-]~~ P. "Uniform standards of professional appraisal practice" (USPAP) deal with the procedures to be followed in which an appraisal, analysis, or opinion is communicated.

[1/14/00; 16.62.1.7 NMAC - Rn & A, 16 NMAC 62.1.7, 09/13/2004]

**16.62.1.8 STANDARDS OF PROFESSIONAL PRACTICE, CODE OF PROFESSIONAL RESPONSIBILITY AND ADOPTION OF FIRREA:**

A. The ~~[uniform standards of professional appraisal practice]~~ USPAP and the appraisal standards board's code of professional responsibility, as filed in the federal register, are the minimum professional and ethical standards that will govern appraisers practicing in New Mexico.

B. The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA, 12 U.S.C. 3351) and its current amendments are adopted and incorporated into these regulations by reference.

[1/14/00; 16.62.1.8 NMAC - Rn & A, 16 NMAC 62.1.8, 09/13/2004]

**NEW MEXICO REAL ESTATE APPRAISER'S BOARD**

This is an amendment to 16.62.2 NMAC, Sections 2, 5, 6, 7 and 8. In accordance with the current NMAC requirements, this action also renubmers, reformats and replaces 16 NMAC 62.2, Application for Registration (filed 12/29/99) with 16.62.2 NMAC, Application for Apprentice, effective 09/13/2004.

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 62 REAL ESTATE APPRAISERS PART 2 APPLICATION FOR [REGISTRATION] APPRENTICE**

**16.62.2.2 SCOPE:** All apprentice real estate appraisers, licensed real estate appraisers, [registered real estate appraisers] residential certified real estate appraisers, general certified real estate appraisers and temporary licensed real estate appraisers.

[1/14/00; 16.62.2.2 NMAC - Rn & A, 16 NMAC 62.2.2, 09/13/2004]

**16.62.2.5 EFFECTIVE DATE:** January 14, 2000, unless a later date is cited at the end of a section ~~[or paragraph]~~.

[1/14/00; 16.62.2.5 NMAC - Rn & A, 16 NMAC 62.2.5, 09/13/2004]

**16.62.2.6 OBJECTIVE:** This part provides requirements for making application for ~~[registration]~~ apprenticeship as a real estate appraiser.

[1/14/00; 16.62.2.6 NMAC - Rn & A, 16 NMAC 62.2.6, 09/13/2004]

**16.62.2.7 DEFINITIONS:** ~~[RESERVED]~~ Prior to 09/13/2004, all "apprentice real estate appraisers" were designated as "registered real estate appraisers".

[1/14/00; 16.62.2.7 NMAC - Rn & A, 16 NMAC 62.2.7, 09/13/2004]

**16.62.2.8 [REGISTRATION] APPRENTICE:** ~~[A-]~~ A holder of [a registration] an apprentice registration, but not a license or certificate, is authorized to prepare appraisals of all types of real estate or real property, provided such appraisals are not described or referred to as "state licensed" or "state certified" and provided further, the [registered] apprentice appraiser does not assume or use any title, designation or abbreviation likely to create the impression that he/she is a state-licensed or state-certified real estate appraiser. [Registration holders] Apprentices are not qualified to perform under FIRREA, Title XI.

~~[B-]~~ A. Applicants for ~~[registration as]~~ apprentice real estate [appraiser] appraisers in the state of New Mexico must:

- (1) be a legal resident of the United States;
- (2) have reached the age of majority;
- (3) prove ~~[they have completed 75 board approved classroom hours of real estate appraisal or equivalent board approved education;]~~ successful completion of real estate appraisal education of at least 75 board-approved classroom hours; real

estate appraisal education programs completed for credit toward this requirement shall include coverage of the following topics, with emphasis on ethics, and basic appraisal principles and procedures in: basic appraisal principles - 30 hours; basic appraisal procedures - 30 hours; and the 15-hour national USPAP course or its equivalent - 15 hours;

(4) courses taken in satisfying the qualifying education requirements shall not be repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased;

~~[(4)]~~ (5) demonstrate to the board that he/she is honest, trustworthy and competent ~~[to render appraisals];~~

(6) successful completion of a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

~~[(5)]~~ (7) pay the fees set out in ~~[Part 12]~~ 16.62.12.8 NMAC;

~~[(6)]~~ (8) submit a duly made application to the board office;

~~[(7)]~~ demonstrate knowledge of the licensing law by submitting a correctly completed questionnaire on NM state license law and regulations.

~~C. The course of instruction for licensing should include instruction in the following subjects:~~

~~(1) ethics;~~

~~(2) principles of value;~~

~~(3) methods of appraisal and reconciliation;~~

~~(4) 15 hours of classroom instruction in the standards of professional practice and New Mexico real estate appraisal law; and~~

~~(5) other subjects relating to appraisals.]~~

B. Training: The apprentice appraiser shall be subject to direct supervision by a supervising appraiser. The supervising appraiser shall be responsible for the training, guidance, and direct supervision of the apprentice appraiser by:

(1) accepting responsibility for the appraisal report by signing and certifying the report complies with USPAP;

(2) reviewing and signing the apprentice appraiser appraisal report(s);

(3) personally inspecting each appraised property with the apprentice appraiser until the supervising appraiser determines the apprentice appraiser is competent, in accordance with the competency rule of USPAP for the property type;

(4) the apprentice appraiser is permitted to have more than one supervising appraiser, but a supervising appraiser may not supervise more than three licensed appraisers at one time;

(5) an appraisal log shall be main-

tained by the apprentice appraiser and the supervising appraiser jointly on the experience log as approved by the board.

[1/14/00; 16.62.2.8 NMAC - Rn & A, 16 NMAC 62.2.8, 09/13/2004]

## NEW MEXICO REAL ESTATE APPRAISER'S BOARD

This is an amendment to 16.62.3 NMAC, Sections 2, 5 and 8. In accordance with the current NMAC requirements, this action also renumbers, reformats and replaces 16 NMAC 62.3, Application for License (filed 8/29/1997) with 16.62.3 NMAC, Application for License, effective 09/13/2004.

**16.62.3.2 SCOPE:** All apprentice real estate appraisers, licensed real estate appraisers, ~~[registered real estate appraisers;]~~ residential certified real estate appraisers, general certified real estate appraisers and temporary licensed real estate appraisers.

[10/1/97; 16.62.3.2 NMAC - Rn & A, 16 NMAC 62.3.2, 09/13/2004]

**16.62.3.5 EFFECTIVE DATE:** October 1, 1997, unless a later date is cited at the end of a section ~~[or paragraph]~~.

[10/1/97; 16.62.3.5 NMAC - Rn & A, 16 NMAC 62.3.5, 09/13/2004]

**16.62.3.8 LICENSE:** A holder of a state license may prepare appraisals of non-complex residential real estate for federally related transactions or other uses. He/she may appraise complex residential or nonresidential real estate provided such appraisals are not described or referred to as meeting the requirements of FIRREA. The holder of a license may not assume or use any title, designation or abbreviation likely to create the impression of certification.

