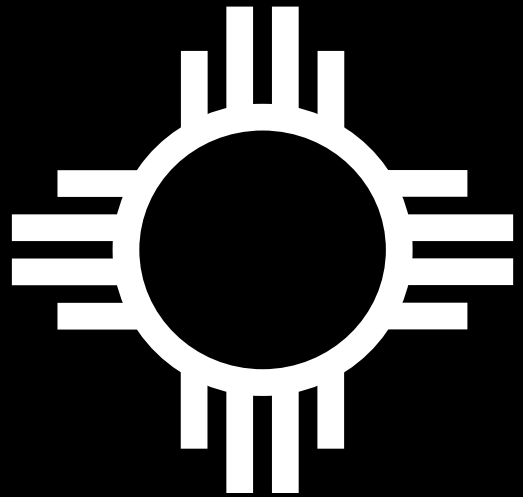


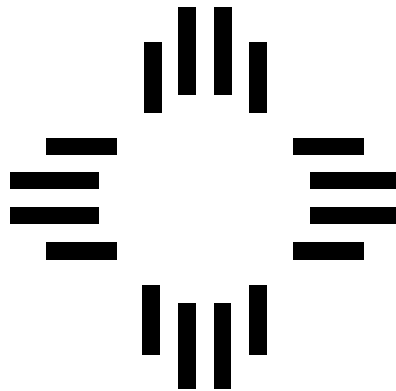
**NEW
MEXICO
REGISTER**



Volume XV
Issue Number 18
September 30, 2004

New Mexico Register

Volume XV, Issue Number 18
September 30, 2004



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

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2004

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New Mexico Register

Volume XV, Number 18

September 30, 2004

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Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF DENTAL HEALTH CARE

Legal Notice

Notice is hereby given that the New Mexico Board of Dental Health Care will convene a Rule Hearing to amend, replace or repeal:

Title 16, Chapter 5, Part 15 Dentists Anesthesia Administration

This Hearing will be held at the State Capitol, 415 Old Santa Fe Trail, Santa Fe, NM, October 29, 2004 at 9:00 a.m.

Following the Rule Hearing the Dental Hygienists Committee will convene a regular meeting. The New Mexico Board of Dental Health Care will convene a regular meeting following the Dental Hygienists Committee Meeting on October 29, 2004, beginning with Executive Session. The public portion of the meeting is anticipated to begin at 11:00 a.m. and adjourn by 5:00 p.m.

Copies of the proposed rules are available on request from the Board office, P. O. Box 25101, Santa Fe, New Mexico, 87504-5101, or phone (505) 476-4680.

Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by October 14, 2004 to allow time for distribution to the Board and Committee members. Individuals planning on testifying at the hearing must provide 14 copies of their testimony.

Final action on the proposed rules will be taken during the Board meeting. Portions of the committee and Board meeting may be closed to the public while the Board and Committee are in Executive Session to discuss licensing matters. Copies of the agenda will be available 24 hours in advance of the meeting from the Board office.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations for their disabilities should contact the Board Administrator at least one week prior to the meeting.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING

San Juan County, Maintenance Plan for Early Action Compact

The New Mexico Environmental Improvement Board (Board) will hold a public hearing on December 3, 2004, in a special meeting that is not in conjunction with their normal December meeting. The hearing will begin at 9:00 a.m. at the Farmington City Hall, 800 Municipal Drive in Farmington, New Mexico. At this hearing, the Board will consider proposed revisions to the New Mexico State Implementation Plan (SIP) to incorporate the San Juan County, New Mexico Maintenance Plan for the Early Action Compact.

The purpose of the public hearing is to consider and take possible action on a petition from the New Mexico Environment Department (NMED) regarding proposed changes to the above-listed SIP revision. These proposed changes are intended to incorporate the results of the San Juan County Early Action Compact for Ozone and adopt a voluntary emission reduction program for ozone precursors in San Juan County. The NMED proposal includes an overview of ozone pollution in San Juan County, the Early Action Compact for San Juan County, photochemical modeling, a Clean Air Action Plan, and a voluntary emission reduction program entitled Voluntary Innovative Strategies for Today's Air Standards (VISTAS).

The proposed changes may be reviewed during regular business hours at the NMED Farmington District Field office located at 724 W. Animas, Farmington, New Mexico. A full text of the NMED's proposed changes are also available on the NMED's web site at www.nmenv.state.nm.us, or by contacting Gail Cooke by phone at (505) 955-8022 or by e-mail at Gail_Cooke@nmenv.state.nm.us.

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, the Air Quality Control Act Section 72-2-6 NMSA 1978 and other applicable procedures.

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

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

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on November 23, 2004, and should reference the name of the SIP revision and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

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

A member of the general public who wants to submit a written non-technical statement for the record in lieu of providing oral non-technical testimony at the hearing shall file such statement prior to the close of 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 November 23, 2004. Ms. Bentley can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-9778. TDD or TDY users may access his number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-

800-659-1779.)

The Board may deliberate and rule on the proposed amendments at the close of the hearing or the Board may convene a meeting after the hearing to consider action on the proposal.

cc: Ms. Gay Dillingham, Chair

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
CHILD SUPPORT ENFORCEMENT
DIVISION**

NOTICE OF PROPOSED RULEMAKING

NOTICE is hereby given that the Child Support Enforcement Division of the New Mexico Human Services Department ("CSED") is commencing a rulemaking proceeding for the purpose of adopting a new rule in Part 133 of the New Mexico Administrative Code, which will establish an "Arrears Management Program." The proposed new rule would be adopted under authority granted to CSED by the Legislature pursuant to Senate Bill 48 of the 2004 Legislative Session.

Among other things, Senate Bill 48 (being N.M. Laws 2004, Ch. 41; codified in pertinent part as NMSA 1978, Section 40-4-4.7) required the CSED to adopt a rule that would "designate an arrears management program starting on or after December 15, 2004 to provide amnesty for child support arrears, pursuant to procedures adopted by the department." In accordance with this requirement of Senate Bill 48, the CSED issued this Notice of Proposed Rulemaking.

Proponents and advocates of child support issues are invited to submit their names and contact information to:

William H. Mee, Policy Manager
Attn: Arrears Management Program
MAIL ADDRESS: P.O. Box 2348
Santa Fe, N.M. 87504-2348
PHYSICAL LOCATION: Room 209 Pollon
Plaza Bldg.
2009 South Pacheco Street
Santa Fe, N.M. 87505
E-MAIL: William.Mee@state.nm.us
(505) 476-7203
FAX (505) 476-7045

A public hearing is proposed on or about October 18, 2004 in Santa Fe, specific information about the hearing can be obtained from the above contact person.

**NEW MEXICO
PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION**

**STATE OF NEW
MEXICO PUBLIC
REGULATION COMMISSION
INSURANCE DIVISION**

**IN THE MATTER OF
AMENDING 13.17.4
NMAC, WORKERS'
COMPENSATION
ASSIGNED RISK POOL** **DOCKET NO.
04-00312-IN**

**NOTICE OF HEARING ON PRO-
POSED RULEMAKING AND PROCE-
DURAL ORDER**

I. SOLICITATION OF COMMENTS

The Superintendent of Insurance is issuing this notice to provide an opportunity for public comment and to create a record for a decision on the proposed amendment of 13.17.4 NMAC, Workers' Compensation Assigned Risk Pool. The Superintendent requests written and oral comments from all interested persons and entities on the proposed amendment.

All relevant and timely comments, including data, views, or arguments, will be considered by the Superintendent. In reaching his decision, the Superintendent may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of the Superintendent's reliance on such information is noted in the order the Superintendent ultimately issues.

II. ORDER

IT IS THEREFORE ORDERED that this Notice of Hearing on Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that an informal public hearing be held on Monday, October 25th, 2004 at 9:30 a.m. in the Fourth Floor Hearing Room of the P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposed rule. All interested persons wishing to present testimony may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time, and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposed rule on or before Monday, October 18, 2004. All relevant and timely comments, including data, views, or arguments will be considered by the Superintendent before final action is taken in this proceeding. An original and two copies of written comments must be filed with the Public Regulation Commission's Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269. The docket number must appear on each submittal. If possible, please also submit a diskette copy of written comments to the Docketing Office or e-mail a copy of written comments to elizabeth.bustos@state.nm.us. Comments will be available for public inspection during regular business hours in the Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

IT IS FURTHER ORDERED that the Superintendent may require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

IT IS FURTHER ORDERED that Insurance Division Staff shall cause a copy of this Notice to be published once in the *New Mexico Register* and once in the *Albuquerque Journal*. To obtain a copy of the proposed rule: (1) send the docket number, rule name, and rule number to the Public Regulation Commission's Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$5.00 made payable to the Public Regulation Commission to cover the cost of copying and postage; (2) call the Docketing Office at 505-827-4526 with the docket number, rule name, and rule number (you will be billed \$5.00 to cover the cost of copying and postage); or e-mail Elizabeth Bustos at elizabeth.bustos@state.nm.us with the docket number, rule name, and rule number (you will receive a copy of the rule in Microsoft WORD format by return e-mail at no charge). The proposed rule is also available for inspection and copying during regular business hours in the Public Regulation Commission's Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

III. ADVISEMENTS

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, NMSA 1978, Section 2-11-1 *et seq.*, regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings.

A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

PLEASE BE ADVISED THAT individuals with a disability who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, may contact Ann Echols, on or before October 18, 2004, at (505) 827-4559. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should also be addressed to Ms. Echols.

DONE, this 8th day of September 2004.

NEW MEXICO PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION

—/s/_____
ERIC P. SERNA,
Superintendent of Insurance

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

NOTICE OF PUBLIC HEARINGS

Notice is hereby given that the New Mexico Workers' Compensation Administration (WCA) will conduct a series of public hearings on changes to the WCA rules. The hearings will be conducted at the Workers' Compensation Administration, 2410 Centre Avenue S.E., Albuquerque, NM. Videoconferencing may also be made available in the WCA Field Offices upon request.

OCIP Rules: On Tuesday, October 5, 2004, commencing at 1:30 p.m., the WCA will conduct a public hearing on the new Owner Controlled Insurance Plan (OCIP) rules. Copies of the proposed OCIP rules will be available on September 7, 2004. Written comments pertaining to the OCIP rules will be accepted until the close of

business on Tuesday, October 12, 2004.

UEF Rules: On Tuesday, October 12, 2004, commencing at 1:30 p.m., the WCA will conduct a public hearing on the revised Uninsured Employers' Fund (UEF) rules. Copies of the revised UEF rules will be available on September 7, 2004. Written comments pertaining to the UEF rules revisions will be accepted until the close of business on Tuesday, October 19, 2004.

Extra-hazardous rules: On Tuesday, October 19, 2004, commencing at 1:30 p.m., the WCA will conduct a public hearing on the revised extra-hazardous rules. Copies of the revised extra-hazardous rules will be available on September 7, 2004. Written comments pertaining to the extra-hazardous rules revisions will be accepted until the close of business on Tuesday, October 26, 2004.

Conduct of parties rules: On Tuesday, October 26, 2004, commencing at 1:30 p.m., the WCA will conduct a public hearing on the revised rules governing the conduct of parties contained in Part 3. Copies of the revised conduct rules will be available on September 7, 2004. Written comments pertaining to the revision of Part 3 of the rules will be accepted until the close of business on Tuesday, November 2, 2004.

Self-insurance rules: On Thursday, November 4, 2004, commencing at 1:30 p.m., the WCA will conduct a public hearing on the revised self-insurance rules. Copies of the revised self-insurance rules will be available on September 27, 2004. Written comments pertaining to the revisions of the self-insurance rules will be accepted until the close of business on Friday, November 12, 2004.

Fee schedule: On Tuesday, November 30, 2004, commencing at 1:30 p.m., the WCA will conduct a public hearing on changes to the medical fee schedule. Copies of the list of adjustments to the medical fee schedule will be available November 15, 2004. Written comments pertaining to the fee schedule changes will be accepted until the close of business on Tuesday, December 14, 2004.

Comments made in writing and at the public hearing will be taken into consideration.

For further information call (505) 841-6000. Please inquire at the WCA Clerk's Office, 2410 Centre Avenue S.E., Albuquerque, NM, 87106, (505) 841-6000 for copies of the draft rules. If you intend to request a copy by mail, please inquire at the WCA Clerk's Office about the postage cost and envelope size needed to accommodate

your request. Plan on including a post-paid, self-addressed envelope with your request.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aide or service to attend or participate in the hearing or meetings, please contact Renee Blechner at (505) 841-6083. Or you may inquire about assistance through the New Mexico relay network at 1-800-659-8331.

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 21.17.48 NMAC, Section 8

21.17.48.8 ASSESSMENT:

A. The committee assessment rate is set forth at [~~5 dollars (\$5)~~ 2 dollars and fifty cents (\$2.50)] per bale of cotton for all cotton produced by producers in the control district. The assessment will be collected at the gin.

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

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

[07/31/98; 21.17.48.8 NMAC - Rn & A, 21 NMAC 17.48.8, 06/14/2001; A, 09/30/2002; A, 10/01/2004]

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.7 NMAC, Sections 12 & 14, effective 11/1/04. Amendments to 20.11.7 NMAC, VARIANCE PROCEDURE were necessary to correct two errors in internal citation.

