

**NEW  
MEXICO  
REGISTER**



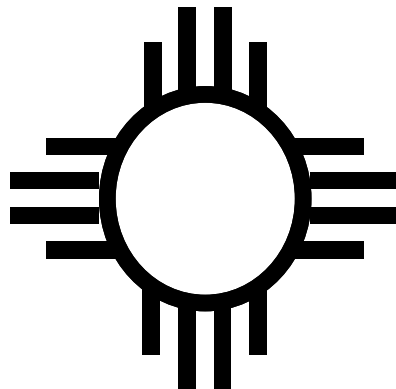
Volume XVIII  
Issue Number 9  
May 15, 2007



# **New Mexico Register**

**Volume XVIII, Issue Number 9**

**May 15, 2007**



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

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Santa Fe, New Mexico  
2007

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# New Mexico Register

Volume XVIII, Number 9

May 15, 2007

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

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE DIVISION

#### NOTICE OF PUBLIC HEARING

The Children, Youth and Families Department, Juvenile Justice Services, will hold a formal public hearing on June 15, 2007 from 1:00 p.m. to 3:00 p.m. in Room 565 on the 5th floor of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico to receive public comments regarding proposed promulgation of regulation 8.14.13 NMAC, governing the Juvenile Continuum Grant Fund.

The proposed regulation may be obtained by contacting Richard Lindahl at 505-827-7625. Interested persons may testify at the hearing or submit written comments no later than 3:00 p.m. on May 15, 2007. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Richard Lindahl, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-476-0225.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Mr. Lindahl at 505-827-7625. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL  
IMPROVEMENT BOARD  
NOTICE OF PUBLIC HEARING TO  
CONSIDER PROPOSED REVISION OF  
RURAL WATER SUPPLY FACILITIES  
REGULATIONS, 20.7.2 NMAC

The New Mexico Environmental Improvement Board (Board) will hold a public hearing at 9:00 a.m. on August 7<sup>th</sup>, 2007, and continuing thereafter as necessary, at the New Mexico State Capitol Building, Room 317, Santa Fe, New Mexico to consider proposed amendments to the Rural Water Supply Facilities Regulations, 20.7.2 NMAC. The New Mexico Environment Department is the proponent of the proposed amendments.

Amendments proposed by the New Mexico Environment Department include (i) addition of and amendments to various definitions, (ii) addition of solid waste as an eligible facility, (iii) amendments to establish an administrative fund and allocate up to two percent of the total balance in the fund to pay for administrative expenses necessary to carry out the provisions of the Rural Infrastructure Act (iv) amendments to loan information and financial report requirements, (v) amendments to maximum loan and grant amounts, (vi) amendments to eligible local authorities, (vii) amendments to repayment installments, and (viii) amendments to remove restrictive language. The sections that would be revised include the following: Addition of or amendments to Subsection A of Section 20.7.2.6, Subsection A, E, and J of 20.7.2.7, Subsection A and I of 20.7.2.202, Subsection A, B, C, D, E, and G of 20.7.2.204, and Subsection C of 20.7.2.205.

The proposed changes may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2153, Santa Fe, NM, 87505. In addition, a copy of the proposed amendments is posted on the NMED website at <http://www.nmenv.state.nm.us/cpb/cpbtop.html> Written comments may be submitted to the EIB regarding the amendments at the above address, and should reference docket number EIB 07-01(R).

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, and other applicable procedures. All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
- summarize or include a copy of the direct

testimony of each technical witness and state the anticipated duration of the testimony of that witness;

- list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of the rules; and,

- attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on July 23rd, 2007, and should reference the name of the regulation and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Joyce Medina  
Office of the Environmental Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr., Room N-2153  
Santa Fe, NM 87502

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by July 23rd, 2007. The Personnel Services Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

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

### NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION LOCAL GOVERNMENT DIVISION

**Notice of Hearing of Amendments to  
Civil Legal Services Fund Rule, 2.40.3  
NMAC,  
Amending 2.40.3.9 and 2.40.3.10 NMAC,  
Eligible Service Providers and Eligible  
Services or Activities**

New Mexico Department of Finance and  
Administration

The Department of Finance and  
Administration (DFA), Local Government

Division, hereby gives notice that the Civil Legal Services Commission will conduct a public hearing at the Court of Appeals Room, New Mexico Supreme Court, 237 Don Gaspar Avenue, Santa Fe, New Mexico, 87501, on June 18, 2007 at 1:00 p.m. concerning the amendment of Civil Legal Services Fund Rule, 2.40.3 NMAC, amending 2.40.3.9 NMAC, Eligible Service Providers, and 2.40.3.10 NMAC, Eligible Services or Activities.

Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m. on June 11, 2007, to Ms. Jessica Lawrence, Local Government Division, DFA, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501. All written and oral testimony will be considered prior to adoption of 2.40.3.9-10 NMAC. Copies of the text of the proposed rule are available from Ms. Jessica Lawrence, Local Government Division, Bataan Memorial Building, Santa Fe, New Mexico, 87501 or at 505-827-4973 or from the DFA internet website <http://nmdfa.state.nm.us>.

**TITLE 2 PUBLIC FINANCE  
CHAPTER 40 EXPENDITURE OF  
PUBLIC FUNDS  
PART 3 CIVIL LEGAL SERVICES FUND**

**2.40.3.9 ELIGIBLE SERVICE PROVIDERS:** [Service providers must be nonprofit organizations that meet one of the two following criteria:

**A.** Must have a mission to provide a range of free legal services to New Mexicans living in poverty and be able to demonstrate the capacity to cooperate with state and local bar associations, pro bono programs, private attorneys and other entities to increase the availability of free legal services to low income New Mexicans, or

**B.** Must have a program(s) to increase and coordinate statewide access to civil legal services for low income persons through the use of technology.] To be eligible to contract for monies with the commission service providers shall provide to the division documentation that they:

**A.** are nonprofit organizations, tax exempt under the Internal Revenue Code, Section 501(c) or its successor or organized and operated exclusively for non-profit activities within the categories recognized as such by the Internal Revenue Code, Section 501(c) or its successor; and

**B.** are registered with the state of New Mexico as a non-profit organization and listed on the state's web site; and

**C.** are organized and operated to provide free legal services to low

income persons residing in New Mexico and do not engage in any other except ancillary activity (such as know-your-rights educational programs) or are organized and operated as a separate department within a larger organization that has as its purpose the provision of free legal services to low income persons residing in New Mexico and that employs at least one full-time attorney dedicated solely to providing these services; and

D. are willing and able to cooperate with state and local bar associations, pro bono legal service programs, private attorneys, and similar persons or entities to increase the availability of free legal services to low income persons residing in New Mexico; or are willing and able to increase and coordinate statewide access to civil legal services to low income persons residing in New Mexico through innovative technology, subject to the limitations on appropriations set forth in 2.40.3.10 NMAC.

[2.40.3.9 NMAC - N, 1/31/2002; A, xx/xx/2007]

**2.40.3.10 ELIGIBLE SERVICES OR ACTIVITIES:**

[All disbursements from the fund are for the sole purpose of providing civil legal services to low income persons, except for the annual administrative costs provided to DFA under statute. These services may be provided through the use of technology, as long as no more than fifty percent of any annual expenditures of the fund are used for this purpose. Examples of eligible services include but are not limited to: outreach; community legal education; a legal "hot line"; supportive services for pro se litigants; systems for alternative dispute resolution; utilization of the private bar; representation by staff attorney programs; providing for group representation and advocacy that is not inconsistent with the Lobbyist Regulation Act, NMSA 1978, Sections 2-11-1 through 2-11-9; and system management/substantive support which enables an organization to provide legal services to the poor.] All disbursements from the fund shall be used for the sole purpose of providing civil legal services to low income persons in accordance with the act, except to the extent that any statutory authorized fee for administrative costs shall be paid to DFA. No more than fifty percent of net appropriations (less the required administrative fee to DFA for operation of the civil legal services commission) shall be spent on activities solely directed to adapting innovative technology to increase access to free legal services for low income persons residing in New Mexico. Appropriations shall only be disbursed to service providers who meet the eligibility requirements set forth in 2.40.3.9 NMAC. Services provided to eligible per-

sons must be in accordance with the New Mexico supreme court access to justice commission civil legal services plan and the critical legal needs of low income persons residing in New Mexico identified in the April 2006 New Mexico supreme court order, including, but not necessarily limited to, housing, consumer, domestic violence, family law, employment, and government benefits issues.

[2.40.3.10 NMAC - N, 1/31/2002; A, xx/xx/2007]

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

**NOTICE**

The New Mexico Human Services Department (HSD) will hold 2 separate public hearings on June 15, 2007 at the State Capitol, Room 311 (corner of Paseo de Peralta and Don Gaspar), Santa Fe, New Mexico.

**From 9:00-10:00 a.m. the subject of the hearing will be Medicaid for Children 6 to 19.**

The New Mexico Human Services Department is proposing to increase the earned income disregard and child care deductions for children six (6) years to nineteen (19) years of age. These will be the same disregards and deductions currently allowed for children 0 - 5 years of age.

**From 10:00-11:00 a.m. the subject of the hearing will be Telehealth Services.**

The Human Services Department, Medical Assistance Division, is proposing to add coverage for telehealth services. The proposed regulation, if finalized, would allow the delivery of consultation services, office visit evaluation and management services, individual psychotherapy services, pharmacologic management, psychiatric diagnostic interview examinations, end stage renal disease related services, and individual medical nutrition therapy via an interactive telecommunications system. For these services, an interactive telecommunications system is considered to meet the requirements of a face-to-face encounter.