A. The licensed real estate appraiser classification applies to the appraisal of non-complex one to four residential units having a transaction value less than \$1,000,000 and complex one to four residential units having a transaction value less than \$250,000.

B. Complex one-to four-family residential property appraisal means one in which the property to be appraised, the form of ownership, or the market conditions are atypical. For non-federally related transaction appraisals, transaction value shall mean market value.

C. All licensed real estate appraisers must comply with the competency rule of USPAP.

[A.] D. Applicants for licensure in the state of New Mexico must:

(1) be a legal resident of the United States;

(2) have reached the age of majority;

(3) prove [they have completed a minimum of 75 classroom hours of real estate appraisal and 15 classroom hours in the standards of professional practice approved by the board;] successful completion of real estate appraisal education of at least 90 board-approved classroom hours; real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following topics, with emphasis on ethics, and basic appraisal principle and procedures in: basic principles - 30 hours; basic appraisal procedures - 30 hours; the 15-hour national USPAP course or its equivalent - 15 hours; and a minimum of 15 hours from one or more of the following:

(a) residential market analysis and highest and best use;

(b) residential appraiser site valuation and cost approach;

(c) residential sales comparison and income approaches;

(d) residential report writing and case studies;

(4) [have a minimum of 2,000 hours of experience in real property appraisal, as defined in Part 1, submitted on a form prescribed by the board and attested to by a duly licensed or certified appraiser under whose supervision the experience was obtained.] examination: the AQB approved licensed real estate appraiser examination must be successfully completed; there is no alternative to successful completion of the examination;

(5) courses taken in satisfying the qualifying education requirements shall not be repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased;

~~[(5)]~~ (6) ~~[attest]~~ demonstrate to the board that he/she is honest, trustworthy and competent;

~~[(6)]~~ (7) ~~[pass]~~ successful completion of a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

~~[(7)]~~ (8) pay the fee set out in ~~[Part 12]~~ 16.62.12.8 NMAC;

~~[(8)]~~ (9) meet the minimum criteria for state licensure issued by the appraisers qualifications board of the appraisal foundation;

~~[(9)]~~ (10) submit a duly made application to the board office.

~~[B. Applicants for state licensure must have completed successfully 90 hours of classroom instruction in the following areas: fifteen (15) hours in uniform standards of professional appraisal practice~~

~~approved by the board; thirty (30) hours in basic appraisal education; thirty (30) hours specific to residential appraisal; and fifteen (15) hours in appraisal methods.]~~

E. Experience: applicants for state licensure must have a minimum of 2,000 hours of experience obtained in no fewer than twelve (12) months in real property appraisal as defined in Part 1, submitted on a form prescribed by the board and attested to by the supervising appraisers under whose supervision the experience was obtained.

F. Upgrade in licensure: Moving up in licensure shall be subject to direct supervision by a supervising appraiser. The supervising appraiser shall be responsible for the training, guidance, and direct supervision of the licensed appraiser by:

(1) accepting responsibility for the appraisal report by signing and certifying the report complies with USPAP;

(2) reviewing and signing the licensed appraiser appraisal report(s);

(3) personally inspecting each appraised property with the licensed appraiser until the supervising appraiser determines the licensed appraiser is competent, in accordance with the competency rule of USPAP for the property type;

(4) the licensed appraiser is permitted to have more than one supervising appraiser, but a supervising appraiser may not supervise more than three licensed appraisers at one time;

(5) an appraisal log shall be maintained by the licensed appraiser and the supervising appraiser jointly on the experience log as approved by the board.  
[10/1/97; 16.62.3.8 NMAC - Rn & A, 16 NMAC 62.3.8, 09/13/2004]

## NEW MEXICO REAL ESTATE APPRAISER'S BOARD

This is an amendment to 16.62.4 NMAC, Sections 2, 5 and 8. In accordance with the current NMAC requirements, this action also renumbers, reformats and replaces 16 NMAC 62.4, Application for Residential Certificate (filed 8/29/1997) with 16.62.4 NMAC, Application for Residential Certificate, effective 09/13/2004.

**16.62.4.2 SCOPE:** All apprentice real estate appraisers, licensed real estate appraisers, ~~[registered real estate appraisers,]~~ residential certified real estate appraisers, general certified real estate appraisers and temporary licensed real estate appraisers.

[10/1/97; 16.62.4.2 NMAC - Rn & A, 16 NMAC 62.4.2, 09/13/2004]

**16.62.4.5 EFFECTIVE DATE:** October 1, 1997, unless a later date is cited at the end of a section ~~[or paragraph]~~.  
[10/1/97; 16.62.4.5 NMAC - Rn & A, 16 NMAC 62.4.5, 09/13/2004]

**16.62.4.8 RESIDENTIAL CERTIFICATION:** A holder of a residential certificate is eligible to prepare appraisals of all residential real estate for federally related transactions or other uses. He/she may appraise nonresidential real estate provided such appraisals are not described or referred to as meeting the requirements of FIRREA. The holder of a residential certificate may not assume or use any title, designation or abbreviation likely to create the impression of general certification.

A. The certified residential real estate appraiser classification qualifies the appraiser to appraise one to four residential units without regard to value or complexity. The classification includes the appraisal of vacant or unimproved land that is utilized for one to four family purposes or for which the highest and best use is for one to four family purposes. The classification does not include the appraisal of subdivisions for which a development analysis/appraisal is necessary.

B. All certified residential real estate appraisers must comply with the competency rule of USPAP.

~~[A.]~~ C. Applicants for certification in residential appraisal in the state of New Mexico must:

(1) be a legal resident of the United States;

(2) have reached the age of majority;

(3) prove [they have completed 405 classroom hours of real estate appraisal and 15 classroom hours in the standards of professional practice approved by the board. Equivalent board approved education may be accepted;] successful completion of real estate appraisal education of at least 120 board-approved classroom hours; real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following topics, with emphasis on ethics, and basic appraisal principles and procedures in: basic appraisal principles - 30 hours; basic appraisal procedures - 30 hours; the 15-hour national USPAP course or its equivalent - 15 hours; and a minimum of 45 hours from one or more of the following:

(a) residential market analysis and highest best use;

(b) residential appraiser site valuation and cost approach;

(c) residential sales comparison and income approaches;

(d) residential report writing and case studies;

(e) statistics, modeling and

finance;

(f) advanced residential applications and case studies;

(g) appraisal subject matter electives;

~~[(4) have two years and 2,500 hours of experience in real property appraisal, as defined in Part 1 [now 16.62.1 NMAC], submitted on a form prescribed by the board and attested to by a duly licensed or certified appraiser under whose supervision the experience was obtained.]~~

(4) examination: the AQB approved certified real estate appraiser examination must be successfully completed; there is no alternative to successful completion of the examination;

~~[(5) attest to the board that he/she is honest, trustworthy and competent;]~~

(5) courses taken in satisfying the qualifying education requirements shall not be repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased;

~~[(6) pass a written examination administered by the board;]~~

(6) demonstrate to the board that he/she is honest, trustworthy and competent;

(7) successful completion of a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

~~[(7)]~~ (8) pay the fee set out in [Part 12] 16.62.12.8 NMAC;

~~[(8)]~~ (9) meet the minimum criteria for the state residential certificate classification issued by the appraisers qualifications board of the appraisal foundation;

~~[(9)]~~ (10) submit a duly made application to the board office.