20.11.7.12 PETITION FOR VARIANCE - FEE:

A. A person seeking a variance from a regulation of the board or a permit condition imposed by the department shall do so by delivering a written petition for variance to the director and the division manager. The petitioner shall use petition forms obtained from the department. The petition form shall include information regarding how the public may obtain additional information from the division regarding the petition, including information regarding the date, time and place of any variance petition hearing before the board.

B. Petitions shall:

(1) be delivered to the director

and the division manager within 30 consecutive days after the date the petitioner had actual or constructive knowledge of the limitation regarding which the petitioner is seeking a variance;

(2) state the petitioner's name, address, telephone number, and, if available, facsimile number, cellular telephone number and other contact information;

(3) state the date the petition is delivered to the director and the division manager;

(4) describe the facility or activity regarding which the variance is sought, if applicable;

(5) state the address or description of the property upon which the facility is located, if applicable;

(6) identify and provide a citation to the limitation prescribed by the Air Quality Control Act, the regulation of the board or the permit condition imposed by the department regarding which the variance is sought;

(7) state in detail the extent to which the petitioner wishes to vary from the limitation;

(8) state why the petitioner believes the variance is justified and can be approved by the board consistent with the requirements of the Air Quality Control Act, specifically, Subsections A and B of 74-2-8 NMSA 1978, Variances;

(9) state any time periods, limitations and other conditions that must be included in the variance in order to comply with Subsection C of 74-2-8 NMSA 1978; and

(10) be signed by the petitioner or by a person who is authorized to sign on the petitioner's behalf. If the person signing is not the petitioner, the person signing shall state in writing the source of the authority to sign on petitioner's behalf and shall attach the proof of authority to the petition that is delivered to the division manager.

C. The fee for filing a variance petition that is required by [~~20.11.2.11 NMAC~~] Subsection J of 20.11.2.18 NMAC shall accompany the copy of the petition that is delivered to the division manager.

D. No later than five consecutive days after the petitioner delivers a copy of the variance petition to the director and division manager, the petitioner shall send by certified mail a copy of the variance petition to the president of each city of Albuquerque and county of Bernalillo neighborhood association within one-half mile of the existing or proposed stationary source or location, if any, that is the subject of the petition for variance. When it is considered to be warranted, because of the characteristics and mobility of the pollutant(s) and density of the population, the

department and the petitioner may agree that the petitioner will notify by certified mail additional neighborhood associations beyond the one-half mile line. The address of each president shall be obtained from the city of Albuquerque government and the county of Bernalillo government, as applicable. The petitioner shall pay all costs related to the mailing. If the petitioner receives notice from the United States postal service that a certified letter was not delivered, the petitioner shall make a second, good faith effort to determine the valid neighborhood association contact and mailing address, and the petitioner shall mail or hand deliver a copy of the variance petition to that person. The petitioner shall complete a proof of delivery form obtained from the division, attach documentation establishing delivery of a copy of the petition and any additional good faith efforts to deliver, and shall deliver the completed proof of delivery form and related documentation to the division seven consecutive days before the start of the evidentiary phase of the variance petition hearing.

[3/24/82. . .12/1/95; 20.11.7.12 NMAC - Rn, 20 NMAC 11.07.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.07.II.1, 10/1/02; A, 8/1/04; A, 11/1/04]

20.11.7.14 PETITIONER, DIRECTOR AND BOARD DEADLINES AND ACTIONS:

A. When the board receives the director's written recommendation, if the director recommends that the board grant a variance in whole or in part, then the board shall hold a public variance hearing. The board shall meet and decide whether to appoint a board hearing officer for the evidentiary phase of the board variance hearing, whether any hearing officer shall provide the board with proposed findings of fact and conclusions of law and a recommended decision, and the date, time and place the board will make a final decision regarding the variance petition. The board shall make a final decision regarding the variance petition no sooner than 20 consecutive days after the petitioner receives the director's recommendation required by 20.11.7.13 NMAC, and no later than 65 consecutive days after the board receives the director's recommendation that the board grant a variance in whole or in part.

B. Within 10 consecutive days after the board makes the procedural decisions required by Subsection A of 20.11.7.14 NMAC, the board shall send notice by certified mail to the petitioner regarding the date, time and place of the evidentiary phase of the hearing, and the date, time and place the board will make a final decision regarding the variance peti-

tion. Within the same 10-day period, the board shall deliver a copy of the notice to the division manager. The board may also deliver a second copy of the hearing notice to the petitioner by facsimile or hand delivery.

C. When the board receives the director's written recommendation, if the director is opposed to the board granting the variance as requested by the petitioner, the board shall only hold a public variance hearing if the board receives a timely written request for hearing from the petitioner. The petitioner shall deliver a written request for a board variance hearing to the director and the division manager within 15 consecutive days after the petitioner receives the director's recommendation that the board deny the variance. If the petitioner delivers a timely written request for a board variance hearing to the director and the division manager, the board shall meet and decide whether to appoint a board hearing officer for the evidentiary phase of the board variance hearing, whether any hearing officer shall provide the board with proposed findings of fact and conclusions of law and a recommended decision, and the date, time and place the board will make a final decision regarding the variance petition. The board shall make a final decision regarding the variance petition no sooner than 20 consecutive days after the petitioner delivers a timely written request for a board variance hearing as required by Subsection C of 20.11.7.14 NMAC, and no later than 80 consecutive days after the board receives the director's recommendation that the board not grant the variance.

D. Within 10 consecutive days after the board makes the procedural decisions required by Subsection C of 20.11.7.14 NMAC, the board shall send notice by certified mail to the petitioner regarding the date, time and place of the evidentiary phase of the hearing, and the date, time and place the board will make a final decision regarding the variance petition. Within the same 10-day period, the board shall deliver a copy of the notice to the division manager. The board may also deliver a second copy of the hearing notice to the petitioner by facsimile or hand delivery.

E. If the petitioner fails to deliver a timely request for a board variance hearing as required by Subsection [B] C of 20.11.7.14 NMAC, the petition shall be deemed denied, with prejudice. [3/24/82. . .12/1/95; 20.11.7.14 NMAC - Rn, 20 NMAC 11.07.II.3, 10/1/02; A, 8/1/04; A, 11/1/04]

NEW MEXICO STATE FAIR COMMISSION

This is an amendment to 4.3.11 NMAC, effective 9/30/2004.

**TITLE 4 C U L T U R A L RESOURCES
CHAPTER 3 STATE FAIR
PART 11 STATE FAIR OPEN AIR MARKET [RULES AND REGULATIONS]**

4.3.11.1 ISSUING AGENCY:
New Mexico State Fair Commission.
[3/13/1992; 4.3.11.1 NMAC - Rn & A, SF-92-1, 9/30/2004]

4.3.11.2 S C O P E :
[~~RESERVED~~] Vendors and members of the general public who attend the New Mexico state fair open air market.
[4.3.11.2 NMAC - N, 9/30/2004]

4.3.11.3 S T A T U T O R Y AUTHORITY: [~~RESERVED~~]
Subsection B of 16.6.4, NMSA 1978.
[4.3.11.3 NMAC - N, 9/30/2004]

4.3.11.4 D U R A T I O N :
Permanent.
[4.3.11.4 NMAC - N, 9/30/2004]

4.3.11.5 E F F E C T I V E D A T E:
March 13, 1992, unless a later date is cited at the end of a section.
[4.3.11.5 NMAC - N, 9/30/2004]

4.3.11.6 O B J E C T I V E :
[~~RESERVED~~] To provide rules and guidelines for vendors and members of the general public who participate in and attend the New Mexico state fair open air market.
[4.3.11.6 NMAC - N, 9/30/2004]

4.3.11.7 D E F I N I T I O N S :
[~~RESERVED~~]
A. "Commission" means the regulating body of the New Mexico state fair that shall prepare, adopt, publish, and enforce all necessary rules for the management of the state fair.
B. "General Manager" means the general manager of the New Mexico state fair, or his/her designee.
[4.3.11.7 NMAC - N, 9/30/2004]

4.3.11.8 THE STATE FAIR OPEN AIR MARKET:
A. The commission delegates to the general manager the authority to establish regulations, rates and conditions concerning the operation of the state fair open air market, herein described as "market" as necessary for the smooth, efficient operation of the market.

[A] B. [The state fair open air market, hereinafter described as "market", shall operate every Saturday and Sunday except during the state fair annual event and on certain Monday holidays. The gates shall open at 7:00 a.m. on each day of the market.] The general manager reserves the right to charge for exhibition space, parking and admission. The general manager reserves the right to set the dates and hours of the market, including but not limited to, canceling and rescheduling. No refunds will be issued for acts of God, weather or emergencies. The commission and the general manager shall not be liable for any losses due to a change in hours or dates.

[B] C. A rental fee [of \$10.00 for a space and \$15.00 for a corner space (having two selling sides)] as determined by the general manager shall be paid in advance at either the fair administrative office or at the gate on the day of the market.

[C] D. The [state fair] general manager [~~or his designee, hereinafter described as "manager";~~] shall designate the selling areas and assign an individual space to each vendor.

[D] E. Anyone using a space that has not been paid for [will be charged for the space, plus a penalty of one half the rental charge] may be removed from the grounds.

F. The general manager reserves the right to relocate any vendor without notice if deemed necessary to maintain cohesiveness in the market. Failure to comply with this rule may be cause for expulsion from the market.

[E] G. All vendors [must] shall sell behind the lines defining each space. No selling shall occur in the pedestrian walkways and aisles, nor shall any electrical cords extend into them.

[F] H. All vendors [must] shall leave the grounds by [5:00 p.m.] a time designated by the general manager. Each vendor [must] shall clean the area around his or her space. [Those who do not will be charged a \$50 a month cleanup fee.] Failure to clean the area around his or her space may be cause for expulsion from the market. Anything left on the grounds shall be deemed abandoned and [will] shall be thrown away.

[G] I. [The manager shall prohibit the sale of any merchandise deemed by him to be illegal.] The general manager reserves the right to determine whether an item is considered offensive or in poor taste, and restrict its sale or display. The general manager may prohibit the sale or display of any illegal merchandise. Failure to comply with management decisions may be cause for expulsion from the market.

[H] J. Every vendor [must] shall abide by all state laws, [ordinances

~~[sic]~~ ordinances, rules and regulations, including those pertaining to unfair trade practices and to health and safety.

[F] K. All vendors and patrons shall conduct themselves at all times in a manner which does not interfere with or impede with the proper operation of the market.

L. Vendors shall do everything within their means to maintain good customer relations with market patrons. Numerous customer complaints to management may result in expulsion from the market.

M. The commission and the general manager do not warrant or guarantee the value or quality of any items sold by market vendors.

[F] N. No person ~~[will]~~ shall be allowed to stay on the market grounds overnight without written permission of the manager. Overnight stays may be charged an additional fee.

[K] O. Radios, televisions, record players, tape decks and other sound-producing equipment ~~[must] shall be kept [keep volume to a minimum]~~ to a volume level that does not interfere with the operation of the market.

[E] P. No person-to-person solicitation of funds of or by vendors or patrons shall be allowed on the market grounds, except those conducted in a space that has been rented by the solicitor.

[M] Q. ~~[No firearm or other deadly weapon shall be allowed on the grounds, except those involved in on duty law enforcement or fair security activities.]~~ All persons ~~[must]~~ shall comply with the New Mexico state fair policy on deadly weapons as set forth in Deadly Weapons Prohibited, ~~[4.3.1.18]~~ 4.3.1.19 NMAC.

[N] R. All bicycles, skateboards and motor powered vehicles, except those used to ~~[assist -sic]~~ assist mobility-impaired persons, ~~[must]~~ shall be parked or walked through the market.

[O] S. No animals, except qualified service animals, shall be allowed on the market grounds.

[P] T. ~~[No prepared or ready to eat foods or beverages, including alcoholic beverages, shall be sold by any vendor.]~~ All food vendors shall comply with the concessions regulations as set forth in general information, 4.3.10 NMAC.

[Q] U. No alcoholic beverages shall be possessed, consumed on the market grounds.

[R] V. No games of chance or skill, raffles or other gambling activities shall be allowed on the market grounds.

[S] W. The ~~[state fair]~~ commission and the general manager [will] shall not be responsible for stolen or lost merchandise or valuables or any damage to vehicles or personal property.

[F] X. The general manager ~~[may]~~ reserves the right to remove from or deny access to the market of individuals who do not comply with these rules and regulations. This includes, but is not limited to, individuals who appear to be intoxicated, use vulgar or abusive language, those who engage in disorderly conduct or who otherwise disturb the peace.

[3/13/1992; 4.3.11.8 NMAC - Rn & A, SF

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION BOARD OF FINANCE

This is an amendment to 1.5.23 NMAC, Sections 3, 7, 8, 9 and 10, effective September 30, 2004.

1.5.23.3 S T A T U T O R Y AUTHORITY:

A. Section 13-6-2.1 NMSA 1978 provides generally, with certain exceptions, that any state agency, local public body, or school district that sells, trades or leases real property belonging to that public entity requires state board of finance approval prior to the effective date of such sale, trade or lease. Section 16-6-15, NMSA 1978, makes Section 13-6-2.1 expressly applicable to the state fair.

B. Sections ~~[15-3-9 and 10]~~ 15-3B-8 NMSA 1978 provide that ~~[the director of]~~ the property control division is authorized to acquire land by purchase, gift or donation subject to prior approval by the state board of finance.