Reimbursement for services at the originating-site and the distant-site are made at the same amount as when furnished without the use of a telecommunication system.

In addition to reimbursement for the services, reimbursement is made to the originating-site for a telehealth system fee. The telehealth system fee will be \$22.47 per transmission. Originating-sites will use the HCPCS code of Q3014 for facility fee reimbursement.



Interested persons may submit written comments no later than 5:00 p.m., June 15, 2007, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

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

**NEW MEXICO  
DEPARTMENT OF LABOR**

**NOTICE OF RULE MAKING**

The New Mexico Department of Labor will hold a public hearing at 9:30 a.m., on Monday, June 18, 2007. The public hearing will be held at 1596 Pacheco Street, Aspen Plaza conference room, suite 103, Santa Fe, New Mexico. The subject of the hearing will be amendments to the rules of the New Mexico Department of Labor, Employment Security Division, Tax Administration.

The Tax Administration Bureau is proposing amendments to the Tax rules: 11.3.400.415 Experience Rating of Employers, 11.3.400.417 Experience History Transfers and 11.3.400.426 Application of Underpayments. Amendments will also include a change in the name of the department as indicated in 11.3.400.1 from NM Department of Labor to the Department of Workforce Solutions. The name of the division is also changed from Employment Security Division to Workforce Transition Services Division.

Interested persons may submit comments no later than 5:00 p.m., June 19, 2007. Written comments can be mailed to Betty Sparrow Doris, Secretary, Department of Labor, Post Office Box 1928, Albuquerque, New Mexico 87103. Interested persons

may also make oral presentations at the public hearing. The Secretary of Labor will consider all written and oral testimony prior to issuance of the final rules.

Copies of the proposed rules are available for review at the Office of General Counsel for the New Mexico Department of Labor, 401 Broadway, NE, Albuquerque, New Mexico or by website at <http://www.dol.state.nm.us/dws-rules.html>. Interested persons may also request a copy of the proposed rules by mail, e-mail or telefax. Send your request to the attention of Jason Lewis, General Counsel. Please send a self-addressed stamped envelope for a hard copy of the proposed rules. Send your request to: NM Department of Labor, Office of the General Counsel, Jason Lewis, Post Office Box 1928, Albuquerque, NM 87103, e-mail address, [jason.lewis@state.nm.us](mailto:jason.lewis@state.nm.us), or telefax (505) 841-9024.

If you are a person with a disability and you require this information in an alternative format or require special accommodation to participate in the public hearing, please contact Sherry Crespin at (505) 841-8471, or through the department's TTY system at (505) 841-2214. The department requests that you give at least 10 days advance notice to provide alternative formats and special accommodations.

**NEW MEXICO PUBLIC EDUCATION  
DEPARTMENT**

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

**CANCELLATION OF NOTICE OF PROPOSED RULEMAKING**

The Public Education Department ("Department") published a Notice of Proposed Rulemaking in the New Mexico Register Volume XVIII, Issue Number 7 (4/16/2007) informing of a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on May 21, 2007, from 10:00 am to 12:00 pm. The purpose of the public hearing was to obtain input on the following rule: 6.30.2, Standards for Excellence (amend section 13).

**THE DEPARTMENT HEREBY CANCELS ITS NOTICE OF PROPOSED RULEMAKING REGARDING THE RULES LISTED. At a later date, the Department intends to initiate the rulemaking process, at which time a notice of proposed rulemaking will be published and a public hearing scheduled. Questions regarding this cancellation may be referred to Dr. Patricia Parkinson, Assistant Secretary, Instructional Support and Vocational Education Division, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 ([patricia.parkinson@state.nm.us](mailto:patricia.parkinson@state.nm.us)) Telephone (505) 827-6676.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

BEFORE THE NEW MEXICO PUBLIC )  
REGULATION COMMISSION )  
) Utility Case  
IN THE MATTER OF AMENDMENTS TO ) No. 07-00157-UT  
THE RENEWABLE PORTFOLIO STANDARD )  
  
RULES OF THE NEW MEXICO  
PUBLIC REGULATION COMMISSION

**NOTICE OF INQUIRY**

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission ("Commission") is commencing an inquiry concerning whether and how the Commission's Rule 572, *Renewable Energy for Electric Utilities* (17.9.572 NMAC), should be amended. This matter comes before the Commission upon its own Motion; whereupon,

**THE COMMISSION FINDS AND CONCLUDES:**

On March 5, 2007, the Governor of New Mexico signed into law New Mexico Senate Bill 418 ("S.B. 418"), regarding renewable energy within the State of New Mexico. S.B. 418 contains numerous amendments to the Renewable Energy Act ("the Act"), NMSA

1978, Section 62-16-1, *et seq.*

It has come to the attention of the Commission that Rule 572, in its present form, may not accomplish all of the aims of the Legislature, as reflected in S.B. 418; that the existing Rule may not accomplish fully certain of the legislative aims that are reflected in the Renewable Energy Act as currently codified at NMSA 1978, Section 62-16-1, *et seq.*; and that amending the existing Rule might more fully enable the Commission to carry out those aims as well to achieve additional results, consistent with the Commission's statutory authority.