~~[B.]~~ D. Experience: applicants for state residential certification must have [completed successfully one hundred twenty (120) hours of classroom instruction consisting of: fifteen (15) hours of uniform standards of professional appraisal practice approved by the board; thirty (30) hours of specific instruction in basic valuation procedures and theory; thirty (30) hours of instruction in residential appraisal; forty-five (45) hours of instruction in appraisal procedures, capitalization and income theory, appraisal applications or any other advanced coursework at the G-3 level or above] a minimum of 2,500 hours of experience in real property appraisal obtained during no fewer than twenty-four (24) months as defined in 16.62.1 NMAC, submitted on a form prescribed by the board and attested to by the supervising appraiser under whose supervision the experience was obtained.

E. Upgrade in licensure.

(1) Moving up in licensure shall

be subject to direct supervision by a supervising appraiser.

(2) The supervising appraiser shall be responsible for the training, guidance, and direct supervision of the licensed appraiser by:

(a) accepting responsibility for the appraisal report by signing and certifying the report complies with USPAP;

(b) reviewing and signing the residential certified appraisal report(s);

(c) personally inspecting each appraised property with the residential certified appraiser until the supervising appraiser determines the residential certified appraiser is competent, in accordance with the competency rule of USPAP for the property type;

(d) the residential certified appraiser is permitted to have more than one supervising appraiser, but a supervising appraiser may not supervise more than three licensed appraisers at one time;

(e) an appraisal log shall be maintained by the residential certified appraiser and the supervising appraiser jointly on the experience log as approved by the board; [10/1/97; 16.62.4.8 NMAC - Rn & A, 16 NMAC 62.4.8, 09/13/2004]

## NEW MEXICO REAL ESTATE APPRAISER'S BOARD

This is an amendment to 16.62.5 NMAC, Sections 2, 5 and 8. In accordance with the current NMAC requirements, this action also renumbers, reformats and replaces 16 NMAC 62.5, Application for General Certificate (filed 8/29/1997) with 16.62.5 NMAC, Application for Apprentice, effective 09/13/2004.

**16.62.5.1 ISSUING AGENCY:** Regulation and Licensing Department - NM Real Estate Appraisers Board. P.O. Box 25101, Santa Fe, NM 87504. [10/1/97; 16.62.5.1 NMAC - Rn, 16 NMAC 62.5.1, 09/13/2004]

**16.62.5.2 SCOPE** All apprentice real estate appraisers, licensed real estate appraisers, [registered real estate appraisers,] residential certified real estate appraisers, general certified real estate appraisers and temporary licensed real estate appraisers. [10/1/97; 16.62.5.2 NMAC - Rn & A, 16 NMAC 62.5.2, 09/13/2004]

**16.62.5.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the real estate appraisers board, Sections 61-30-7, 10, 12, 13 and 14 NMSA 1978 as amended. [10/1/97; 16.62.5.3 NMAC - Rn, 16 NMAC

62.5.3, 09/13/2004]

**16.62.5.4 DURATION:** Permanent. [10/1/97; 16.62.5.4 NMAC - Rn, 16 NMAC 62.5.4, 09/13/2004]

**16.62.5.5 EFFECTIVE DATE:** October 1, 1997, unless a later date is cited at the end of a section [or paragraph]. [10/1/97; 16.62.5.5 NMAC - Rn & A, 16 NMAC 62.5.5, 09/13/2004]

**16.62.5.6 OBJECTIVE:** This provides requirements for making application for certification as a general certified real estate appraiser. [10/1/97; 16.62.5.6 NMAC - Rn, 16 NMAC 62.5.6, 09/13/2004]

**16.62.5.7 DEFINITIONS:** [RESERVED]

**16.62.5.8 GENERAL CERTIFICATE:** A holder of a general certificate may prepare appraisals on all real estate and may indicate that such appraisals are state certified.

A. All certified general real estate appraisers must comply with the competency rule of USPAP.

[A] B. Applicants for the general certificate in the state of New Mexico must:

(1) be a legal resident of the United States;

(2) have reached the age of majority;

(3) prove [they have completed one hundred sixty five (165) board approved classroom hours of real estate appraisal and 15 classroom hours in the standards of professional practice;] successful completion of real estate appraisal education of at least 180 board-approved classroom hours; real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following topics, with emphasis on ethics, and basic appraisal principles and procedures in: basic appraisal principles - 30 hours; basic appraisal procedures - 30 hours; the 15 hour-national USPAP course or its equivalent - 15 hours; and a minimum of 105 hours from one or more of the following:

(a) general appraiser market analysis and highest and best use;

(b) statistics, modeling and finance;

(c) general appraiser sales comparison approach;

(d) general appraiser site valuation and cost approach;

(e) general appraiser income approach;

(f) general appraiser report writ-

ing and case studies;

(g) appraisal subject matter electives;

(4) [have the equivalent of not less than thirty (30) months and 3,000 hours of appraisal experience, one thousand five hundred (1,500) hours of which must be in nonresidential appraisal, as defined in Part 1. Such experience must be submitted on a form prescribed by the board and attested to by a duly licensed or certified appraiser under whose supervision the experience was obtained.] examination: the AQB approved uniform state certified general real estate appraiser examination must be successfully completed; there is no alternative to successful completion of the examination.

(5) courses taken in satisfying the qualifying education requirements shall not be repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased;

[(5)] (6) demonstrate to the board that he/she is honest, trustworthy and competent [to render appraisals;]

[(6)] (7) [pass] successful completion of a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

[(7)] (8) pay the fee set out in [Part 12] 16.62.12.8 NMAC;

[(8)] (9) meet the minimum criteria for state general certification classification [set by the] issued by the appraisers qualifications board of the appraisal foundation;

[(9)] (10) submit a duly made application to the board office.

[B] C. [Individuals applying for general certification must submit evidence of completion of one hundred eighty (180) classroom hours of approved appraiser education, as follows: 30 hours basic principles of appraisal, 30 hours appraisal procedures, 30 hours capitalization and income theory, 45 hours appraisal case studies or advanced specialties, and 15 hours uniform standards of professional appraisal practice or other classroom hours as approved by the board.] Experience: applicants for state general certification must have a minimum of 3,000 hours of experience in real property appraisal obtained during no fewer than thirty (30) months, of which, one thousand five hundred (1,500) hours must be in non-residential appraisal work as defined in Part 1, submitted on a form prescribed by the board and attested to by the duly certified general supervising appraiser under whose supervision the experience was obtained.