C. Section ~~[15-3-11(B)]~~ 15-3B-7(B) NMSA 1978 provides that ~~[the director of]~~ the property control division, subject to the approval of the state board of finance and after following the bidding procedures required by the Procurement Code for the purchase of personal tangible property, is authorized to enter into long-term leases not exceeding ten years of vacant lands when the lessor contracts with the state to construct and complete buildings, subject to approval of the state architect, as a condition precedent to the start of the rental term.

D. Section 17-1-22.1 NMSA 1978 provides that the state game commission, upon approval from the state board of finance, may transfer money from the game and fish bond retirement fund to the game and fish capital outlay fund. Money in the game and fish capital outlay fund may be expended for fish hatcheries and rearing facilities, habitat acquisition, development and improvements and other similar capital projects. All projects funded by the game and fish capital outlay fund shall be approved by the state board of

finance.

E. Section 3-46-34(B) NMSA 1978 provides that a municipality may dispose of real property in an urban renewal or land development area to private persons only under reasonably competitive bidding procedures as it shall prescribe or as provided in this subsection. The municipality may accept any proposal it deems to be in the best interest and in furtherance of the purposes of the urban renewal law; provided, that a notification of intention to accept the proposal shall be filed with the governing body not less than thirty days prior to any acceptance. Thereafter, the municipality may execute a contract in accordance with the provisions of the urban renewal law, and deliver deeds, leases and other instruments and take all steps necessary to effectuate the contract; provided that if the municipality accepts other than the highest bid, the acceptance must be approved by the state board of finance before the municipality may proceed.

[1.5.23.3 NMAC - N, 2-14-2001; A, 9-30-2004]

1.5.23.7 DEFINITIONS:

A. "Acquisition" means, unless usage indicates otherwise, obtaining title in fee simple absolute to real estate by purchase, trade, gift or donation.

B. "Board" means state board of finance.

C. "Consideration" means something which is of value, including but not limited to cash, another piece of real estate, or other form of compensation.

D. "Current" means:

(1) in the context of an appraisal, dated within one year of the date of submission of the proposed transaction to the board for approval, and

(2) in the context of a title binder, dated within six months of the proposed closing date [of the transaction's submission to the board].

E. "General certified appraiser" means a person who holds a valid, current general certificate as a state certified real estate appraiser issued by the real estate appraisers board pursuant to the Real Estate Appraisers Act (who has met the qualifications required in section 61-30-12 (D) NMSA 1978 and 16.62.5.8 NMAC).

~~[E]~~ F. "Local public body" means all political subdivisions, except municipalities and school districts, of the state and their agencies, instrumentalities and institutions.

~~[F]~~ G. "Private entity" means any non-public entity, including but not limited to persons, associations, and both for-profit and non-profit corporations. It does not include Indian nations, tribes and pueblos.

~~[G]~~ H. "Public body" means a

local public body, a state agency, a school district or state educational institution.

~~[H-]~~ L. "Real property" means any interest in real estate, including but not limited to estates in fee simple, leaseholds, water rights and permanent easements.

J. "Residential certified appraiser" means a person who holds a valid, current residential certificate as a state certified real estate appraiser issued by the real estate appraisers board pursuant to the Real Estate Appraisers Act (who has met the qualification required in sections 60-30-12 (C) NMSA 1978 and 16.62.4.8 NMAC).

~~[I-]~~ K. "State agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities, or institutions other than state educational institutions.

~~[J-]~~ L. "School districts" means those political subdivisions of the state established for the administration of public schools.

~~[K-]~~ M. "State educational institution" means Article XII, Section 11 educational institutions.

~~[L-]~~ N. "Term" means the period of time during which a lease is in effect, and includes all renewal options or extensions.

[1.5.23.7 NMAC - N, 2-14-2001; A, 6-28-2002; A, 9-30-2004]

1.5.23.8 ACQUISITION OF REAL PROPERTY:

A. Public bodies requiring board approval before acquiring real property include, but are not limited to, the following:

- (1) general services department;
- (2) department of game and fish for expenditures from the game and fish capital outlay fund.

B. In order to attain approval for acquisition of real property, the board requires that the following information be provided at the time of submission to the board:

(1) the form of general warranty deed by which the public entity will take title in fee simple absolute containing legal description of the property and warranty covenants; reversions or other forfeiture provisions in the deed ~~[are prohibited]~~ shall be accepted only under extraordinary circumstances; special warranty deeds will be accepted only under extraordinary circumstances; when the seller is a public body, transfer of title shall be by quitclaim deed;

(2) a copy of a current appraisal ~~[and a]~~ completed by a general certified appraiser for commercial property or a general certified appraiser or a residential certified appraiser for residential property and report of review from the property tax division of the taxation and revenue department if appraisal was not done by the division;

the public entity seeking division review must submit necessary information to division within time frame specified by division; when the seller is another public body, neither an appraisal nor department review is required;

(3) site improvement survey plat to verify legal description and to identify the existence of recorded easements and encroachments, if applicable;

(4) a description of the proposed use;

(5) sources of funds used for the purchase;

(6) current title binder evidencing clear title with no non-standard exceptions, and agreement by the title company that it will delete general exceptions 1~~[though]~~ through 6, and the first two-thirds of 7;

(7) purchase agreement, if applicable;

(8) phase I environmental assessment for all properties, and a phase II environmental assessment if recommended by the phase I assessment;

(9) resolution or minutes of the governing body, if applicable, authorizing the purchase and containing a provision making the acquisition subject to approval by the board.

[1.5.23.8 NMAC - N, 2-14-2001; A, 6-28-2002; A, 9-30-2004]

1.5.23.9 SALE OR TRADE OF REAL PROPERTY:

A. If the sale or trade of real property is for a consideration of more than twenty-five thousand dollars (\$25,000), then prior board approval is necessary for:

- (1) state agencies (unless the consideration is one hundred thousand dollars (\$100,000) or more, in which case require approval by the legislature is required);
- (2) school districts; and
- (3) local public bodies, include,

but not limited to:

- (a) counties;
- (b) technical vocational institutes;
- (c) conservancy districts;
- (d) flood control authorities; and
- (e) municipalities, when board approval is required pursuant to Section 3-46-34, NMSA.

B. In order to obtain approval for the sale or trade of real property, the board requires that the following information be provided at the time of submission to the board:

(1) the form of quitclaim deed from the public body transferring title to purchaser containing the legal description of the property;

(2) a copy of a current appraisal completed by a general certified appraiser for commercial property or a general certified appraiser or a residential certified

appraiser for residential property and report of review by the property tax division of the taxation and revenue department if the appraisal was not done by the division (for both properties if trade); the public entity seeking division review must submit necessary information to division within time frame specified by division; when the buyer is another public body, neither an appraisal nor department review is required;

(3) a description of the reason for the sale or trade;

(4) selection process used to determine purchaser; competitive sealed bid, public auction, or negotiation;

(5) purchase price and if applicable, cost per square foot, cost per acre, or cost per acre foot of water rights, etc. (for both properties if trade);

(6) sale agreements, if applicable;

(7) resolution or minutes of the governing body, if applicable, authorizing the sale or trade and containing a provision making the sale or trade subject to approval by the board; and

(8) approval by the state engineer of any transfer of water rights.

C. Transfer for less than fair market value of real property owned by a public entity to any private entity is not permitted, except as authorized by legislation implementing the economic development and affordable housing exceptions to the Anti-donation Clause of Article IX, Section 14 of the New Mexico constitution [1.5.23.9 NMAC - N, 2-14-2001; A, 6-28-2002; A, 7-15-2003; A, 9-30-2004]

1.5.23.10 LEASE OF REAL PROPERTY:

A. Board approval is required whenever certain public bodies wish to lease properties they own if the lease is: (1) for a period of more than five years, or (2) for a consideration of twenty-five thousand dollars (\$25,000) or more. Prior board approval is necessary for:

(1) state agencies (unless consideration is one hundred thousand dollars (\$100,000) or more and the term is for a period of more than twenty-five years, in which case approval by the legislature is required);

- (2) counties;
- (3) school districts; and
- (4) local public bodies, which include, but are not limited to, the following:

- (a) technical vocational institutes;
- (b) conservancy districts; and
- (c) flood control authorities.

B. In order to obtain approval for leases of real property, the board requires that the following information be provided:

(1) current appraisal completed by a general certified appraiser for commer-

cial property or a general certified appraiser or a residential certified appraiser for residential property or other evidence of fair market value and [a] report of review from the property tax division of the taxation and revenue department if appraisal was not done by the division; the public entity seeking division review must submit necessary information to division within time frame specified by division; when the lessee/tenant is another public body, neither an appraisal nor department review is required;

- (2) copy of the lease;
- (3) resolution from the governing body, if applicable, approving the lease, and containing a provision making the lease subject to board approval;
- (4) the reason for leasing;
- (5) description of the selection process used to determine lessee: competitive sealed bid, public auction, or negotiation.

C. Rent or other consideration at less than fair market value to a private entity is not permitted, except as authorized by legislation implementing the economic development and affordable housing exceptions to the Anti-donation Clause of Article IX, Section 14 of the New Mexico constitution.

[1.5.23.10 NMAC - N, 2-14-2001; A, 6-28-2002; A, 7-15-2003; A, 9-30-2004]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an emergency amendment to 8.102.500 NMAC, Section 8, effective 10/01/2004.

8.102.500.8 GENERAL REQUIREMENTS

A. Need determination process: Eligibility for NMW or refugee cash assistance based on need requires a finding that:

- (1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;
- (2) the benefit group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;
- (3) the countable resources owned by and available to the benefit group do not exceed the \$1500 liquid and \$2000 non-liquid resource limits;
- (4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

B. GA program need determination: Eligibility for the GA program requires a finding that the benefit

group's countable gross earned and unearned income does not equal or exceed the standard of need for the size of the benefit group.

C. Gross income limits: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

- (1) Income eligibility limits are revised and adjusted each year in October.
- (2) The gross income limit for the size of the benefit group is as follows:
 - (a) one person [~~\$ 637~~] \$ 659
 - (b) two persons [~~\$ 859~~] \$ 884
 - (c) three persons [~~\$1,081~~] \$1,110
 - (d) four persons [~~\$1,304~~] \$1,335
 - (e) five persons [~~\$1,526~~] \$1,560
 - (f) six persons [~~\$1,748~~] \$1,785
 - (g) seven persons [~~\$1,971~~] \$2,011
 - (h) eight persons [~~\$2,193~~] \$2,236
 - (i) nine persons [~~\$2,416~~] \$2,461
 - (j) ten persons [~~\$2,638~~] \$2,686
 - (k) for more than ten persons, add [~~\$223~~] \$225 for each additional person.

D. Eligibility for support services only: Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than 100% of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

- (1) one person [~~\$ 749~~] \$ 776
- (2) two persons [~~\$ 1,010~~] \$ 1,041
- (3) three persons [~~\$ 1,272~~] \$ 1,306
- (4) four persons [~~\$ 1,534~~] \$ 1,571
- (5) five persons [~~\$ 1,795~~] \$ 1,836
- (6) six persons [~~\$ 2,057~~] \$ 2,101
- (7) seven persons [~~\$ 2,319~~] \$ 2,366
- (8) eight persons [~~\$ 2,580~~] \$ 2,631
- (9) nine persons [~~\$ 2,842~~] \$ 2,896
- (10) ten Persons [~~\$ 3,104~~] \$ 3,161
- (11) for more than ten persons, add [~~\$ 262~~] \$ 265 for each additional person.

E. Standard of need:

- (1) The standard of need is based on the number of individuals included in the benefit group and allows for a financial standard and basic needs.
- (2) Basic needs include food, clothing, shelter, utilities, personal requirements and the individual's share of benefit group supplies.
- (3) The financial standard includes approximately \$79 per month for each individual in the benefit group.
- (4) The standard of need for the NMW, GA, and refugee cash assistance benefit group is:

- (a) one person \$ 231
- (b) two persons 310
- (c) three persons 389
- (d) four persons 469
- (e) five persons 548
- (f) six persons 627
- (g) seven persons 706
- (h) eight persons 802
- (i) nine persons 881
- (j) ten persons 960
- (k) for more than 10 persons, add \$79 for each additional person.

F. Special needs:

(1) **Special clothing allowance:** In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$44 for the month of August only.

- (a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.
- (b) The clothing allowance shall be allowed for each school-age child who is included in the NMW, GA, or refugee cash assistance benefit group for the month of August.
- (c) The clothing allowance is not allowed in determining eligibility for NMW, GA, or refugee cash assistance.
- (2) **Layette:** A one-time layette allowance of \$25 is allowed upon the birth of a child who is or will be included in the benefit group. The allowance shall be authorized by

no later than the end of the month following the month in which the child is born.

G. Shelter home care: A cash payment may be made to a GA or an SSI recipient when the recipient resides in a licensed shelter care home because the recipient needs help with personal care, such as bathing, dressing, eating or taking prescribed medication.

(1) The payment shall be allowed only if the GA or SSI recipient is living in a residential shelter care facility that is licensed by the New Mexico department of health.

(2) **Eligibility and payment standard for GA recipients:** The payment for a GA recipient living in a licensed residential shelter care facility is equal to the cash assistance payment plus \$100.

(3) **Payment to an SSI recipient:** The payment made to an SSI recipient living in a licensed residential shelter care facility is \$100 per month.

[8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.620 NMAC, Section 16, effective 10/01/2004.