The Commission proposes, as starting points toward the formulation of amended rules, the proposed Rule amendments that are indicated in redline form on the copy of Rule 572 that is attached hereto as Exhibit "A."

A public Workshop should be held for the purposes of considering whether and how Rule 572 should be amended. Workshop participants should consider, and be prepared to offer constructive discussion on, the Commission's proposed Rule amendments.

Workshop participants should be prepared to address the following issues, as examples of preliminary considerations that may lead to amendments to Rule 572:

Should current methods for ensuring portfolio diversification be changed?  
Does the current method based on a weighting system for various classes of renewable energy supplies discourage the addition of large solar resources?  
Is the current method ineffective in other ways?

The Commission has jurisdiction over public utilities in the State of New Mexico. N.M. CONST., Art. XI, Section 2, NMSA 1978 Section 62-1-1, *et seq.*

With regard to performance-based incentives, S.B. 418's addition of Section 62-16-4(H) to the Act requires the Commission to undertake a preliminary analysis of that issue:

The commission shall determine if it is in the public interest for the commission to provide appropriate performance-based financial or other incentives to encourage public utilities to acquire renewable energy supplies in amounts that exceed the requirements of the renewable portfolio standard.

In view of the foregoing language establishing a requirement for the Commission to conduct a preliminary

analysis, any rulemaking to address possible performance-based incentives should be deferred to a separate docket.

8. The Commission should invite comments and participation in the workshop from all New Mexico utilities, including rural electric cooperatives, from the New Mexico Attorney General, from environmental organizations, from consumer organizations, from the Commission's Utility Division Staff, and from any other interested persons, with respect to the issues set forth herein, and with respect to any related issues that are relevant to the question of whether and how Rule 572 should be amended.

IT IS THEREFORE ORDERED:

A. An inquiry concerning whether and how the Commission's Rule 572, *Renewable Energy for Electric Utilities* (17.9.572 NMAC), should be amended, is hereby commenced as provided by this *Notice of Inquiry*; provided, that any rulemaking to address possible performance-based incentives shall be conducted in a separate docket.

B. A public workshop, to be presided over by Commission Chairman Ben R. Lujan or his designee, shall be held on Friday, May 11, 2007, at 10:00 a.m., at the Commission's offices, at the following location (see next page):

4th Floor Hearing Room  
PERA Building  
1120 Paseo de Peralta  
Santa Fe, New Mexico 87501  
Tel. (505) 827-6941.

All persons attending the workshop should be prepared to address the issues set forth at ¶ 5 herein. Interested persons should contact the Commission to confirm the date, time and place of any public workshop, because workshops are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the Workshop should contact Cecilia Rios at 827-4501 at least 48 hours prior to the commencement of the Workshop.

C. Within five business days of the date of this *Notice of Inquiry*, the Commission's Utility Division Staff shall mail a copy of this *Notice of Inquiry* to all persons on the Commission's official service list for Utilities.

D. Staff shall provide this *Notice of Inquiry* by e-mail or by facsimile transmission to any persons who have so requested.

E. In addition, Staff shall cause this *Notice of Inquiry* to be published in at least seven newspapers of regular circulation in the State of New Mexico, including, at a minimum, the *Albuquerque Journal*, the *Santa Fe New Mexican*, the *Las Cruces Sun News*, the *Farmington Daily Times*, the *Alamogordo Daily News*, the *Rio Grande Sun*, the *Santa Fe Reporter*; and in the NEW MEXICO REGISTER.

F. Staff shall publish this *Notice of Inquiry* on the Commission's Web site. Affidavits attesting to the publication of this *Notice of Inquiry* as described above shall be filed in this docket.