[10/1/97; 16.62.5.8 NMAC - Rn & A, 16 NMAC 62.5.8, 09/13/2004]

## NEW MEXICO REAL ESTATE APPRAISER'S BOARD

This is an amendment to 16.62.6 NMAC, Sections 2, 5 and 8. In accordance with the current NMAC requirements, this action also renumbers, reformats and replaces 16 NMAC 62.6, Examinations (filed 12/29/1999) with 16.62.6 NMAC, Examinations, effective 09/13/2004.

**16.62.6.2 SCOPE:** All apprentice real estate appraisers, licensed real estate appraisers, [~~registered real estate appraisers,~~] residential certified real estate appraisers, general certified real estate appraisers and temporary licensed real estate appraisers.

[1/14/00; 16.62.6.2 NMAC - Rn & A, 16 NMAC 62.61.2, 09/13/2004]

**16.62.6.5 EFFECTIVE DATE:** January 14, 2000, unless a later date is cited at the end of a section [~~or paragraph~~].

[1/14/00; 16.62.6.5 NMAC - Rn & A, 16 NMAC 62.6.5, 09/13/2004]

**1.62.6.8 EXAMINATION REQUIREMENTS:** All candidates for licensure or certification must successfully complete the appraiser qualifications board endorsed Uniform State certifications/licensing examination or its equivalent.

A. [RESERVED]

B. The examination will be approved by the appraisal qualifications board of the appraisal foundation and will cover standard appraisal concepts.

C. The board will administer an examination on the New Mexico Real Estate Appraisers Act and board rules and regulations which will require a score of 70 percent or more for a passing grade.

D. The applicant must take the examination prescribed by the board at the time and place noted in the written authorization.

E. An [~~application~~] applicant for licensing or certification will be denied and the results of the examination will be invalidated if: the applicant uses or possesses anything that gives the applicant an advantage other than silent, cordless, non-programmable calculator[s]. HPC 12C or its equivalent. All calculator memories must be cleared before the examination. Operating manuals will not be allowed at the testing site.

F. The applicant gives or receives any kind of aid during the examination.

G. Someone other than the applicant takes the test or attempts to take the test for the applicant.

[1/14/00; 16.62.6.8 NMAC - Rn & A, 16 NMAC 62.61.8, 09/13/2004]

## NEW MEXICO REAL ESTATE APPRAISER'S BOARD

This is an amendment to 16.62.7 NMAC, Sections 2, 5, 7, 8, 9, 10, 11, 12, 14 and 15. In accordance with the current NMAC requirements, this action also renumbers, reformats and replaces 16 NMAC 62.7, Issuance/Renewal of Registrations/Licenses/Certificates (filed 8/29/1997) with 16.62.7 NMAC, Issuance/Renewal of Registrations/Licenses/Certificates, effective 09/13/2004.

**16.62.7.2 SCOPE:** All apprentice real estate appraisers, licensed real estate appraisers, [~~registered real estate appraisers,~~] residential certified real estate appraisers, general certified real estate appraisers and temporary licensed real estate appraisers.

[10/1/97; 16.62.7.2 NMAC - Rn & A, 16 NMAC 62.7.2, 09/13/2004]

**16.62.7.5 EFFECTIVE DATE:** October 1, 1997, unless a later date is cited at the end of a section [~~or paragraph~~].

[10/1/97; 16.62.7.5 NMAC - Rn & A, 16 NMAC 62.7.5, 09/13/2004]

**16.62.7.7 DEFINITIONS:** "License" for the purposes of this part means [~~a registration~~] an apprentice license, residential certificate, or general certificate.

[10/1/97; 16.62.7.7 NMAC - Rn & A, 16 NMAC 62.7.7, 09/13/2004]

**16.62.7.8 INITIAL LICENSE ISSUANCE:** Initial licenses expire on April 30 in the [~~third~~] second year of licensure. No license will be issued for longer than [~~36~~] 24 months or less than [~~25~~] 13 months.

[10/1/97; 16.62.7.8 NMAC - Rn & A, 16 NMAC 62.7.8, 09/13/2004]

**16.62.7.9 RENEWAL PERIOD AND EXPIRATION:** [~~Effective March 30 2000, each license that expires will be renewed until April 30 of the year in which the license holder is required to submit continuing education hours. Thereafter all~~] All licenses will expire every [~~three~~] two years on April 30. Renewal fees for the initial period will be prorated as defined in 16.62.12.8 NMAC.

[10/1/97; 16.62.7.9 NMAC - Rn & A, 16 NMAC 62.7.9, 09/13/2004]

**16.62.7.10 R E N E W A L**

**PROCESS:** A completed renewal application, accompanied by the required fee as defined in 16.62.12.8 NMAC and documentation of [~~42~~] 28 hours of continuing education. [~~as defined in Section 12 of this Part~~] Renewal applications must be post-marked or delivered to the board office on or before April 30 of the renewal year.

[10/1/97; 16.62.7.10 NMAC - Rn & A, 16 NMAC 62.7.10, 09/13/2004]

**16.62.7.11 LICENSE RESPONSIBILITY:** The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make a timely request for the renewal form if one has not been received thirty days prior to license expiration.

[10/1/97; 16.62.7.11 NMAC - Rn & A, 16 NMAC 62.7.11, 09/13/2004]

**16.62.7.12 REQUIRED CONTINUING EDUCATION:** [~~Forty two (42)~~] Twenty-eight (28) classroom hours of continuing education in courses approved by the board are required in each [~~three~~] two-year renewal period. Each license holder is required to submit a list of continuing education courses with each renewal with copies of certificate(s) of successful completion for the continuing education taken. [~~The board following each renewal cycle will complete a random audit of continuing education hours~~] Continuing education requirements are pro-rated at fourteen hours per full year and 1.17 hours for each additional month of the initial licensing period. Effective with the first [~~triennial~~] biennial renewal period and each subsequent renewal, a [~~fifteen~~] seven (7) hour class in uniform standards of professional appraisal practice is required as part of the continuing education requirement.

[10/1/97; 16.62.7.12 NMAC - Rn & A, 16 NMAC 62.7.12, 09/13/2004]

**16.62.7.14 REINSTATEMENT OF EXPIRED LICENSE:** An expired license may be reinstated within 90 days after expiration upon submission of an application, payment of the required renewal administrative reinstatement fee, proof of compliance with continuing education requirements, and payment of the reinstatement fee. The board may, in its discretion, treat the former [~~registration~~] apprentice license or certificate holder as a new applicant and further require that the applicant be reexamined as a condition to reissue a license or certificate.