8.102.620.16 SUPPORTIVE SERVICES BENEFITS

A. Issuance schedule:

(1) Participants assigned to a work program activity expected to take more than 30 days to complete receive reimbursement on a monthly basis. Participants must submit participation reports to be received no later than the fifth calendar day, or the first following work day if the fifth calendar day is a weekend or holiday, after a participation month's end. Reimbursement shall be authorized within five working days after receipt of all required verification. Warrants shall be issued within 10 working days after authorization.

(2) Participants must submit the monthly participation report to be received no later than the fifth calendar day after a participation month's end. Reports received on the first ~~work day~~ workday after the fifth shall be considered timely if the fifth occurred on a ~~week end~~ weekend or holiday. Participants shall not be eligible to receive reimbursement if the report verifying participation is received 30 days or more following the end of the month for which participation is being reported.

B. Retroactive benefit coverage:

(1) Benefit coverage which provides supportive services may be issued retroactively to a participant if, upon individual case review, it is determined that:

(a) the participant was eligible to receive supportive services;

(b) the participant requested supportive services timely; and

(c) work program staff inadvertently failed to process the reimbursements in a timely manner.

(2) Work program participants must have signed a WPA, which has been approved by the caseworker, which identifies the supportive services. Under no circumstances shall work program participants be eligible to receive supportive service reimbursement for costs incurred prior to enrollment in the work program.

[8.102.620.16 NMAC - Rp 8.102.620.16 NMAC, 07/01/2001; A, 10/01/2004]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an emergency amendment to 8.106.500 NMAC, Section 8, effective 10/01/2004.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. Need determination

process: Eligibility for the GA program based on need requires a finding that the:

(1) countable resources owned by and available to the benefit group do not exceed either the \$1500 liquid or \$2000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent (85%) of the federal poverty guideline for the size of the benefit group; and

(3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

B. GA payment determination: The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

C. Gross income test:

The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent (85%) of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

- (a) one person [~~\$ 637~~] \$ 659
- (b) two persons [~~\$ 859~~] \$ 884

- (c) three persons [~~\$1,081~~] \$1,110
- (d) four persons [~~\$1,304~~] \$1,335
- (e) five persons [~~\$1,526~~] \$1,571
- (f) six persons [~~\$1,748~~] \$1,785
- (g) seven persons [~~\$1,971~~] \$2,011
- (h) eight persons [~~\$2,193~~] \$2,236
- (i) nine persons [~~\$2,416~~] \$2,461
- (j) ten persons [~~\$2,638~~] \$2,686
- (k) for more than ten persons, add [~~\$223~~] \$225 for each additional person.

D. Standard of need:

(1) The standard of need is based on the number of individuals included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.

(3) The financial standard includes approximately \$79 per month for each individual in the benefit group.

(4) The standard of need for the GA cash assistance benefit group is:

- (a) one person \$ 231
- (b) two persons 310
- (c) three persons 389
- (d) four persons 469
- (e) five persons 548
- (f) six persons 627
- (g) seven persons 706
- (h) eight persons 802
- (i) nine persons 881
- (j) ten persons 960

(k) for more than 10 persons, add \$79 for each additional person.

E. Net income test:

The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group.

F. Special clothing allowance for school-age dependent children:

In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$44 for the month of August only.

(1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age nineteen (19) by the end of August.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group for the month of August.

(3) The clothing allowance is not counted in determining eligibility for GA cash assistance.

[8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an emergency amendment to 8.139.500 NMAC, Section 8, effective 10/01/2004.

8.139.500.8 BASIS OF ISSUANCE

A. Income standards: Determination of need in the Food Stamp Program is based on federal guidelines. Participation in the program is limited to households whose income is determined to be a substantial limiting factor in permitting them to obtain a nutritious diet. The net and gross income eligibility standards are based on the federal income poverty levels established in the Community Services Block Grant Act [42 USC 9902(2)].

B. Gross income standards: The gross income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin Islands is 130 percent (130%) of the federal income poverty levels for the 48 states and the District of Columbia. One hundred thirty percent (130%) of the annual income poverty guidelines is divided by 12 to determine monthly gross income standards, rounding the results upward as necessary. For households larger than eight, the increment in the federal income poverty guidelines is multiplied by 130%, divided by 12, and the results rounded upward if necessary.

C. Net income standards: The net income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin Islands are the federal income poverty levels for the 48 contiguous states and the District of Columbia. The annual income poverty guidelines are divided by 12 to determine monthly net income eligibility standards, (results rounded upward if necessary). For households larger than eight, the increment in the federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

D. Yearly adjustment: Income eligibility limits are revised each October 1st to reflect the annual adjustment to the federal income poverty guidelines for the 48 states and the District of Columbia.

E. Issuance table: The issuance table lists applicable income guidelines used to determine food stamp (FS) eligibility based on household size. Some amounts are increased to meet the needs of certain categorically eligible households. Some of the net income amounts listed are higher than the income limits for some household sizes. Households not categorically eligible for FS benefits must have income below the appropriate gross income limit for household size.

Household Size	Maximum Gross Monthly Income Elderly/Disabled Separate Status at 165% of Poverty	Maximum Gross Monthly Income At 130% of Poverty	Maximum Net Monthly Income At 100% of Poverty	Maximum Allotment (benefit amount)
1	[\$1,265] <u>\$1,281</u>	[\$973] <u>\$1,009</u>	[-\$749] <u>\$776</u>	[\$141] <u>\$149</u>
2	[\$1,707] <u>\$1,718</u>	[\$1,313] <u>\$1,354</u>	[-\$1,010] <u>\$1,041</u>	[\$259] <u>\$274</u>
3	[\$2,150] <u>\$2,155</u>	[\$1,654] <u>\$1,698</u>	[-\$1,272] <u>\$1,306</u>	[\$371] <u>\$393</u>
4	\$2,592	[\$1,994] <u>\$2,043</u>	[-\$1,534] <u>\$1,571</u>	[\$471] <u>\$499</u>
5	[\$3,034] <u>\$3,030</u>	[\$2,334] <u>\$2,387</u>	[-\$1,795] <u>\$1,836</u>	[\$560] <u>\$592</u>
6	[\$3,476] <u>\$3,467</u>	[\$2,674] <u>\$2,732</u>	[-\$2,057] <u>\$2,101</u>	[\$672] <u>\$711</u>
7	[\$3,918] <u>\$3,904</u>	[\$3,014] <u>\$3,076</u>	[-\$2,319] <u>\$2,366</u>	[\$743] <u>\$786</u>
8	[\$4,360] <u>\$4,341</u>	[\$3,354] <u>\$3,421</u>	[-\$2,580] <u>\$2,631</u>	[\$849] <u>\$898</u>
\$Each Additional Member	+ [\$443] <u>\$438</u>	+ [\$341] <u>\$345</u>	+ [-\$262] <u>\$265</u>	+ [-\$106] <u>\$112</u>

F. Deductions and standards:

(1) Determination: Expense and standard deduction amounts are determined by federal guidelines and may be adjusted each year. Households eligible based on income and resource guidelines, and other relevant eligibility factors, are allowed certain deductions to determine countable income.

(2) Yearly adjustment: The expense and standard deductions may change each year. If federal guidelines mandate a change, it is effective each October 1st.

(3) Expense deductions and standards table:

Standard Deduction for Household Size of 1 through 4	\$134.00
Standard Deduction for Household Size of 5	[\$149.00] <u>\$153.00</u>
Standard Deduction for Household Size of 6 or more	[\$171.00] <u>\$175.00</u>
Earned Income Deduction (EID)	20%
Dependent Care Deduction Limit (per dependent)	
Under age 2	\$ 200.00
All others including elderly dependent	\$ 175.00
Heating/Cooling Standard Utility Allowance (HCSUA)	[\$193.00] <u>\$211.00</u>
Limited Utility Allowance (LUA)	[-\$ 86.00] <u>\$ 91.00</u>
Telephone Standard (TS)	[-\$ 28.00] <u>\$ 29.00</u>

Excess Shelter Cost Deduction Limit for Non-Elderly/Disabled Households	[\$378.00] \$388.00
Homeless Household Shelter Standard	\$ 143.00
Prescription Drug Card Deduction	\$23.00
Minimum Allotment for Eligible One-and Two-Person Households	\$ 10.00

[02/01/95, 10/01/95, 02/29/96, 10/01/96, 3/15/97, 01/15/98, 11/15/98, 12/15/99, 01/01/01, 03/01/01; 8.139.500.8 NMAC - Rn, 8 NMAC 3.FSP.501, 05/15/2001; A, 10/01/2001; A, 10/01/2002, A, 09/01/2003; A, 10/01/2003; A/E 10/01/2004]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an emergency amendment to 8.139.520 NMAC, Section 11, effective 10/01/2004.

8.139.520.11 GENERAL DEDUCTIONS

A. Use of deductions: A household must qualify for deductions by first meeting a gross income test. A household is not eligible if gross income is more than the standard listed in Subsection E of 8.139.500.8 NMAC for a household size. If income falls below the gross income limit, a household shall be allowed deductions, where applicable, to make a final eligibility and benefit amount determination. Households that include elderly or disabled members, as defined, automatically qualify for deductions; eligibility is determined based on net rather than gross income.

B. Standard deduction: All households are allowed a standard deduction from income. The standard deduction is listed in Paragraph 3 of Subsection F of 8.139.500.8 NMAC, Tables, and is adjusted effective every October 1st.

C. Earned income deduction: Twenty percent (20%) of gross earned income shall be deducted. Excluded income is not used for purposes of computing the earned income deduction.

(1) Computing an overissuance: The earned income deduction (EID) shall not be allowed when calculating the income to be used in determining an overissuance which is due to the failure of a household to report earned income in a timely manner.

(2) Work supplementation programs: The EID shall not be allowed for any amount of income which is earned under a work supplementation or support program and is attributable to public assistance.

D. Medical deductions: Allowable medical deductions include:

(1) Elderly/disabled: Medical expenses in excess of \$35.00 per month, excluding special diets, incurred by any household member who is elderly or disabled.

(2) Emergency SSI: Individuals receiving emergency SSI benefits based on

presumptive eligibility shall be eligible for the medical deduction.

(3) Death: A medical expense incurred by a household member who dies shall be allowed as a deduction if the member was eligible for the deduction at the time of death and if the remaining household members are legally responsible for payment.

(4) Hospital/outpatient/nursing home: Medical expenses, such as hospitalization or outpatient treatment, nursing care and nursing home care, including payments by a household for an individual who was an eligible household member immediately before entering a hospital or nursing home facility recognized by the state, are allowable deductions.

(5) Not eligible: Spouses, children or other individuals in the household who are not elderly or disabled, shall not be entitled to claim the medical deduction.

(6) Allowing medical expenses:

(a) One-time only expense:

(i) A household may choose to have a one-time only expense, reported at certification, deducted in a lump sum or averaged over the certification period.

(ii) If a household incurs a one-time medical expense and has made arrangements with the provider to make monthly installments (beyond the current certification period), the expense may be allowed each month as arranged.

(iii) A household reporting a one-time only medical expense during its certification period may choose to have a one-time deduction or to have the expense averaged over the remaining months of the certification period.

(b) Households certified for 24 months: A household certified for 24 months cannot have a one-time medical expense averaged over the 24-month certification period.

(i) A one-time medical expense may be deducted in the first month of the 24-month certification period; or the one-time medical expense may be deducted and averaged over the first 12 months of the 24-month certification period.

(ii) One-time medical expenses reported after the first 12 months of the certification period shall be averaged over the remaining months.

(c) Expense in last month of certification: If a household is billed for and

reports an expense during the last month of its certification period, the deduction shall not be allowed. If the expense will be paid in installments during the following certification period, the deduction shall be allowed during the appropriate number of months in the subsequent certification period.

(d) Fluctuating expenses:

Fluctuating medical expenses shall be allowed as deductions if regularly recurring, reasonably anticipated, and verified. Once determined, the household is not required to report changes of \$25 or less or reverify expenses each month.

(e) Anticipated changes in expenses: At certification and recertification the household must report and verify all medical expenses. The household's monthly medical deduction for the certification period shall be based on:

(i) anticipated changes in the household's medical expenses that can reasonably be expected to occur during the certification period based on available information about the recipients medical condition, public or private insurance coverage, and current verified medical expenses; and

(ii) expenses that occurred during the certification period that will continue in the new certification period; and

(iii) consideration of unpaid and past due medical expenses that will continue in the certification period.

(f) If a household reports an allowable medical expense at the time of certification but cannot provide verification at that time, and if the amount of the expense cannot be reasonably anticipated based upon available information about the recipients' medical condition and public or private medical insurance coverage, the household shall have the nonreimbursable portion of the medical expense considered at the time the amount of the expense or reimbursement is reported and verified.

(g) A household shall not be required to file reports about its medical expenses during the certification period. If a household voluntarily reports a change in its medical expenses, the caseworker shall act on the change in accordance with regulations in (c) of Paragraph 1 of Subsection B of 8.139.120.10 NMAC.

(7) Past due and unpaid medical expenses: The medical expense deduc-

tion shall not be determined by averaging past due or unpaid monthly medical expenses. Such expenses shall be used only as an indicator of what can reasonably be anticipated. Medical expenses which the household might reasonably anticipate receiving include but are not limited to costs of medical services and treatment received regularly, but less often than monthly, and prescription drugs.