G. This *Notice of Inquiry* is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 26th day of April 2007.

NEW MEXICO PUBLIC REGULATION  
COMMISSION  
s/ \_\_\_\_\_

BEN R. LUJAN, CHAIRMAN  
s/ \_\_\_\_\_

JASON MARKS, VICE CHAIRMAN  
Excused \_\_\_\_\_

DAVID W. KING, COMMISSIONER  
Telephonically Approved \_\_\_\_\_

CAROL K. SLOAN, COMMISSIONER  
Excused \_\_\_\_\_

SANDY JONES, COMMISSIONER  
\_\_\_\_\_

**NEW MEXICO  
DEPARTMENT OF PUBLIC  
SAFETY  
MOTOR TRANSPORTATION  
DIVISION**

**NOTICE**

**N.M. DEPARTMENT OF PUBLIC  
SAFETY  
PUBLIC HEARING**

The Department of Public Safety will be holding a public hearing for the sake of receiving comments on proposed amendment revisions to 18.2.3 NMAC, the Motor Carrier Regulation pertaining to Motor Carrier Safety. The hearing will held at 10:00 A.M. on June 20, 2007, at the auditorium of the NM Law Enforcement Academy 4491 Cerrillos Road, Santa Fe, New Mexico.

Proposed amendments to the rule include, but not limited to, changes of definitions and adoptions with modifications of Parts 107, 171, 172, 173, 177, 178, 180, 40, 382, 385, 387, 390, 391, 392, 393, 395, 396 and 397, of the Code of Federal Regulation (49 CFR).

Copies of the proposed amendments may be obtained by calling Ron Cordova at 505.827.0302. Comments on these amendments are invited. Oral comments may be made at the hearing, or written comments may be substituted by mail to Ron Cordova at the Department of Public Safety, Motor Transportation Division, PO Box 1628, Santa Fe, NM 87504-1628, no later than June 19, 2007. Any individual with a disability, who is in need of a reader, amplifier, or other form of auxiliary aid or service in order to attend or participate in the hearing, should contact Mr. Cordova at least ten (10) days prior to the hearing.

## **NEW MEXICO RACING COMMISSION**

### **NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN** that a rulemaking and public hearing will be held in the Boardroom, 4900 Alameda Blvd NE, Albuquerque, New Mexico, commencing in executive session at 8:30 o'clock a.m. on Wednesday, May 23, 2007. The public session will begin at 9:30 o'clock a.m. on Wednesday, May 23, 2007. The Commission will consider adoption of the proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No. 15.2.2.8 NMAC (regarding financial requirements.)

Copies of the proposed rules may be obtained from Julian Luna, Agency Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Suite A, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

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

\_\_\_\_\_  
Julian Luna  
Agency Director

Dated: May 1, 2007

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE AND ADMINISTRATIVE CENTER

This is an amendment to 10.14.200 NMAC, Sections 7 and 8. The purpose of these changes are to effect the amending of Paragraphs (6) through (53) of Subsection C of 10.14.200.7 NMAC, and Subsection H of 10.14.200.8 NMAC all to be effective on May 15, 2007, unless a later date is cited at the end of a paragraph.

#### 10.14.200.7 DEFINITIONS:

**A.** "Administrative center" means the law enforcement agency that administers and operates the DNA identification system and is governed by the DNA oversight committee.

**B.** "Analysis" means DNA profile generation.

**C.** "Arrestee" for purposes of DNA sample collection means any person as listed in Subsection A of 29-3-10 NMSA 1978 that is arrested for a felony offense committed as an adult and as defined by Paragraph (3) of Subsection D of 29-3-10 NMSA 1978. The qualifying arrestee offenses are:

(1) 30-2-1(A) Murder in the first degree,

(2) 30-2-1(B) Murder in the second degree,

(3) 30-2-3(A) Voluntary manslaughter,

(4) 30-2-3(B) Involuntary manslaughter,

(5) 30-2-4 Assisting suicide,

(6) 30-3-2 Aggravated assault

~~(6)~~ (7) 30-3A-3.1 Aggravated stalking (if second or subsequent conviction),

~~(7)~~ (8) 30-3-5(C) Aggravated battery (resulting in great bodily harm or with a firearm or explosive),

~~(8)~~ (9) 30-3-7 Injury to pregnant woman (resulting in a stillbirth),

~~(9)~~ (10) 30-3-8 Shooting at dwelling or occupied building; shooting at or from a motor vehicle (resulting in great bodily harm),

~~(10)~~ (11) 30-3-9(C) Aggravated assault upon a school employee,

~~(11)~~ (12) 30-3-9(F) Aggravated battery upon a school employee (resulting in great bodily harm or with a firearm or explosive),

~~(12)~~ (13) 30-3-9.1(D) Aggravated assault upon a sports official,

~~(13)~~ (14) 30-3-9.1(H)

Aggravated battery upon a sports official (resulting in great bodily harm or with a firearm or explosive),

~~(14)~~ (15) 30-3-9.2(C)

Aggravated assault upon a health care worker,

~~(15)~~ (16) 30-3-13 Aggravated assault against a household member,

~~(16)~~ (17) 30-3-14 Assault against a household member with intent to commit a violent felony,