[10/1/97; 16.62.7.14 NMAC - Rn & A, 16 NMAC 62.7.14, 09/13/2004]

**16.62.7.15 CHANGE OF ADDRESS:** [~~A registration~~] An apprentice license or certificate holder shall report

immediately to the board in writing any change of business address. Failure to do so within 30 days is grounds for ~~[registration]~~ apprentice, license or certificate suspension. [10/1/97; 16.62.7.15 NMAC - Rn & A, 16 NMAC 62.7.15, 09/13/2004]

## NEW MEXICO REAL ESTATE APPRAISER'S BOARD

This is an amendment to 16.62.8 NMAC, Sections 2, 5, 9, 10, 11, 12, 14, 15, 17 and 18. In accordance with the current NMAC requirements, this action also renumbers, reformats and replaces 16 NMAC 62.8, Educational Programs/Continuing Education (filed 02/14/2000) with 16.62.8 NMAC, Educational Programs/Continuing Education, effective 09/13/2004.

**16.62.8.2 SCOPE:** All apprentice real estate appraisers, licensed real estate appraisers, ~~[registered real estate appraisers]~~, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed real estate appraisers. [3/14/00; 16.62.8.2 NMAC - Rn & A, 16 NMAC 62.8.2, 09/13/2004]

**16.62.8.5 EFFECTIVE DATE:** March 14, 2000, unless a later date is cited at the end of a section ~~[or paragraph]~~. [3/14/00; 16.62.8.5 NMAC - Rn & A, 16 NMAC 62.8.5, 09/13/2004]

**16.62.8.9 RELEVANCE OF COURSEWORK:** All coursework for original ~~[registration]~~ apprenticeship, licensing or certification shall be in courses closely related to real estate appraisal. The board will not accept an applicant's completion of a course of a kind, which is designed to prepare students for examination, commonly known as a "cram course". All coursework credited toward original ~~[registration]~~ apprenticeship, licensure or certification shall have been completed no more than ten (10) years prior to the date of the application filed with the board. [3/14/00; 16.62.8.9 NMAC - Rn & A, 16 NMAC 62.8.9, 09/13/2004]

**16.62.8.10 ~~[CHALLENGED CLASSES]:~~** ~~Credit may be granted for courses where credit was granted by challenge examination, if such credit was granted prior to July 1, 1990, and, further, that the board is satisfied with the quality of the challenge examination that was administered by the course provider.]~~ [RESERVED] [3/14/00; 16.62.8.10 NMAC - Rn & A, Repealed, 16 NMAC 62.8.10, 09/13/2004]

**16.62.8.11 ACCEPTABLE CONTINUING EDUCATION:** Courses approved for continuing education credit shall have significant intellectual or practical content and shall deal primarily with matters directly related to appraisal practice or to the ethical obligations of ~~[registrants]~~ apprentices, licensees and certificate holders. The primary objective of such courses shall be consistent with the board's charge to protect the public and to increase the professional competence of ~~[registrants]~~ apprentices, licensees and certificate holders. No more than fourteen (14) hours may be from courses offered over the internet or other distance learning modalities. [3/14/00; 16.62.8.11 NMAC - Rn & A, 16 NMAC 62.8.11, 09/13/2004]

**16.62.8.12 CONTINUING EDUCATION REQUIREMENTS:** ~~[Forty two (42)]~~ Twenty-eight (28) hours of continuing education are required each ~~[triennial]~~ biennial renewal period. Continuing education requirements for initial ~~[registrations]~~ apprentices, licenses or certificates issued for less than ~~[three]~~ two full years are prorated as defined in 16.62.7.12 NMAC.

A. [The course in uniform standards of professional appraisal practice must be approved by the board, at least fifteen (15) classroom hours in length, and include passing an examination as a condition of course completion.] Seven (7) hour uniform standards of professional appraisal practice (USPAP) course (or its equivalent, as approved by the appraiser qualifications board (AOB), and include passing an examination as a condition of course completion.

B. Successful completion of [the uniform standards of professional practice] this seven (7) hour course will be required of every [registrant] apprentice, licensee and certificate holder as a condition of renewal in each [triennial] biennial renewal [period, effective the date of the first triennial renewal]. Licenses renewing in April 2005 and thereafter must have successfully completed the seven (7) hour USPAP update course within two (2) years of renewal date. [3/14/00; 16.62.8.12 NMAC - Rn & A, 16 NMAC 62.8.12, 09/13/2004]

**16.62.8.14 APPROVAL OF SPONSORS:** The board may approve individuals or organizations as course sponsors. Colleges and universities offering credit courses in real estate appraisal are also considered approved sponsors.

A. Requests for approval must be made on board approved forms and include a code of conduct for instructors.

B. The instructor selection and retention policy will include, at a minimum, the following requirements:

(1) instructors must be licensed

by exam or certified at the same or a higher category than the level of classes they are engaged to teach;

(2) instructors engaged to teach the USPAP course must qualify under the instructor evaluation policy for instructor selection for the national USPAP course developed by the appraisal foundation;

(3) instructors must teach only the appraisal foundation-approved national USPAP course;

(4) student critiques must be requested and maintained for each class given;

(5) a summary of the critiques and the pass rate of the class must be submitted to the board within 30 days after the course is completed;

(6) the sponsor shall provide a procedure for periodic monitoring of instructors in the classroom setting along with the sponsor application.

C. Approved sponsors shall comply with the following requirements to maintain approved status; the school must be conducted in accordance with these rules:

(1) to permit the board or its representative access to the school or classes being conducted and to make available to the board, upon request, all information pertaining to the activities of the school required for the administration of the rules and regulations, including its financial condition;

(2) to advertise the school at all times in a form and manner free from misrepresentation, deception or fraud;

(3) assure that all representations made by anyone authorized by the school to act as its agent or solicitor for prospective students are free from misrepresentation, deception or fraud;

(4) when a school closes, all student records shall be submitted to the board within 30 days;

(5) to maintain current, complete, and accurate student records and instructor critiques or summaries which shall be accessible at all times to the board or its authorized representative; these records shall include, in addition to other information, a record of payments made, a record of attendance, and a record of units of work completed;

(6) to conduct all courses in accordance with outlines submitted to and approved by the board;

(7) to only certify course completion for students who have successfully taken and passed the course; credit cannot be given for students who pass a course by challenging the course;

(8) sponsors will be subject to renewal of approval every three (3) years; the board assumes no responsibility for renewal courses not received from the spon-

for any reason; it is the sponsor's responsibility to make timely request(s) for the renewal of course(s) for board approval:

(9) sponsors must assure that all instructors:

(a) conduct all classes in accordance with board rules;

(b) ensure that all instruction is free from misrepresentation;

(c) instruct only from board-approved outlines;

(d) allow access to any class being instructed to any duly appointed representative of the board; and

(e) certify to his/her sponsor a true and correct record of students' attendance in his/her classes;

(10) failure to comply with this rule may result in the loss of approval of the sponsor; and

(11) the board reserves the right to disapprove an instructor.