(8) Medical and dental care: Medical and dental care, psychotherapy, and rehabilitation services, provided by licensed practitioners authorized by state law, or other qualified health professional, shall be allowed as medical expense deductions. State licenses in New Mexico are authorized by occupational licensing boards. A state-licensed practitioner has such a license. Native American practitioners (medicine men) are not licensed, but are recognized as health practitioners for this purpose.

(9) Prescription drugs and medical supplies: Prescription drugs, when prescribed by a licensed practitioner authorized under state law, and over-the-counter medications (including insulin) when approved by a licensed practitioner or other qualified health professional, shall be allowed as deductions. In addition, costs for medical supplies, sick-room equipment (including rental), or other prescribed equipment are deductible.

(10) Health and hospitalization/medicare premiums: Health and hospitalization insurance premiums, and medicare premiums, as well as any cost sharing or spend-down expenses incurred by medicaid recipients, are allowable deductions. If a medical insurance policy includes benefits for household members not eligible for a deduction, only that portion of the premium assigned to the eligible member(s) may be considered a deduction. In the absence of specific information about how much of the premium is for the eligible member(s), a pro rata amount may be used. This system may be used even if the policy holder does not qualify for the deduction but the policy includes a person(s) who does qualify. The cost of life or health and accident policies, such as those payable in lump sum settlements for death or dismemberment, or income maintenance policies that continue mortgage or loan payments while the beneficiary is disabled, are not deductible.

(11) Transportation and lodging costs: Reasonable costs of transportation and lodging to obtain medical treatment or services are deductible. The allowance for mileage in privately owned vehicles is the same as the amount allowed state employees. Lodging costs may not exceed the daily expense amount allowed (per diem) for state employees.

(12) Maintaining an attendant:

Costs of maintaining an attendant, home-maker or home health aide, child care services, or housekeeper that are necessary because of age, infirmity, or illness are deductible medical expenses. In addition, an amount equal to the food stamp benefit amount for one person is deductible if the household furnishes the majority of the attendant's meals. The food stamp benefit amount for the meal-related deduction is the one in effect at the time of initial certification. The caseworker shall update the food stamp benefit amount for meals at the next scheduled recertification. If a household incurs attendant care expenses that could qualify under both the medical deduction and the dependent care deduction, the caseworker shall treat the expense as a medical expense.

(13) Other expenses: Other deductible expenses include but are not limited to:

(a) dentures, hearing aids, prosthetics;

(b) securing and maintaining a seeing-eye or hearing dog, or other service animal, including the cost of dog food and veterinary bills; and

(c) eyeglasses or contact lenses prescribed by an ophthalmologist or an optometrist.

(14) Prescription drug card expense:

(a) An individual participating in the food stamp program who has enrolled for the medicare-approved drug discount card shall have \$23.00 credited to the monthly medical expense allowed for that individual.

(b) An individual participating in the food stamp program who receives a \$600.00 transitional assistance credit on the medicare-approved drug discount card for the calendar years 2004 and 2005 shall have \$50.00 credited to the monthly medical expense allowed for that individual for each month after September 2004, through December 2005, and not beyond that month.

E. Dependent care expenses:

(1) Deductible amounts: Payments may be deducted for the actual cost of the care of children or other dependents when necessary for a household member to accept or continue employment, comply with E&T work requirements, or an equivalent effort by those not required to comply with E&T work requirements, or attend training or pursue education which is preparatory to employment or leads to a degree. An amount up to the maximum allowed may be deducted for each child requiring dependent care (See Paragraph 3 of Subsection F of 8.139.500.8 NMAC, Deductions and Standards).

(2) Household member provides care:

If a household member provides dependent care, the payment is neither income to the payee nor a deduction for the payor (see Subsection A of 8.139.500.11 NMAC).

(3) Income excluded/deduction allowed: Households whose dependent care costs are paid in accordance with 8.139.527 NMAC, Income and Resources Excluded by Federal Law, shall be entitled to a dependent care deduction only for the amount of the child care expense not reimbursed by a work program or Transitional Day Care (TDC) Program. Child care expenses reimbursed or paid by a work program or TDC are not deductible.

F. Household expenses:

(1) Shelter expenses:

(a) Definition: Continuing charges for the shelter occupied by a household include rent, mortgage payment, or other continuing charges leading to the ownership of the shelter, such as loan repayments for the purchase of a mobile home and interest on such payments. If payments are made on more than one mortgage on the home, each payment is counted for the period the payment is intended to cover. Security deposits on rental property and downpayments for the purchase of a home are not allowed as shelter expense deductions. Closing costs shall not be allowed as a shelter expense, unless the closing costs can be itemized to identify costs that are allowable deductions, such as insurance and property taxes.

(b) Excess shelter expense deduction: Monthly shelter expenses in excess of fifty percent (50%) of a household's income, after all other deductions have been allowed may be deducted, subject to the following restrictions:

(i) The shelter deduction may not exceed the maximum amount indicated in Paragraph 3 Subsection F of 8.139.500.8 NMAC, unless the household contains a member who is elderly or disabled, as defined.

(ii) Households may not claim shelter expenses if the expense shall be paid as a vendor payment by an individual or organization outside the household.

(iii) The household must be responsible for payment of the shelter expense; however the household need not have paid the expense to claim the deduction. A current billing statement is used to establish the expense. The expense may not be allowed more than once.

(2) Taxes and insurance: Property taxes, state and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings, are deductible expenses.

(3) Natural disasters: Expenses

for the repair of a home that has been substantially damaged or destroyed by a natural disaster such as fire or flood may be deducted. Expenses shall not be allowed if the household has been or will be reimbursed by public or private relief agencies, insurance companies, or any other source. Expense deductions are limited to the repair of the home and not its furnishings.

(4) Costs of temporarily unoccupied home:

(a) If the home is temporarily unoccupied by a household because of employment or training away from home, illness, or abandonment caused by a natural disaster or casualty loss, the shelter costs for the home may be deducted. However, a household may claim only one SUA.

(b) For costs of a home vacated by the household to be included in its shelter costs:

- (i)** the household must intend to return to the home;
- (ii)** the current occupants of the home, if any, cannot be claiming shelter expenses for food stamp purposes;
- (iii)** the home cannot be leased or rented during the household's absence.

(c) Verification is required of households claiming this deduction if the cost is questionable or would result in a deduction.

(5) Maximum deduction limit adjustment: The maximum deduction limit for excess shelter expenses will be revised as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as follows: effective January 1, 1997 through September 30, 1998, the deduction will be \$250; from October 1, 1998 through September 30, 2000 the deduction will be \$275; and effective from October 1, 2000 the deduction will be \$300; and will remain so indefinitely.

(6) Homeless shelter standard: A household in which all household members are defined as homeless, within the definition at paragraph (40) of Subsection A of 8.139.100.7 NMAC, shall be allowed the homeless shelter standard if the household incurs any shelter expenses at any time during the month.

(a) The homeless household may claim actual shelter expenses if the expenses exceed the homeless shelter standard and the expenses are verified. Verification standards at Subsection A of 8.100.130.15 NMAC and 8.100.130.9 NMAC shall be used to verify shelter expenses, as well as other reasonable documentation determined to establish the homeless household's actual expenses.

(b) The caseworker shall assist the homeless household in determining

whether claiming the homeless shelter standard or actual expenses would be most beneficial to the household.

(c) The homeless shelter standard shall be deducted from the household's countable net income.

(7) Utility expenses:

(a) Allowable expenses for the mandatory utility standards: Allowable expenses that may be used to determine the mandatory utility standards include the cost of home heating or cooling; cooking fuel; electricity; water and sewerage; garbage and trash collection fees; the service fee for one telephone, including but not limited to, basic service fees, wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees, taxes; and fees charged by the utility provider for initial installation of the utility.

- (i)** A one-time deposit is not allowed as a utility expense.
- (ii)** Expenses billed to a landlord or housing unit, but separately identifiable from the rent as an expense to the household, are allowable expenses.
- (iii)** A household shall not be allowed actual utility expenses, even if the expenses exceed the amount of the mandatory utility standard for which the household is eligible.

(iv) A household that is determined eligible for a mandatory utility standard deduction shall receive only one standard deduction during the household's food stamp certification period.

(b) Mandatory heating or cooling standard: A food stamp household shall be allowed the Heating/Cooling Standard Utility Allowance (HCSUA) during the household's certification period. The HCSUA includes all utility expenses for heating or cooling the household's home. The household's heating or cooling expense must be billed separately from other shelter expenses. The HCSUA shall be allowed if the household:

- (i)** incurs a heating or cooling expense separate from other shelter expenses; or
- (ii)** receives or received a direct payment or a payment is made on behalf of the household under the Low Income Home Energy Assistance Act of 1981; or
- (iii)** receives or received a payment or a payment is made on behalf of the household under any other similar energy assistance program as long as the household still incurs out-of-pocket heating or cooling expenses in excess of the energy assistance provided; or
- (iv)** lives in a public housing unit that has central utility meters, incurs a heating or cooling expense, and the household is charged only for excess heating or cooling usage.

(c) Mandatory limited utility standard: A food stamp household shall be allowed a Limited Utility Allowance (LUA) if the household does not incur a heating or cooling expense but does incur two or more of the following expenses:

- (i)** electricity or fuel, for purposes other than heating or cooling;
- (ii)** water;
- (iii)** sewerage;
- (iv)** well and septic tank installation or maintenance;
- (v)** garbage or trash collection; and
- (vi)** one telephone.

(d) Mandatory telephone standard: A food stamp household shall be allowed the telephone standard if the household incurs an expense only for the telephone used by the household. The telephone standard shall be allowed for only one telephone charge for the residence.

G. Child support deduction: A deduction shall be allowed for child support payments paid by a household member to or for a non-household member, provided that the household member has a legal obligation to pay child support and such payments are being made.

(1) Legal obligation and verification: The household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays shall be verified. Any document that verifies the household's legal obligation to pay child support, such as a court or administrative order, or legally enforceable separation agreement shall be acceptable verification. Documents that are accepted as verification of the household's legal obligation to pay child support shall not be accepted as verification of the household's actual monthly child support payments. Actual payment of child support shall be verified by documentation including, but not limited to, cancelled checks, wage withholding statements, verification of withholding from unemployment compensation, and statements from the custodial parent regarding direct payments or third party payments the non-custodial parent pays or expects to pay on behalf of the custodial parent. The department shall be responsible for obtaining verification of the household's child support payments if the payments are made to the child support enforcement division.

(2) Determining the deduction amount:

(a) Household with at least three months of payment history: Average the last three month period, taking into account any anticipated changes in the legal obligation. This average is the child support deduction amount. In the event that the client has at least a three month payment history and the payment includes arrear-

ages, the amount paid toward arrearages shall be used in the average.

(b) Household with less than three months of payment history: The department shall estimate the anticipated payments according to the obligation and discussion with the client. This anticipation shall not include payments toward arrearages.

H. Non deductible expenses:

(1) Excluded reimbursement/vendor payments:

(a) That portion of any allowable expense that is reimbursed to the household or that is paid through a vendor payment to a third party is not allowable as a deduction.

(b) Actual utility expense deductions or the SUA, as appropriate, shall be allowed for households receiving payments from LIHEAP, or receiving energy assistance payments under a program other than LIHEAP, as long as the household continues to incur out-of-pocket expenses for home heating or cooling.

(c) A reimbursement paid by HUD or FmHA to a household, or indirectly to a utility provider, is not allowed as a deductible expense.

(d) A household receiving HUD or FmHA utility reimbursements shall be entitled to the SUA if it incurs heating or cooling costs exceeding the amount of excluded utility reimbursements.

(2) Household member provides service:

(a) When one household member pays another household member to provide a product or service, the money that is exchanged is neither an expense for one nor income for the other household member. Expenses are deductible only when a product or service is provided by someone outside the household and the household makes a money payment for the product or service.

(b) Similarly, income is not counted for one household member who is paid by another household member to obtain wood for home heating. The actual cost of the wood is allowed as a utility expense if an outside money payment is made. Money exchanged between household members is not considered income to the individual receiving the money and is not an expense to the member paying it.

(3) Past due shelter expenses: Payment on delinquent rent, mortgage, property taxes or utilities are not allowed as deductible expenses even if not previously billed.

[02/01/95, 12/17/96, 07/01/97; 8.139.520.11 NMAC - Rn, 8 NMAC 3.FSP.525.8, 05/15/2001; A, 02/14/2002, A, 09/01/2003; A/E, 10/01/2004]

NEW MEXICO BOARD OF PODIATRY

Rule I, Conduct of Board Business (filed July 21, 1980) is hereby repealed, effective October 15, 2004.

Rule V, Examinations (filed September 11, 1989) is hereby repealed, effective October 15, 2004.

Rule VI, Renewal of License (filed August 18, 1989) is hereby repealed, effective October 15, 2004.

Rule VII, Continuing Education (filed August 18, 1989) is hereby repealed, effective October 15, 2004.

Rule VIII, Dishonest and Unprofessional Conduct Defined (filed July 21, 1980) is hereby repealed, effective October 15, 2004.

Rule IX, Scope of Practice (filed July 21, 1980) is hereby repealed, effective October 15, 2004.

Rule X, Gross Malpractice Defined (filed July 21, 1980) is hereby repealed, effective October 15, 2004.