~~(17)~~ (18) 30-3-16(C) Aggravated battery against a household member (resulting in great bodily harm or with a firearm or explosive),

~~(18)~~ (19) 30-4-1 Kidnapping (when the victim is less than eighteen years of age and the offender is not a parent of the victim),

~~(19)~~ (20) 30-4-1 Attempted kidnapping (when the victim is less than eighteen years of age and the offender is not a parent of the victim),

~~(20)~~ (21) 30-4-1 Kidnapping,

~~(21)~~ (22) 30-4-3 False imprisonment (when the victim is less than eighteen years of age and the offender is not a parent of the victim),

~~(22)~~ (23) 30-6-1(B) Abandonment of a child (resulting in death or great bodily harm),

~~(23)~~ (24) ~~30-6-1(D)~~ 30-6-1(E) Abuse of a child (negligent ~~and~~ or intentional, resulting in ~~death or~~ great bodily harm),

(25) 30-6-1(F) Abuse of a child (negligent, resulting in death),

(26) 30-6-1(G) Abuse of a child (12 to 18 years of age, intentional, resulting in death),

(27) 30-6-1(H) Abuse of a child (under 12 years of age, intentional, resulting in death),

~~(24)~~ (28) 30-6A-3 Sexual exploitation of children,

~~(25)~~ (29) 30-6A-3 Attempted sexual exploitation of children as defined in 30-6A-3(B), 30-6A-3(C) or 30-6A-3(D),

~~(26)~~ (30) 30-6A-4 Sexual exploitation of children by prostitution,

~~(27)~~ (31) 30-6A-4 Attempted sexual exploitation of children by prostitution,

~~(28)~~ (32) 30-7-5 Dangerous use of explosives,

(33) 30-9-11 Aggravated criminal sexual penetration; effective 7/1/2007,

(34) 30-9-11 Attempted aggravated criminal sexual penetration; effective 7/1/2007,

~~(29)~~ (35) 30-9-11 Criminal sexual penetration in the first, second, third or fourth degree,

~~(30)~~ (36) 30-9-11 Attempted

criminal sexual penetration in the first, second or third degree,

~~(31)~~ (37) 30-9-12 Criminal sexual contact in the fourth degree,

~~(32)~~ (38) 30-9-13 Criminal sexual contact of a minor in the second, third or fourth degree,

~~(33)~~ (39) 30-9-13 Attempted criminal sexual contact of a minor in the second or third degree,

~~(34)~~ (40) 30-9-13 Solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree,

~~(35)~~ (41) 30-9-14.3 Aggravated indecent exposure,

~~(36)~~ (42) 30-10-3 Incest (when the victim is less than eighteen years of age),

~~(37)~~ (43) 30-10-3 Attempted incest (when the victim is less than eighteen years of age),

~~(38)~~ (44) 30-16-1 Larceny (stolen property over \$500; livestock of any value; or firearm of any value),

~~(39)~~ (45) 30-16-2 Robbery,  
~~(40)~~ (46) 30-16-3(A) Burglary (dwelling house),

~~(41)~~ (47) 30-16-3(B) Burglary,  
~~(42)~~ (48) 30-16-4 Aggravated burglary,

~~(43)~~ (49) 30-17-6 Aggravated arson,

~~(44)~~ (50) 30-20A-3 Antiterrorism Act; unlawful acts,

~~(45)~~ (51) 30-22-17(B) Assault by prisoner,

~~(46)~~ (52) 30-22-22 Aggravated assault upon a peace officer,

~~(47)~~ (53) 30-22-25(C) Aggravated battery upon a peace officer (resulting in great bodily harm or with a firearm or explosive),

~~(48)~~ (54) 30-28-3 Solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree,

(55) 30-37-3.2 Child solicitation by electronic communication device; effective 7/1/2007,

~~(49)~~ (56) 30-47-4(D) Abuse of a resident,

~~(50)~~ (57) 30-47-5(D) Neglect of a resident,

~~(51)~~ (58) 66-8-101 Homicide by vehicle; great bodily harm by vehicle,

~~(52)~~ (59) 66-8-101.1 Injury to pregnant woman by vehicle (resulting in a stillbirth),

~~(53)~~ (60) any federal offense equivalent to the above listed New Mexico qualifying felony offenses.

**D.** "Buccal cell" means cells from the interior linings of the cheek and gum.

**E.** "CODIS" means the

federal bureau of investigation's national DNA index system for storage and exchange of DNA records submitted by designated forensic DNA laboratories.

**F.** "Collection kit" see Subsection N of 10.14.200.7 NMAC.

**G.** "Core loci" means the chromosomal locations designated as being required for a convicted offender profile to be considered complete by the board of the national DNA index system, and consistent with the federal DNA Identification Act of 1994 and subsequent federal laws.