[3/14/00; 16.62.8.14 NMAC - Rn, 16 NMAC 62.8.14, 09/13/2004]

#### 16.62.8.15 APPROVAL OF COURSES:

A. All real estate appraisal courses except those offered for credit in a degree program at a college or university must have prior approval by the board if they are to be approved for credit.

B. All board approved real estate appraisal courses accepted for pre-~~registration~~ apprenticeship, pre-licensing or pre-certification credit must include passing a final examination.

C. Application for course approval must be made to the board. No classes for credit may commence prior to board approval. The education advisory committee will review the application, and a recommendation made to the board in accordance with 16.62.8.13 NMAC.

D. All course outlines approved by the board for pre-~~registration~~ apprenticeship, pre-licensing, pre-certification or continuing education credit shall become the property of the board and the outlines shall be available to all those board approved sponsors wishing to teach said courses.

E. All existing courses are subject to periodic review by the board. The board may at any time change the approval status of any course.

[3/14/00; 16.62.8.15 NMAC - Rn & A, 16 NMAC 62.8.15, 09/13/2004]

**16.62.8.17 APPROVAL WITHOUT COMMITTEE REVIEW:** Real estate appraisal courses offered by an accredited college or university may be approved on an hourly basis for continuing education credit for ~~registration~~ apprenticeship, license or certificate renewal without further review by the board or the com-

mittee, provided the instructional content of the course conforms to the requirements of the board.

[3/14/00; 16.62.8.17 NMAC - Rn & A, 16 NMAC 62.8.17, 09/13/2004]

**16.62.8.18 EDUCATION CREDIT FOR TEACHING:** ~~Instructors [of approved appraisal courses shall be granted continuing education credit for teaching such courses, provided that credit shall only be granted one time per three year period for each course taught.] who are also certified and licensed may receive up to one-half of their continuing education requirement from instruction of appraisal courses or seminars. Credit for instructing any given course or seminar can only be awarded once during a continuing education cycle.~~

[3/14/00; 16.62.8.18 NMAC - Rn & A, 16 NMAC 62.8.185, 09/13/2004]

### NEW MEXICO REAL ESTATE APPRAISER'S BOARD

This is an amendment to 16.62.9 NMAC, Sections 2, 5 and 8. In accordance with the current NMAC requirements, this action also renumbers, reformats and replaces 16 NMAC 62.9, Certificate of Good Standing (filed 02/28/2000) with 16.62.9 NMAC, Certificate of Good Standing, effective 09/13/2004.

**16.62.9.2 SCOPE:** All ~~apprentice real estate appraisers,~~ licensed real estate appraisers, ~~[registered real estate appraisers]~~ residential certified real estate appraisers, general certified real estate appraisers and temporary licensed real estate appraisers.

[3/15/00; 16.62.9.2 NMAC - Rn & A, 16 NMAC 62.9.2, 09/13/2004]

**16.62.9.5 EFFECTIVE DATE:** March 15, 2000, unless a later date is cited at the end of a section ~~[or paragraph]~~.

[3/15/00; 16.62.9.5 NMAC - Rn & A, 16 NMAC 62.9.5, 09/13/2004]

**16.62.9.8 CERTIFICATE OF GOOD STANDING/FEE:** The board shall issue a certificate of good standing to any state ~~[registered]~~ apprentice, licensed or certified real estate appraiser who is in good standing under the act by virtue of having met the following requirements.

A. The ~~registration~~ apprenticeship, license or certificate of the applicant must be current, with all required fees paid in full and any required continuing education hours completed by the date required by law.

B. The applicant's appraiser ~~registration~~ apprenticeship, license or

certificate must not be under suspension or revocation as a result of disciplinary action by the board, and the registration, license or certificate holder must not be the subject of a pending notice of contemplated action issued by the board.

C. The certificate of good standing shall specify the current license status and license history of the applicant.

D. The applicant must pay a fee set by the board for issuance of the certificate of good standing.

[2/28/94; 3/15/00; 16.62.9.8 NMAC - Rn & A, 16 NMAC 62.9.8, 09/13/2004]

### NEW MEXICO REAL ESTATE APPRAISER'S BOARD

This is an amendment to 16.62.10 NMAC, Sections 2 and 5. In accordance with the current NMAC requirements, this action also renumbers, reformats and replaces 16 NMAC 62.10, Temporary Practice (filed 02/28/2000) with 16.62.10 NMAC, Temporary Practice, effective 09/13/2004.

**16.62.10.2 SCOPE:** All ~~apprentice real estate appraisers,~~ licensed real estate appraisers, ~~[registered real estate appraisers]~~ residential certified real estate appraisers, general certified real estate appraisers and temporary licensed real estate appraisers.

[3/15/00; 16.62.10.2 NMAC - Rn & A, 16 NMAC 62.10.2, 09/13/2004]

**16.62.10.5 EFFECTIVE DATE:** March 15, 2000, unless a later date is cited at the end of a section ~~[or paragraph]~~.

[3/15/00; 16.62.10.5 NMAC - Rn & A, 16 NMAC 62.10.5, 09/13/2004]

### NEW MEXICO REAL ESTATE APPRAISER'S BOARD

This is an amendment to 16.62.12 NMAC, Sections 2, 5 and 8. In accordance with the current NMAC requirements, this action also renumbers, reformats and replaces 16 NMAC 62.12, Fees (filed 02/12/1996) with 16.62.12 NMAC, Fees, effective 09/13/2004.

**16.62.12.2 SCOPE:** All ~~apprentice real estate appraisers,~~ licensed real estate appraisers, ~~[registered real estate appraisers]~~ residential certified real estate appraisers, general certified real estate appraisers and temporary licensed real estate appraisers.

[2/29/96; 16.62.12.2 NMAC - Rn & A, 16 NMAC 62.12.2, 09/13/2004]

**16.62.12.5 EFFECTIVE DATE:**



February 29, 1996, unless a later date is cited at the end of a section ~~[or paragraph]~~. [2/29/96; 16.62.12.5 NMAC - Rn & A, 16 NMAC 62.12.5, 09/13/2004]

**16.62.12.8 FEES:** All fees required under the Real Estate Appraiser Act or these regulations are non-refundable unless otherwise noted.

A. Application fee for ~~[registration]~~ apprenticeship is ~~[\$100]~~ \$110, which includes the initial ~~[registration]~~ apprenticeship period.

B. Application fee for a license is ~~[\$150]~~ \$165, which includes the initial licensing period.

C. Application fee for residential certification is ~~[\$150]~~ \$165, which includes the initial licensing period.

D. Application fee for general certification is ~~[\$150]~~ \$165, which includes the initial licensing period.

E. The fee for all examinations will be paid directly to the company who provides the exam.

F. The ~~[triennial]~~ biennial renewal fee for ~~[registered]~~ apprentice appraisers is ~~[\$150]~~ \$110. During the implementation of the ~~[triennial]~~ biennial renewal schedule, renewals issued for less than a ~~[three]~~ two-year period will be pro-rated at ~~[\$50]~~ \$55 per year or portion of a year. Any renewal issued for less than six months will be charged ~~[\$25]~~ \$30.