Rule XI, Advertising by Licensees (filed July 21, 1980) is hereby repealed, effective October 15, 2004.

Rule XII, Inspection of Board Records (filed November 29, 1990) is hereby repealed, effective October 15, 2004.

Rule XIII, Duplicate/Replacement License (filed November 29, 1990) is hereby repealed, effective October 15, 2004.

Rule XIV, Severability (filed November 29, 1990) is hereby repealed, effective October 15, 2004.

Rule XV, Complaints and Disciplinary Proceedings (filed January 28, 1991) is hereby repealed, effective October 15, 2004.

Rule XVI, Retirement and Reinstatement (filed January 28, 1991) is hereby repealed, effective October 15, 2004.

16 NMAC 21.3, Application for License by Examination (filed June 17, 1996) is hereby repealed, effective October 15, 2004.

16 NMAC 21.4, Application for License by Reciprocity (filed June 17, 1996) is hereby repealed, effective October 15, 2004.

16 NMAC 21.5, Application for Temporary

License (filed June 17, 1996) is hereby repealed, effective October 15, 2004.

NEW MEXICO BOARD OF PODIATRY

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 21 PODIATRISTS
PART 1 GENERAL PROVI-
SIONS**

16.21.1.1 ISSUING AGENCY: Regulation and Licensing Department, NM Board of Podiatry.
[16.21.1.1 NMAC - N, 10-15-04]

16.21.1.2 SCOPE: The provisions in 16.21.1 NMAC apply to all parts of Chapter 21 and provide information for applicants, licensed podiatrists, board members, and members of the public.
[16.21.1.2 NMAC - N, 10-15-04]

16.21.1.3 STATUTORY AUTHORITY: Podiatry Act, Section 61-8-6(E)(2) NMSA 1978.
[16.21.1.3 NMAC - N, 10-15-04]

16.21.1.4 DURATION: Permanent.
[16.21.1.4 NMAC - N, 10-15-04]

16.21.1.5 EFFECTIVE DATE: October 15, 2004, unless a later date is cited at the end of a section.
[16.21.1.5 NMAC - N, 10-15-04]

16.21.1.6 OBJECTIVE: This part provides general provisions for the practice of podiatry, licensee responsibility, and requirements for the conduct of board business.
[16.21.1.6 NMAC - N, 10-15-04]

16.21.1.7 DEFINITIONS: "APMA" means the American podiatric medical association.
[16.21.1.7 NMAC - N, 10-15-04]

16.21.1.8 SCOPE OF PRACTICE: For the purpose of clarification of the Podiatry Act, Section 61-8-2(C) NMSA 1978, the practice of podiatry:

A. in regard to surgical treatment shall be limited to the tuberosity of the tibia and the area distal thereto, excepting the skin and subcutaneous tissues of the thigh;

B. does not include amputation of the foot, however, it does allow removal of any part thereof;

C. does not include the personal administration of a general anesthetic, however, it does allow the use of the services of a certified registered nurse anes-

thetist; and

D. a licensed podiatrist may assist a licensed medical or osteopathic physician in the performance of any surgery of the lower extremities.

[16.21.1.8 NMAC - Rp, Rule IX, 10-15-04]

16.21.1.9 LICENSE DISPLAY:

A valid license must be displayed and must be visible to the public in each place of business.

[16.21.1.9 NMAC - N, 10-15-04]

16.21.1.10 RESPONSIBILITY OF LICENSEE:

It is the responsibility of the licensed podiatrist to keep the board informed of a current mailing address. All correspondence, including renewal forms, will be mailed to the last address on file. The board assumes no responsibility for renewal applications or other correspondence not received because of a change of address.

[16.21.1.10 NMAC - N, 10-15-04]

16.21.1.11 SEVERABILITY:

The provisions of these regulations are severable. If any parts of these regulations are held invalid, the remaining provisions shall remain in force and effect.

[16.21.1.11 NMAC - Rp, Rule XIV, 10-15-04]

16.21.1.12 TELEPHONIC ATTENDANCE BY BOARD MEMBERS:

A. Pursuant to the provisions of the Open Meetings Act, Section 10-15-1(C), NMSA, 1978, board members may participate in a board meeting by means of a conference telephone or similar communications equipment, and participation by such means shall constitute presence in person at the meeting. Such participation by telephone may only occur when it is difficult or impossible for the member to attend in person.

B. Each board member participating by conference telephone must be identified when speaking and all participants must be able to hear each other at the same time, and members of the public attending the meeting must be able to hear any member of the public or board members participating by phone.

[16.21.1.12 NMAC - N, 10-15-04]

16.21.1.13 CONDUCT OF BOARD BUSINESS:

A. *Officers.* The board shall elect a chairperson, vice-chair, and secretary at the first regularly scheduled meeting in each calendar year.

B. *Excused absences.* A board member may be excused from a board meeting at the discretion of the board chairperson. The member shall notify the

board chairperson and board administrator prior to meeting with an explanation of why they will be unable to attend. All other unattended meetings will be unexcused absences. After three consecutive unexcused absences, the member shall be recommended for removal as a board member pursuant to the Podiatry Act, Section 61-8-5(D) NMSA 1978.

C. *Quorum.* Three board members shall constitute a quorum.

D. *Notice of meetings.* Regular meetings, special meetings and emergency meetings shall be noticed in accordance with the provisions of the board's open meetings resolution.

[16.21.1.13 NMAC - Rp, Rule I, 10-15-04]

16.21.1.14 PUBLIC RECORDS:

Except as otherwise provided by law, all applications, pleadings, petitions, motions, exhibits, decisions and orders entered following formal disciplinary proceedings conducted pursuant to the Uniform Licensing Act, Sections 61-1-1 to 61-1-33 NMSA 1978) are matters of public record as of the time of filing with or by the board.

A. Unless otherwise provided by law, or excepted by the Inspection of Public Records Act, all records in the board's custody are public record available for inspection. Requests for inspection of public records shall follow the requirements of the Inspection of Public Records Act, Section 14-2-1 NMSA 1978.

B. No person shall be permitted to remove documents from the board office.

[16.21.1.14 NMAC - Rp, Rule XII, 10-15-04]

16.21.1.15 ADVERTISING GUIDELINES:

A. All advertisements shall include the podiatrist's name, address and telephone number consistent with the Health Care Advertising Act, Section 57-27-1.

B. *Specialty Practice:* A podiatrist may only advertise a specialty practice if they qualify under one of the following provisions:

(1) the licensee is board certified by a recognized certifying board; the abbreviation and name of the certifying board must be included in the advertisement;

(2) the licensee is a fellow or an associate of a specialty organization which admits fellows and associates on the basis of an examination; the abbreviation and name of the certifying board must be included in the advertisement; or

(3) the licensee is "board eligible", as that term is defined by the recognized specialty board.

[16.21.1.15 NMAC - Rp, Rule XI, 10-15-04]

NEW MEXICO BOARD OF PODIATRY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 21 PODIATRISTS PART 2 FEES

16.21.2.1 ISSUING AGENCY: Regulation and Licensing Department, NM Board of Podiatry.

[16.21.2.1 NMAC - N, 10-15-04]

16.21.2.2 SCOPE: All applicants for licensure, licensees and members of the public.

[16.21.2.2 NMAC - N, 10-15-04]

16.21.2.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to Section 61-8-10 NMSA 1978.

[16.21.2.3 NMAC - N, 10-15-04]

16.21.2.4 DURATION: Permanent.

[16.21.2.4 NMAC - N, 10-15-04]

16.21.2.5 EFFECTIVE DATE: October 15, 2004, unless a later date is cited at the end of a section.

[16.21.2.5 NMAC - N, 10-15-04]

16.21.2.6 OBJECTIVE: To establish fees to fund the cost of board operation.

[16.21.2.6 NMAC - N, 10-15-04]

16.21.2.7 DEFINITIONS: [RESERVED]

16.21.2.8 FEES:
A. Application fee for licensure by examination is \$325.

B. Application fee for licensure by reciprocity is \$525.

C. Duplicate license fee is \$25.

D. Temporary license fee is \$100.

E. Annual renewal fee is \$200.00.

F. Late fee for license renewal applications that are received but not complete, or not received or postmarked by December 31, is \$50 per month for each month or part thereof.

G. Reinstatement fee is \$25 for the first twelve months of delinquency and \$500 for a license that has lapsed more than one year but not more than three years.

H. Fees for requests for copies of public records will be charged in accordance with the regulation and licensing department's standard charges.

[16.21.2.8 NMAC - N, 10-15-04]

**NEW MEXICO BOARD OF
PODIATRY**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 21 PODIATRISTS
PART 3 LICENSE BY EXAM**

16.21.3.1 ISSUING AGENCY: Regulation and Licensing Department, NM Board of Podiatry.

[16.21.3.1 NMAC - Rp, 16 NMAC 21.3.1, 10-15-04]

16.21.3.2 SCOPE: Applicants for licensure as a podiatrist by examination.
[16.21.3.2 NMAC - Rp, 16 NMAC 21.3.2, 10-15-04]

16.21.3.3 STATUTORY AUTHORITY: Podiatry Act, Section 61-8-6(E)(10) and 61-8-8 NMSA 1978.
[16.21.3.3 NMAC - Rp, 16 NMAC 21.3.3, 10-15-04]

16.21.3.4 DURATION: Permanent.
[16.21.3.4 NMAC - Rp, 16 NMAC 21.3.4, 10-15-04]

16.21.3.5 EFFECTIVE DATE: October 15, 2004, unless a later date is cited at the end of a section.
[16.21.3.5 NMAC - Rp, 16 NMAC 21.3.5, 10-15-04]

16.21.3.6 OBJECTIVE: This part lists the requirements and documentation, which must be submitted to the board to obtain licensure as a podiatrist by examination.
[16.21.3.6 NMAC - Rp, 16 NMAC 21.3.6, 10-15-04]

16.21.3.7 DEFINITIONS: "Jurisprudence exam" means an examination concerning the laws and rules of the New Mexico board of podiatry.
[16.21.3.7 NMAC - N, 10-15-04]

16.21.3.8 REQUIREMENTS for LICENSE: Each applicant for a license as a podiatrist must possess the following qualifications:

- A. graduated and been awarded a doctor of podiatric medicine degree from an accredited college of podiatric medicine as defined in the Podiatry Act, Section 61-8-8,(A)(3) NMSA 1978;
- B. passed the podiatric medical examiners national board;
- C. completed a residency program as defined in the Podiatry Act,

Section 61-8-8,(A),(4);

D. passed the podiatric medical licensing examination for states (PMLexis) within the past five years; and

E. passed the New Mexico jurisprudence examination with a score of 75% or higher.

[16.21.3.8 NMAC - Rp, 16 NMAC 21.3.8, 10-15-04]

16.21.3.9 DOCUMENTATION

REQUIREMENTS: Each applicant for a license by examination must submit the required fees and following documentation:

A. completed application, signed and notarized with a passport quality photo taken within the past 6 months; applications are valid for one year from the date of receipt;

B. official transcripts from the school of podiatric medicine or college, to be sent directly to the board office from the accredited program;

C. a certified copy of a certificate of completion of a residency program approved by the American podiatric medical association;

D. proof that the applicant has passed the American podiatric medical examiners national board examination;

E. proof that the applicant has passed the PM Lexis examination; and

F. verification of licensure in all states where the applicant holds or has held a license to practice podiatry, or other health care profession; verification must be sent directly to the board office from the other state(s), and must attest to the status, issue date, license number, and other information contained in the form.
[16.21.3.9 NMAC - Rp, Rule V, 10-15-04]

16.21.3.10 REPORTS: The board will obtain reports from the national practitioners data bank or other national reporting organization and the federation of podiatric medical boards disciplinary data bank if the applicant is currently licensed as a podiatrist in another state.
[16.21.3.10 NMAC - Rp, 16 NMAC 21.3.8, 10-15-04]

16.21.3.11 LICENSURE PROCEDURE: Upon receipt of a completed application, including all required documentation and fees, the board secretary or the designee of the board will review and may approve the application. The board shall ratify the approval of the application at the next scheduled board meeting. Any application which cannot be approved by the designee of the board will be reviewed by the board at the next scheduled meeting.
[16.21.3.11 NMAC - Rp, 16 NMAC 21.3.8, 10-15-04]

**NEW MEXICO BOARD OF
PODIATRY**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 21 PODIATRISTS
PART 4 LICENSE BY RECI-
PROCITY**

16.21.4.1 ISSUING AGENCY: Regulation and Licensing Department, NM Board of Podiatry.

[16.21.4.1 NMAC - Rp, 16 NMAC 21.4.1, 10-15-04]

16.21.4.2 SCOPE: Applicants for licensure by reciprocity who are currently licensed in another state.
[16.21.4.2 NMAC - Rp, 16 NMAC 21.4.2, 10-15-04]

16.21.4.3 STATUTORY AUTHORITY: The Podiatry Act, Section 61-8-9 NMSA 1978.
[16.21.4.3 NMAC - Rp, 16 NMAC 21.4.3, 10-15-04]

16.21.4.4 DURATION: Permanent.
[16.21.4.4 NMAC - Rp, 16 NMAC 21.4.4, 10-15-04]

16.21.4.5 EFFECTIVE DATE: October 15, 2004, unless a later date is cited at the end of a section.
[16.21.4.5 NMAC - Rp, 16 NMAC 21.4.5, 10-15-04]