**H.** "Covered offender" for purposes of fee assessment means any person convicted of a felony offense, committed after July 1, 1997, and as defined by Subsection D of 29-16-3 NMSA 1978 and as described in Paragraphs (1) through (3) of Subsection A of 29-16-6 NMSA 1978.

**I.** "Covered offender" for purposes of DNA sample collection means any person as defined by Subsection D of 29-16-3 and Subsection A of 29-16-6 NMSA 1978.

**J.** "DNA" means deoxyribonucleic acid.

**K.** "DNA Identification Act" means Sections 29-16-1 to 29-16-13 NMSA 1978, and any subsequent amendments or additions to these sections, the law that authorizes the DNA identification system and the DNA oversight committee.

**L.** "DNA identification system" means the system established pursuant to the DNA Identification Act.

**M.** "DNA oversight committee" means the DNA identification system oversight committee.

**N.** "DNA sample collection kit" means materials designed for the collection of DNA samples.

**O.** "FTA card" means an FTA collection card, a card of blotter paper designed for the collection of liquid biological samples or any other device designed for the collection of liquid biological samples.

**P.** "Head of the administrative center" means the authorized person who supervises the day-to-day operations of the administrative center.

**Q.** "Identification system" see Subsection L of 10.14.200.7 NMAC.

**R.** "In writing" means a document hand or typewritten on paper and includes the use of facsimile copies or computer requests that can be printed.

**S.** "Kit" see Subsection N of 10.14.200.7 NMAC.

**T.** "Records" means the results of analysis, testing, and related information.

**U.** "Sample" means a sample of biological material sufficient for DNA testing.

**V.** "Sample collection kit"

see Subsection N of 10.14.200.7 NMAC.

**W.** "Sample profile hit" means a match of the examined loci as determined by the servicing forensic DNA laboratory.

**X.** "Secured" means limited and controlled access only by authorized personnel including use of protection and safety devices such as restricted space access, physical locks and keys, passwords, encryption, firewalls etc. to safeguard any and all functions of that equipment or facility.

[3/1/1998; 10.14.200.7 NMAC - Rn & A, 10 NMAC 14.200.7, 5/1/2000; A, 7/1/2003; A, 7/1/2005; A, 12/29/2006; A, 5/15/2007]

#### **10.14.200.8 COLLECTION AND TRANSFER OF SAMPLES AND FEES:**

**A.** Routine collection of samples from a covered offender shall be performed only by trained employees of the department of corrections adult prisons or probation and parole divisions, jail or detention facility personnel, employees of the county sheriff office, members of the administrative center or persons designated by the administrative center as trained by and in coordination with the administrative center, utilizing the collection protocol approved by the oversight committee.

**B.** Collection and deposit of assessed fees from covered offenders shall be performed by employees of the department of corrections adult prisons and probation and parole divisions pursuant to policies and procedures established by the department of corrections.

**C.** The department of corrections shall be responsible for establishing policies and procedures for the collection of samples and assessed fees from covered offenders utilizing a collection protocol to be approved by the DNA oversight committee when custody is maintained by private or out-of-state, probation and parole or corrections facilities.

**D.** Routine collection of samples from arrestee's shall be performed only by trained jail or detention facility personnel, members of the administrative center or persons designated by the administrative center as trained by and in coordination with the administrative center, utilizing the collection protocol approved by the oversight committee.

**E.** DNA sample collection kits and information on the collection, storage, and transfer of samples shall be provided at no cost by the administrative center.

**F.** The routine method of sample collection shall be by buccal cell collection using the standardized sample collection kit as supplied by the administrative center. In non-routine circumstances, including a refusal by an arrestee or a cov-

ered offender, the collection shall, pursuant to Section 29-16-9 NMSA 1978:

(1) be referred to the administrative center;

(2) require a written consent or court order;

(3) consist of an appropriate, alternative sample type as designated by the administrative center or the court; and

(4) shall be collected by members of the administrative center; or

(5) by persons trained in the collection of the designated alternative sample type in coordination with, and as designated by, the administrative center.

**G.** In the case of an arrestee who refuses to provide a DNA sample to jail or detention facility personnel upon booking as required by Subsection A of 29-3-10 NMSA 1978, the jail or detention facility personnel shall immediately document the refusal and shall immediately report the refusal to the office of the district attorney for the county where the arrest took place.

**H.** The determination of a ~~person's~~ person's eligibility for DNA sample collection as a qualifying arrestee or as a covered offender shall be the responsibility of the authorized collector designated in Subsection A or D of 10.14.200.8 NMAC. The determination of a person's eligibility shall be based upon the statutory requirements for the specific collection.