G. The ~~[triennial]~~ biennial renewal fee for licensed appraisers is ~~[\$275]~~ \$220. During the implementation of the ~~[triennial]~~ biennial renewal schedule, renewals issued for less than a ~~[three]~~ two-year period will be pro-rated at ~~[\$90]~~ \$110 per year or portion of a year. Any renewal issued for less than six months will be charged ~~[\$50]~~ \$55.

H. The ~~[triennial]~~ biennial renewal fee for residential certified appraisers is ~~[\$300]~~ \$220. During the implementation of the ~~[triennial]~~ biennial renewal schedule, renewals issued for less than a ~~[three]~~ two-year period will be pro-rated at ~~[\$100]~~ \$110 per year or portion of a year. Any renewal issued for less than six months will be charged ~~[\$50]~~ \$55.

I. The ~~[triennial]~~ biennial renewal fee for general certified appraisers is ~~[\$400]~~ \$305. During the implementation of the ~~[triennial]~~ biennial renewal schedule, renewals issued for less than a ~~[three]~~ two-year period will be pro-rated at ~~[\$140]~~ \$155 per year or portion of a year. Any renewal issued for less than six months will be charged ~~[\$75]~~ \$80.

J. The fee for listing on the federal registry is ~~[\$75]~~ \$50 per ~~[triennial]~~ biennial renewal.

K. The application fee for a temporary practice certificate is \$100.

L. The fee for replacement

of ~~[a registration]~~ apprentice, license or certificate is ~~[\$10]~~ \$25.

M. The fee for a certificate of good standing is ~~[\$10]~~ \$25.

N. Administrative reinstatement fee is ~~[\$100]~~ \$200.

O. Administrative fees as follows:

(1) approved continuing education course is \$25;

(2) duplicate is \$25;

(3) list is \$75;

(4) verification is \$25;

(5) miscellaneous is \$25.

[2/29/96; 16.62.12.8 NMAC - Rn, 16 NMAC 62.12.8, 09/13/2004]

## NEW MEXICO REAL ESTATE APPRAISER'S BOARD

This is an amendment to 16.62.13 NMAC, Sections 2, 5, 7, 8, 9, 12 and 14. In accordance with the current NMAC requirements, this action also renumbers, reformats and replaces 16 NMAC 62.13, Disciplinary Proceedings (filed 08/29/1997) with 16.62.13 NMAC, Disciplinary Proceedings, effective 09/13/2004.

**16.62.13.2 SCOPE:** All apprentice real estate appraisers, licensed real estate appraisers, ~~[registered real estate appraisers]~~, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed real estate appraisers.

[10/1/97; 16.62.13.2 NMAC - Rn & A, 16 NMAC 62.13.2, 09/13/2004]

**16.62.13.5 EFFECTIVE DATE:** October 1, 1997, unless a later date is cited at the end of a section ~~[or paragraph]~~.

[10/1/97; 16.62.13.5 NMAC - Rn & A, 16 NMAC 62.13.5, 09/13/2004]

**16.62.13.7 DEFINITIONS:** ~~[RESERVED]~~ "Complaint committee" shall be appointed by the board. Complaint committee chairperson shall be an appraiser board member. The complaint committee is for the purpose of review of complaints and shall make recommendation(s) to the board as to its findings.

[10/1/97; 16.62.13.7 NMAC - Rn & A, 16 NMAC 62.13.7, 09/13/2004]

**16.62.13.8 FILING COMPLAINT:** Upon receipt of a sworn complaint against any person ~~[registered]~~ who is an apprentice, licensed or certified under the Real Estate Appraisers Act the board shall cause an investigation to be initiated. [10/1/97; 16.62.13.8 NMAC - Rn & A, 16 NMAC 62.13.8, 09/13/2004]

**16.62.13.9 REVIEW OF COMPLAINT:** The chairman of the board shall appoint at least one appraiser member of the board to review the results of investigation of each complaint filed with the board.

A. The board member appointee/reviewer shall be chairperson of the complaint committee.

B. Upon completion and review of the investigation initiated pursuant to this regulation, the board member appointee/reviewer along with the complaint committee shall either ~~[direct that]~~ recommend the case be closed or shall submit to the board a recommendation for further disciplinary action.

[10/1/97; 16.62.13.9 NMAC - Rn & A, 16 NMAC 62.13.9, 09/13/2004]

**16.62.13.12 REPRIMAND PUBLIC RECORD:** The fact that ~~[a registered]~~ an apprentice appraiser, license or certificate holder has received a letter of reprimand is a matter of public record.

[10/1/97; 16.62.13.12 NMAC - Rn & A, 16 NMAC 62.13.12, 09/13/2004]

**16.62.13.14 REFUSAL, SUSPENSION OR REVOCATION:**

A. Disciplinary proceedings may be instituted by the sworn complaint of any person, including members of the board, filed with the board. The complaint shall conform with the provisions of the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.

B. In accordance with the procedures contained in the Uniform Licensing Act, the board may deny, revoke or suspend any ~~[registration]~~ apprentice, license or certificate held or applied for upon finding, after a hearing, that the ~~[registered]~~ apprentice appraiser, licensee, certificate holder or applicant has violated any provision of the Real Estate Appraisers Act (Section 61-30-1 et seq., NMSA 1978) or regulations or continually or repeatedly or persistently or willfully violated any of the prohibitions found hereinafter:

(1) obtaining or attempting to obtain any fee through fraud, misrepresentation, or other dishonesty;

(2) impersonating another person ~~[registered]~~ apprenticed, licensed or certified to practice real estate appraisal or permitting or allowing any person to use his/her registration, license or certificate;

(3) aiding or abetting the practice of real estate appraisal by a person not ~~[registered]~~ apprenticed, licensed or certified by the board;

(4) the suspension or revocation by another state of an apprentice registration, license or certificate to practice real estate appraisal based upon acts by the registered appraiser, certificate holder or licensee similar to acts described in the sec-



tion;

(5) the solicitation of any person either by ~~a registered~~ an apprentice appraiser, licensee or certificate holder or by one in his/her employ or under his/her control under circumstances suggesting that the appraiser or other person was taking advantage of the person being solicited from making a rational independent decision as to whether or not to obtain the services of an appraiser, or any particular appraiser;

(6) falsifying of real estate appraisal records, whether or not for personal gain;

(7) practicing beyond the scope of the ~~registration~~ apprenticeship license or certificate as defined by state law and/or regulations;

(8) advertising in any manner that violates the board's regulation on advertising, as provided in 16.62.16 NMAC; or

(9) making false statements in any application for ~~registration~~ apprenticeship, licensure or certification.