16.21.4.6 OBJECTIVE: This part lists the requirements and documentation that must be submitted to the board to obtain licensure as a podiatrist based on a license to practice podiatry in another state.
[16.21.4.6 NMAC - Rp, 16 NMAC 21.4.6, 10-15-04]

16.21.4.7 DEFINITIONS:
A. "Active practice" for the purpose of this rule does not include practice in a residency or other training program.
B. "Jurisprudence exam" means an examination concerning the laws and rules of the New Mexico board of podiatry.
[16.21.4.7 NMAC - N, 10-15-04]

16.21.4.8 REQUIREMENTS FOR LICENSURE BY RECIPROCITY: Each applicant for licensure as a podiatrist by reciprocity must possess the following qualifications:
A. graduated and received a degree from an accredited podiatric school as defined in the Podiatry Act, 61-8-

8(A)(3); NMSA 1978;

B. hold a valid license by examination in another state or territory of the United States, with requirements for licensure equal to or exceeding those in New Mexico;

C. provide proof of active practice for at least five consecutive years immediately preceding the date of application;

D. passed the podiatric medical examiners national board; and

E. passed the jurisprudence examination with a score of 75% or higher.
[16.21.4.8 NMAC - Rp, 16 NMAC 21.4.8, 10-15-04]

16.21.4.9 DOCUMENTATION

REQUIREMENTS: Each applicant for a license by reciprocity must submit the required fees and submit or provide for the following documentation:

A. completed application, signed and notarized with a passport quality photo taken within the past 6 months. Applications are valid for one year from the date of receipt;

B. official transcripts from the school of podiatric medicine or college, to be sent directly to the board office from the accredited program;

C. one letter of recommendation from a practicing podiatrist who is personally acquainted with the applicant and who can attest that the applicant is of good moral character;

D. a certified copy of a certificate of completion of a residency program accredited by the American podiatric medical association;

E. proof that the applicant has passed the American podiatric medical examiners national board examination;

F. proof that the applicant has passed the PM lexis or equivalent examination;

G. proof of active practice for the five consecutive years immediately preceding the date of application (proof may include a letter from an accountant, the professional society, tax forms, or other documentation approved by the board);

H. verification of licensure in all states where the applicant holds or has held a license to practice podiatry, or other health care profession; and verification must be sent directly to the board office from the other state(s), and must attest to the license status, issue date, license number, and other information requested in the verification form.
[16.21.4.9 NMAC - Rp, 16 NMAC 21.4.8, 10-15-04]

16.21.4.10 REPORTS: The board will obtain reports from the National practi-

tioners data bank, or other national reporting organization, and the Federation of podiatric medical boards disciplinary data bank if the applicant is currently licensed, or has previously been licensed, as a podiatrist in another state.

[16.21.4.10 NMAC - Rp, 16 NMAC 21.4.8, 10-15-04]

16.21.4.11 LICENSURE PRO-

CEDURE: The application for licensure by reciprocity will be reviewed by the board at the next regular meeting following receipt of the completed application.

[16.21.4.11 NMAC - Rp, 16 NMAC 21.4.8, 10-15-04]

NEW MEXICO BOARD OF PODIATRY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 21 PODIATRISTS PART 5 TEMPORARY LICENSE

16.21.5.1 ISSUING AGENCY: Regulation and Licensing Department, NM Board of Podiatry.

[16.21.5.1 NMAC - Rp, 16 NMAC 21.5.1, 10-15-04]

16.21.5.2 SCOPE: Applicants for a temporary license to practice podiatry in New Mexico.

[16.21.5.2 NMAC - Rp, 16 NMAC 21.5.2, 10-15-04]

16.21.5.3 STATUTORY AUTHORITY: The Podiatry Act, Section 61-8-6(E) and 61-8-14(B) and (C) NMSA 1978.

[16.21.5.3 NMAC - Rp, 16 NMAC 21.5.3, 10-15-04]

16.21.5.4 DURATION: Permanent.

[16.21.5.4 NMAC - Rp, 16 NMAC 21.5.4, 10-15-04]

16.21.5.5 EFFECTIVE DATE: October 15, 2004, unless a later date is cited at the end of a section.

[16.21.5.5 NMAC - Rp, 16 NMAC 21.5.5, 10-15-04]

16.21.5.6 OBJECTIVE: This part provides the circumstances under which a temporary license will be issued and lists the requirements and documentation that must be submitted to the board in a complete application. It provides the procedure by which the board may approve the application and provides for expiration of the temporary license.

[16.21.5.6 NMAC - Rp, 16 NMAC 21.5.6,

10-15-04]

16.21.5.7 DEFINITIONS: "Emergency" for purposes of this rule means any sudden or unforeseen situation that requires immediate action. The sudden onset of physical or mental illness, injury, impairment or other incapacitating condition by a New Mexico licensed podiatrist is considered an emergency.

[16.21.5.7 NMAC - N, 10-15-04]

16.21.5.8 TEMPORARY LICENSE: A temporary license may be issued by the board in the following situations:

A. in cases of emergency as determined by the board; a temporary license to practice podiatry may be issued under this rule for practice in the office of a New Mexico licensed podiatrist who is unable to continue his or her practice due to an emergency;

B. to facilitate educational programs; a temporary license to practice podiatry in New Mexico may be issued to:

(1) a participant in a residency training program located in New Mexico; or

(2) a participant in a residency program that is located in a bordering state, if that program offers as part of its program residency in New Mexico;

C. educational program or residency training programs under this rule must be accredited by the council on podiatric medical education and insure that at all times throughout the program the temporary license holder is supervised by a New Mexico licensed podiatrist.

[16.21.5.8 NMAC - Rp, 16 NMAC 21.5.8, 10-15-04]

16.21.5.9 REQUIREMENTS FOR TEMPORARY LICENSE:

A. Applicants for temporary license due to an emergency under this rule must meet the following qualifications:

(1) graduated and been awarded a doctor of podiatric medicine degree from an accredited college of podiatric medicine as defined in the Podiatry Act, Section 61-8-8(A)(3) NMSA 1978;

(2) completed a residency program as defined in the Podiatry Act, Section 61-8-8(A)(4) NMSA 1978; and

(3) passed the jurisprudence examination with a score of 75% or higher.

B. Applicants for temporary licensure to facilitate an educational or residency program must meet the following qualifications:

(1) graduated and been awarded a doctor of podiatric medicine degree from an accredited college of podiatric medicine as defined in the Podiatry Act, Section 61-8-8(A)(3) NMSA 1978; and

(2) passed the jurisprudence

examination with a score of 75% or higher.
[16.21.5.9 NMAC - Rp, 16 NMAC 21.5.9, 10-15-04]

16.21.5.10 DOCUMENTATION REQUIREMENTS: Each applicant for a temporary license must submit the required fees and submit or provide for the following documentation:

A. a completed application, signed and notarized with a passport quality photo taken within the past 6 months; applications are valid for one year from the date of receipt;

B. an official transcript from the school of podiatric medicine or college, to be sent directly to the board office from the accredited program;

C. proof that the applicant has passed the podiatric medical examiners national board examination; and

D. verification of licensure in all states where the applicant holds or has held a license to practice podiatry, or other health care profession; verification must be sent directly to the board office by the licensing state and attest to the status, issue date, license number of the licensee;

E. in addition, applicants obtaining temporary licensure to work in an existing practice due to an emergency must provide a certified copy of a certificate of completion of a residency program approved by the American podiatric medical association;

F. applicants for temporary licensure to facilitate an educational or residency program must submit proof of enrollment in the educational or residency training program.
[16.21.5.10 NMAC - Rp, 16 NMAC 21.5.10, 10-15-04]

16.21.5.11 REPORTS: The board will obtain reports from the national practitioners data bank or other national reporting organization and the federation of podiatric medical boards disciplinary data bank if the applicant is currently licensed as a podiatrist in another state.
[16.21.5.11 NMAC - Rp, 16 NMAC 21.5.11, 10-15-04]

16.21.5.12 LICENSE PROCEDURE:

A. At the next scheduled board meeting the board will review the completed application. The board's decision in regard to the issuance of a temporary license shall be final.

B. When issued, a temporary license shall state on its face that the license only authorizes the individual to practice podiatry at the location or locations stated on the license and shall expire automatically on the date of the next board meeting or on the date the applicant's edu-

cational program terminates.

[16.21.5.12 NMAC - Rp, 16 NMAC 21.5.12, 10-15-04]

NEW MEXICO BOARD OF PODIATRY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 21 PODIATRISTS PART 7 LICENSE EXPIRA- TION AND RENEWAL

16.21.7.1 ISSUING AGENCY: Regulation and Licensing Department, NM Board of Podiatry.

[16.21.7.1 NMAC - N, 10-15-04]

16.21.7.2 SCOPE: All podiatrists with a license to practice in New Mexico.

[16.21.7.2 NMAC - N, 10-15-04]

16.21.7.3 STATUTORY AUTHORITY: Podiatry Act, 61-8-10 NMSA 1978 and 61-8-10.1 NMSA 1978.

[16.21.7.3 NMAC - N, 10-15-04]

16.21.7.4 DURATION: Permanent.

[16.21.7.4 NMAC - N, 10-15-04]

16.21.7.5 EFFECTIVE DATE: October 15, 2004, unless a later date is cited at the end of a section.

[16.21.7.5 NMAC - N, 10-15-04]

16.21.7.6 OBJECTIVE: To establish procedures for license expiration and renewal.

[16.21.7.6 NMAC - N, 10-15-04]

16.21.7.7 DEFINITIONS: [RESERVED]

16.21.7.8 LICENSE EXPIRATION: Podiatry licenses expire on January 1 of each year.

[16.21.7.8 NMAC - Rp, Rule VI.A, 10-15-04]

16.21.7.9 RENEWAL DEADLINE: A completed renewal application accompanied by the required fees, the state tax ID certificate number, documentation of 14 hours of continuing education as defined in 16.21.8.13 NMAC and must be post-marked on or before January 1 of each year.
[16.21.7.9 NMAC - Rp, Rule VI.A, 10-15-04]

16.21.7.10 LICENSEE 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

timely request for the renewal form if one has not been received thirty days prior to license expiration.

[16.21.7.10 NMAC - Rp, Rule VI.A, 10-15-04]

16.21.7.11 LATE RENEWAL: Renewal applications that are not post-marked or hand-delivered to the board office by January 1 must be accompanied by the completed renewal application as defined in 16.21.7.9 NMAC and late fees defined in Subsection F of 16.21.2.8 NMAC.

[16.21.7.11 NMAC - Rp, Rule VI.B, 10-15-04]

16.21.7.12 SUMMARY SUSPENSION: A license that is not renewed by March 1 may be summarily suspended by the board.

[16.21.7.12 NMAC - Rp, Rule VI.B, 10-15-04]

NEW MEXICO BOARD OF PODIATRY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 21 PODIATRISTS PART 8 CONTINUING EDU- CATION

16.21.8.1 ISSUING AGENCY: Regulation and Licensing Department, NM Board of Podiatry.

[16.21.8.1 NMAC - N, 10-15-04]

16.21.8.2 SCOPE: Individuals with a license to practice podiatry in the state of New Mexico.

[16.21.8.2 NMAC - N, 10-15-04]

16.21.8.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to the Podiatry Act, 61-8-10.1(B) NMSA 1978, which requires, as a condition of license renewal, evidence of completion of post-graduate study as required by board rule.

[16.21.8.32 NMAC - N, 10-15-04]

16.21.8.4 DURATION: Permanent.

[16.21.8.4 NMAC - N, 10-15-04]

16.21.8.5 EFFECTIVE DATE: October 15, 2004, unless a later date is cited at the end of a section.

[16.21.8.5 NMAC - N, 10-15-04]

16.21.8.6 OBJECTIVE: To establish the criteria, standards, approval requirements, verification and waiver requirements, for post-graduate study required by the board for license renewal.

[16.21.8.6 NMAC - N, 10-15-04]

16.21.8.7 DEFINITIONS:
[RESERVED]

16.21.8.8 HOURS REQUIRED:
Fourteen (14) hours of continuing education are required annually, if the licensed podiatrist is practicing within the state. Initial licenses issued for a period of less than six months do not require any continuing education for the initial licensing period. Licenses issued for more than six months but less than twelve months require eight hours of continuing education for the initial licensing period.

A. Continuing education coursework must contribute directly to the practice of podiatric medicine.

B. One hour of credit will be granted for every contact hour of instruction. This credit shall apply to either academic or clinical instruction.

[16.21.8.8 NMAC - Rp, Rule VII.A, 10-15-04]

16.21.8.9 APPROVED COURSES: Continuing education courses offered or sponsored by the following organizations are automatically approved by the board:

A. a college of podiatric medicine which is accredited by the council on podiatric medical education of the American podiatric medical association;

B. constituent society of the American podiatric medical association;

C. an organization or sponsor approved by the council on podiatric medical education of the American podiatric medical association; or

D. hospital sponsored in-service programs related to the practice of podiatry.

[16.21.8.9 NMAC - Rp, Rule VII.B, 10-15-04]

16.21.8.10 APPROVAL REQUIREMENTS: Any course not sponsored by a recognized provider may be approved by the board secretary or designee of the board. The application for approval must include the name of the course, the sponsor, course outline, date, location, hours, names and qualifications of presenters, and the method that will be used to certify attendance.