[10/1/97; 16.62.13.14 NMAC - Rn & A, 16 NMAC 62.13.14, 09/13/2004]

### NEW MEXICO REAL ESTATE APPRAISER'S BOARD

This is an amendment to 16.62.15 NMAC, Sections 2, 5, 6, 8, 9 and 10. In accordance with the current NMAC requirements, this action also renumbers, reformats and replaces 16 NMAC 62.15, Retirement and Reinstatement (filed 02/28/2000) with 16.62.15 NMAC, Retirement and Reinstatement, effective 09/13/2004.

**16.62.15.2 SCOPE:** All apprentice real estate appraisers, licensed real estate appraisers, ~~registered real estate appraisers~~, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed real estate appraisers.  
[3/15/00; 16.62.15.2 NMAC - Rn & A, 16 NMAC 62.15.2, 09/13/2004]

**16.62.15.5 EFFECTIVE DATE:** March 15, 2000, unless a later date is cited at the end of a section ~~or paragraph~~.  
[3/15/00; 16.62.15.5 NMAC - Rn & A, 16 NMAC 62.15.5, 09/13/2004]

**16.62.15.6 OBJECTIVE:** This part provides for retirement and reinstatement of ~~a registration~~ an apprentice, license or certificate under certain circumstances.  
[3/15/00; 16.62.15.6 NMAC - Rn & A, 16 NMAC 62.15.6, 09/13/2004]

**16.62.15.8 RETIREMENT:** Any appraiser who wishes to retire from practice

shall notify the board in writing prior to the expiration of the ~~registration~~ apprenticeship, license or certificate. The notice will be recorded in the minutes of the board. The appraiser shall be exempt from payment of the yearly renewal fees during the period of retirement.

[3/15/00; 16.62.15.8 NMAC - Rn & A, 16 NMAC 62.15.8, 09/13/2004]

**16.62.15.9 REINSTATEMENT:** Any appraiser who has retired as provided in 16.62.15.8 NMAC, may, within ~~three~~ two years from the date the active ~~registration~~ apprenticeship, license or certificate expired, notify the board of his/her desire to resume active practice.

[3/15/00; 16.62.15.9 NMAC - Rn & A, 16 NMAC 62.15.9, 09/13/2004]

**16.62.15.10 APPLICATION FOR REINSTATEMENT:** Upon receipt of written notice required in 16.62.15.9 NMAC, the board shall send to the retired appraiser, an application for reinstatement of the ~~registration~~ apprenticeship, license or certificate.

A. The application for the reinstatement of ~~a registration~~ an apprentice, license or certificate shall provide space for the applicant to provide the board the following information:

(1) the serial number of the former ~~registration~~ apprentice, license or certificate;

(2) the full name of the applicant;

(3) the date of the original issue;

(4) the date of the applicant's retirement.

B. The application must be completed and returned to the board with a check or money order in an amount equivalent to all lapsed renewal fees. In addition, the applicant for reinstatement of ~~registration~~ apprenticeship, license or certificate must offer proof sufficient to satisfy the board that he/she has taken in the calendar year immediately preceding the application for reinstatement, a minimum of ten clock hours per year missed in refresher courses in addition to any hours of continuing education units the applicant might have been delinquent prior to retirement

C. Any appraiser who wishes reinstatement after retirement may apply at any time. The application will be reviewed by the board at its next regularly scheduled meeting. If the board finds the application in order and is satisfied that the applicant for reinstatement has fulfilled the requirements as specified, the board shall issue the applicant a registration, license or certificate.

D. No appraiser who has retired shall reactivate his/her practice until a new apprentice registration, license or certificate is received.

E. No application for retirement will be accepted if the appraiser is under investigation or facing disciplinary proceedings.

[3/15/00; 16.62.15.10 NMAC - Rn & A, 16 NMAC 62.15.10, 09/13/2004]

### NEW MEXICO REAL ESTATE APPRAISER'S BOARD

This is an amendment to 16.62.16 NMAC, Sections 2, 5, 6 and 8. In accordance with the current NMAC requirements, this action also renumbers, reformats and replaces 16 NMAC 62.16, Advertising (filed 02/28/2000) with 16.62.16 NMAC, Advertising, effective 09/13/2004.

**16.62.16.2 SCOPE:** All apprentice real estate appraisers, licensed real estate appraisers, ~~registered real estate appraisers~~, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed real estate appraisers.

[3/15/00; 16.62.16.2 NMAC - Rn & A, 16 NMAC 62.16.2, 09/13/2004]

**16.62.16.5 EFFECTIVE DATE:** March 15, 2000, unless a later date is cited at the end of a section ~~or paragraph~~.

[3/15/00; 16.62.16.5 NMAC - Rn & A, 16 NMAC 62.16.5, 09/13/2004]

**16.62.16.6 OBJECTIVE:** This part provides requirements for advertising by ~~registrants~~ apprentices, licensees and certificate holders.

[3/15/00; 16.62.16.6 NMAC - Rn & A, 16 NMAC 62.16.6, 09/13/2004]

### 16.62.16.8 [ADVERTISING-] REQUIREMENTS/LIMITATIONS

A. No appraiser shall advertise or procure another to advertise, nor personally solicit or procure another to personally solicit on his/her behalf or on the behalf of another, in a manner that is false, fraudulent or misleading.

B. No firm, group or association may advertise as being ~~registered~~ an apprentice, licensed or certified. The individual members of the firm, group or association must be listed along with the scope of their ~~registrations~~ apprenticeship, licenses or certifications. Sole practitioners must include their name and the scope of their ~~registration~~ apprenticeship, license or certificate in every advertisement.

C. Advertisement for appraiser individuals or firms shall conform to the ethics provisions of the uniform standards of professional appraisal practice.

[3/15/00; 16.62.16.8 NMAC - Rn & A, 16 NMAC 62.16.8, 09/13/2004]

**NEW MEXICO REAL  
ESTATE APPRAISER'S  
BOARD**

This is an amendment to 16.62.17 NMAC, Sections 2 and 5. In accordance with the current NMAC requirements, this action also renumbers, reformats and replaces 16 NMAC 62.17, Unlicensed Practice Penalties (filed 02/28/2000) with 16.62.17 NMAC, Unlicensed Practice/ Penalties, effective 09/13/2004.

**16.62.17.2 SCOPE:** All apprentice real estate appraisers, licensed real estate appraisers, [~~registered real estate appraisers~~], residential certified real estate appraisers, general certified real estate appraisers, [~~and~~] temporary licensed real estate appraisers[-] and members of the general public.

[3/15/00; 16.62.17.2 NMAC - Rn & A, 16 NMAC 62.17.2, 09/13/2004]

**16.62.17.5 EFFECTIVE DATE:** March 15, 2000, unless a later date is cited at the end of a section [~~or paragraph~~].

[3/15/00; 16.62.17.5 NMAC - Rn & A, 16 NMAC 62.17.5, 09/13/2004]

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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
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Issue Number 19	October 1	October 14
Issue Number 20	October 15	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 30

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