[16.21.8.10 NMAC - Rp, Rule VII.C, 10-15-04]

16.21.8.11 COURSES NOT ALLOWED: Courses dealing with money management, personal finances or personal business matters, and courses in basic educational or cultural subjects that are not taught in direct relationship to podiatric care may not be used to fulfill continuing education requirements.

[16.21.8.11 NMAC - N, 10-15-04]

16.21.8.12 VERIFICATION OF COURSE ATTENDANCE: The following documents, or combination of documents, may be used to verify attendance in required continuing education.

A. Course certificate with the course title, content, presenter, sponsor and hours.

B. Pamphlet of course with same information as requested on certificate, along with a cancelled check.

C. Course attendance sheet submitted by the sponsor.

D. Course code or statement of attendance from presenter or sponsor.

[16.21.8.12 NMAC - Rp, Rule VII.D, 10-15-04]

16.21.8.13 VERIFICATION OF CONTINUING EDUCATION HOURS: The board following each renewal cycle will complete a random audit of continuing education hours. Individuals selected for audit must submit proof of compliance with the continuing education requirements. The records indicated in 16.21.8.12 NMAC are acceptable forms of documentation. Continuing education records must be maintained for one year following the renewal cycle in which they are earned and they may be audited by the board at any time.

[16.21.8.13 NMAC - N, 10-15-04]

16.21.8.15 WAIVER OF REQUIREMENTS: Waivers of the continuing education requirement shall be given only for prolonged illness or physical incapacity.

A. For purposes of this rule, a prolonged illness or physical incapacity is one which is defined as lasting for a period of more than six months.

B. Any licensee who believes that she or he is entitled to a waiver of a continuing education requirement for reasons of prolonged illness or physical incapacity shall request such a waiver by sending the board a letter from his or her physician setting out in detail the nature of the illness or incapacity and its probable duration. The board shall notify the licensee in writing of the date on which the application will be considered by the board. The licensee or the licensee's representative may attend the meeting, present evidence on behalf of a petition for waiver, and to speak to the board concerning the petition. The burden shall be on the licensee to satisfy the board of the necessity of the waiver. The decision of the board on the waiver shall be final.

C. Applications for waiver under this section must be filed as soon as the licensee has reason to believe that

grounds for the waiver exist.

[16.21.8.15 NMAC - Rp, Rule VII.E, 10-15-04]

16.21.8.16 EXTENSION TO MEET REQUIREMENTS: The board may extend the time in which a licensee may meet the required continuing education requirements.

A. A licensee unable to fulfill the continuing education requirements may apply to the board for an extension of time in which to meet educational requirements. Extensions of up to three months may be granted by the board or its designee. Licensees granted an extension must pay the late fee defined in Subsection F of 16.21.2.8 NMAC to cover the cost of additional processing requirements.

B. A licensee who is unable to fulfill the requirements within the three month extension must apply to the board for an additional extension.

[16.21.8.16 NMAC - N, 10-15-04]

NEW MEXICO BOARD OF PODIATRY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 21 PODIATRISTS PART 10 LAPSE OF LICENSE AND REINSTATEMENT

16.21.10.1 ISSUING AGENCY: Regulation and Licensing Department, NM Board of Podiatry

[16.21.10.1 NMAC - N, 10-15-04]

16.21.10.2 SCOPE: Podiatrists licensed in New Mexico who do not submit an application for license renewal within sixty days of the expiration date.

[16.21.10.2 NMAC - N, 10-15-04]

16.21.10.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to the Podiatry Act, 61-8-10 NMSA 1978, and 61-8-10.1 NMSA 1978.

[16.21.10.3 NMAC - N, 10-15-04]

16.21.10.4 DURATION: Permanent.

[16.21.10.4 NMAC - N, 10-15-04]

16.21.10.5 EFFECTIVE DATE: October 15, 2004, unless a later date is cited at the end of a section.

[16.21.10.5 NMAC - N, 10-15-04]

16.21.10.6 OBJECTIVE: To establish the procedures and policies for podiatry licenses that are not renewed within 60 days of the date of expiration.

[16.21.10.6 NMAC - N, 10-15-04]

16.21.10.7 DEFINITIONS:
[RESERVED]

16.21.10.8 LICENSE SUSPENSION FOR NON-RENEWAL: Unless an application for license renewal is received by the board office, or post-marked, before March 1, the license may be summarily suspended.
[16.21.10.8 NMAC - Rp, Rule VI.B, 10-15-04]

16.21.10.9 REINSTATEMENT OF SUSPENDED LICENSE: A podiatrist may request reinstatement of a lapsed license within three (3) years from the date the license expired by notifying the board in writing. Upon receipt of the request for reinstatement, board staff will send a reinstatement application. The following information is required for the request to be considered:

A. a completed application, payment of the reinstatement fee, any delinquent renewal fees, and proof of fourteen hours of continuing education per the year of renewal and each full year the license was allowed to lapse;

B. the application may be approved by the designee of the board if the application is complete and all requirements have been fulfilled;

C. no podiatrist shall reactivate or resume their podiatric practice until his or her lapsed license is reinstated and a new license is issued.
[16.21.10.9 NMAC - Rp, Rule VI.A&B, 10-15-04]

16.21.10.10 REINSTATEMENT FOR LICENSEES WHO PRACTICE AS MEDICAL OFFICERS IN THE UNITED STATES SERVICE: Licensed podiatrists who practice podiatry in the uniformed services may reinstate their expired New Mexico license within three months after the termination of such service without payment of any renewal, late or reinstatement fees as per the Podiatry Act, Section 61-8-10(C) NMSA 1978. Individuals using this option must notify the board prior to the expiration date of their license that they will not renew until the time they terminate their uniformed service practice.
[16.21.10.10 NMAC - N, 10-15-04]

NEW MEXICO BOARD OF PODIATRY

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 21 PODIATRISTS
PART 11 DISCIPLINARY
PROCEEDINGS**

16.21.11.1 ISSUING AGENCY:

Regulation and Licensing Department, NM Board of Podiatry.
[16.21.11.1 NMAC - N, 10-15-04]

16.21.11.2 SCOPE: The provisions of Part 11 apply to all active license holders and applicants for licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a podiatrist licensed by the board.
[16.21.11.2 NMAC - N, 10-15-04]

16.21.11.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to the Podiatry Act, 61-8-6 NMSA 1978, 61-8-11 NMSA 1978, and 61-8-13 NMSA 1978.
[16.21.11.3 NMAC - N, 10-15-04]

16.21.11.4 DURATION: Permanent.
[16.21.11.4 NMAC - N, 10-15-04]

16.21.11.5 EFFECTIVE DATE: October 15, 2004, unless a different date is cited at the end of a section.
[16.21.11.1 NMAC - N, 10-15-04]

16.21.11.6 OBJECTIVE: To establish the procedures for filing complaints against licensees, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to define conduct that constitutes incompetent or unprofessional practice.
[16.21.11.6 NMAC - N, 10-15-04]

16.21.11.7 DEFINITIONS:
[RESERVED]

16.21.11.8 COMPLAINTS: Disciplinary proceedings may be instituted by the sworn complaint of any person, including members of the board. The complaint will be reviewed by the board and any subsequent disciplinary action shall conform with the Uniform Licensing Act, Sections 61-1-1, et. seq., NMSA 1978.
[16.21.11.8 NMAC - Rp, Rule XV.A, 10-15-04]

16.21.11.9 ACTIONS: The board may take any action authorized by the Podiatry Act, Section 61-8-1, et. seq., NMSA 1978 and the Uniform Licensing Act, 61-1-1, et. seq. NMSA 1978 if the board determines that a licensee has violated any of the provisions of the Podiatry Act, the rules, or the Impaired Health Care Provider Act, 61-7-1 NMSA 1978.
[16.21.11.9 NMAC - Rp, Rule XV.B, 10-15-04]

16.21.11.10 SUSPENSION, REVOCATION OR REFUSAL OF A LICENSE: For the purpose of the Podiatry Act, Section 61.8.11.10 NMSA 1978 of, the

following definitions shall apply.

A. "Gross malpractice" or "gross incompetency" means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients, or any act or omission by a podiatrist such as to indicate a willful act or injury to the patient, or such incompetence on the part of the podiatrist as to render the podiatrist unfit to hold himself out to the public as a licensed podiatrist.

B. "Unprofessional conduct" means, but is not limited to:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the profession;

(2) practicing beyond the scope of practice of a podiatrist as defined by the Podiatry Act, Section 61-8-1 NMSA 1978, or board rule;

(3) the use of false, fraudulent or misleading advertising;

(4) the making of false or misleading statement in communication with patients or potential patients;

(5) the use of misleading or deceptive titles or designations in a name or title of a podiatric practice, including the unauthorized advertisement of a specialty designation;

(6) failure to release to a patient copies of that patient's records and x-rays; in a reasonable period of time;

(7) conviction of a felony; a certified copy of the record of the court of conviction shall be proof of such conviction;

(8) impersonating another person licensed to practice podiatry or permitting or allowing any person to use his license or certificate of registration;

(9) failure to obtain informed consent prior to incisional surgical treatment;

(10) deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another podiatrist licensed or applying for licensure by the board;

(11) accept rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits in a professional partnership, association, HMO, or similar association shall not be construed as fee-splitting;

(12) injudicious prescribing, administration, or dispensing of any drug or medicine;

(13) sexual misconduct;

(14) the use of a false, fraudulent

or deceptive statement in any document connected with the practice of podiatry;

(15) the falsifying of medical records, whether or not for personal gain;

(16) any intentional conduct or practice which is harmful or dangerous to the health of the patient;

(17) fraud, deceit or misrepresentation in any renewal or reinstatement application;

(18) obtaining or attempting to obtain a license through fraud, misrepresentation, or other dishonesty;

(19) cheating on an examination for licensure.

(20) violation of any order of the board, including any probation order;

(21) treating patients when the podiatrist is under the influence of alcohol or illegal drugs; or

(22) failure to report to the board the involuntary surrender of a license to practice in another state, or involuntary surrender of membership on any medical staff or in any podiatric or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(23) willful abandonment of a patient.

[16.21.11.10 NMAC - Rp, Rules VIII, X, & XV, 10-15-04]

16.21.11.11 INVESTIGATIVE SUBPOENAS: The board secretary or other designee of the board is authorized to issue investigative subpoenas prior to the issuance of a notice of contemplated action and to employ experts with regard to pending investigations.

[16.21.11.11 NMAC - N, 10-15-04]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

September 9, 2004

Leo R. Lucero, Agency Analysis Bureau Chief
NM Commission of Public Records
1205 Camino Carlos Rey
Santa Fe, New Mexico 87505

Mr. Lucero:

You recently requested to publish a synopsis in lieu of publishing the full content of the following rule:

* 1.18.465 NMAC ERRDS,
Gaming Control Board (New).

A review of this rule shows that its impact is limited to the individual agency to which it pertain, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a

synopsis for it is approved.

Sincerely,

Sandra Jaramillo
State Records Administrator

SJ/lrl

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.465 NMAC ERRDS, Gaming Control Board

1. Subject matter: 1.18.465 NMAC. Executive Records Retention and Disposition Schedule for the Gaming Control Board. This is a new rule. The retention and disposition requirements on this schedule are based on the legal and use requirements of the records and on their administrative, legal, fiscal and archival values. This records retention and disposition schedule was developed by the State Records Center and Archives (New Mexico Commission of Public Records), and approved by the State Records Administrator, the Director of the Gaming Control Board, and legal counsel for the Gaming Control Board.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Gaming Control Board. Persons and entities normally subject to the rules and regulations of the Gaming Control Board may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Gaming Control Board.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Gaming Control Board. Any person or entity outside the covered geographical area that conducts business with or through the Gaming Control Board may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505.

Telephone number: (505) 476-7900.

7. Effective date of this rule: October 11, 2004.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.465 NMAC ERRDS, Gaming Control Board.

Roberta D. Joe Date
Assistant Attorney General

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.213 NMAC Section 9, effective 9/30/04.

3.2.213.9 BROADCASTING AND RELATED ADVERTISING

A. Microwave carriers:

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

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

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

D. Cable television systems: Cable television systems are eligible for the deduction provided by Section 7-9-55 NMSA 1978 for receipts from the sale of

broadcast time to a national or regional advertiser.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 3/3/86, 4/2/86, 11/26/90, 9/20/93, 11/15/96; 3.2.213.9 NMAC - Rn, 3 NMAC 2.55.9 & A, 5/31/01; A, 9/30/04]

**NEW MEXICO
TAXATION AND
REVENUE
DEPARTMENT**

This is an amendment to 3.6.5 NMAC Section 33, effective 9/30/04.

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

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

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

(a) owner's name and mailing address;

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

(c) name of the manufacturer;

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

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

(f) state registration number;

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

(h) date of purchase;

(i) price paid;

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

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

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

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

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

C. MANUFACTURED

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

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

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

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

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

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

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

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

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

(4) Subsection D of Section 3.6.5.33 NMAC is applicable to valuations made on or after January 1, 1998. [3/23/83, 12/29/94, 8/31/96, 7/15/98;

3.6.5.33 NMAC - Rn & A, 3 NMAC 6.5.33 & A, 4/30/01; A, 9/30/04]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2004

Volume XV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 30
Issue Number 3	February 2	February 13
Issue Number 4	February 16	February 27
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	August 2	August 13
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 14
Issue Number 20	October 15	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 30

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.