**I.** Questions on supplies, collection or packaging should be directed to the administrative center.

[3/1/1998, A, 4/30/99; 10.14.200.8 NMAC - Rn, 10 NMAC 14.200.8, 5/1/2000; A, 7/1/2003; A, 7/1/2005; A, 12/29/2006; A, 5/15/2007]

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

This is an amendment to 19.31.4 NMAC, Section 16, effective May 15, 2007

#### **19.31.4.16 CLOSED WATERS: A. Waters closed to fishing**

(1) In Catron county: Big Dry creek from Golden link cabin upstream through its headwaters.

(2) In Catron county: Little creek from the "barrier" upstream through all tributaries.

(3) In Catron county: ~~[McKenna, and Spruce and Sacaton creeks]~~ Spruce creek.

(4) In Catron and Sierra counties: Main Diamond creek above the point of confluence with east fork of Diamond creek and the south Diamond creek drainage.

(5) In Colfax county: a posted

area lying within 300 feet of Eagle Nest dam, which is closed to entry.

(6) In Colfax county: a posted area of Stubblefield and Laguna Madre lakes lying within 150 feet of the outlet structures.

(7) In Grant county: east fork of Mogollon creek upstream of waterfalls near FS Trail No. 153, including Trail canyon, south fork Mogollon, and Woodrow canyon creeks.

(8) In Grant county: McKnight creek.

(9) In Grant county: Sheep corral creek.

(10) In Lincoln county: posted areas of Alto reservoir and Bonito lake near the outlets.

(11) In Catron county: White creek from waterfall near White creek cabin upstream to headwaters.

(12) In Catron county: West fork of the Gila river and all tributaries above waterfalls between FS Trail No. 151 crossing of the West fork of the Gila river near White creek cabin and FS Trail No. 151 crossing of the West fork of the Gila river near Lilley canyon.

(13) In Sandoval county: Capulin creek on Bandelier national park and the Dome wilderness.

**B. Taking fish from hatchery waters:** No person shall take or attempt to take fish from the waters of any fish hatchery or rearing ponds owned and operated by state or federal agencies. During open season, however, angling for trout shall be permitted in the Glenwood pond at the Glenwood state fish hatchery, Red River hatchery pond at the Red River state fish hatchery, Brood pond at Seven Springs hatchery, and Burns canyon lake at Parkview state fish hatchery. Additionally, the director may expressly authorize other limited fishing at the state's fish hatcheries based on management needs.

**C. Taking fish from or through the ice:** Fish may be taken from or through the ice except on the following waters: Santa Cruz lake, Monastery lake, and Springer lake.

[19.31.4.16 NMAC - Rp 19.31.4.16 NMAC, 4-15-02; A, 6-25-03; A/E, 3-31-06; A/E, 7-18-06; A, 5-1-07; A, 5-15-07]

## NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency order to 19.31.4 NMAC, Section 19, effective May 4, 2007.

**19.31.4.19 EMERGENCY  
ORDER FOR FISH SALVAGE:** Under authority of 19.31.10.18 promulgated by the

state game commission on September 15, 1994, I, BRUCE C. THOMPSON, director of the department of game and fish, hereby declare that an emergency exists in Oasis Park lake in Roosevelt county to the extent that fish life will be destroyed by drying out of the lake for maintenance. Bag limits on sport fish will be unlimited. Manner and method regulations will also be suspended during daylight hours only. All other state park rules apply. This relaxation will go into effect at 12:01 a.m., May 4, 2007, and will remain in effect through 11:59 p.m., May 13, 2007.

[19.31.4.19 NMAC - N/E, 5-4-07]

## NEW MEXICO GAMING CONTROL BOARD

**This is an amendment to 15.1.5 NMAC, Sections 7, 13, 16, 17, 21 and the addition of a new Section 27 effective May 15, 2007.**

### 15.1.5.7 DEFINITIONS:

Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

**A. "Act"** means the New Mexico Gaming Control Act.

**B. "Auxiliary member"** means an individual who has qualified as an auxiliary member in accordance with the national and local charter, articles of incorporation, bylaws, or rules of an official auxiliary that is organized in accordance with the bylaws and regulations of a nonprofit organization gaming operator licensee or applicant and in accordance with federal Internal Revenue Code section 501(c)(19) or (23) and applicable regulations; "auxiliary member" does not include any other person or membership class whose participation in gaming activity would create taxable gaming income for the licensee or would threaten the licensee's tax exempt status.

**C. "Component"** means a part of a gaming machine that is necessary for the proper operation and essential function of the gaming machine, including but not limited to a hopper, coin acceptor, microprocessor and related circuitry, programmed EPROM, bill acceptor, progressive system, monitoring system, meter; and any other parts the board determines are components; a component is necessary for the proper operation and essential function of a gaming machine if it affects, directly or indirectly, the gaming machine's operation, game outcome, security, recordkeeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses, batteries, handles, springs, brackets, and locks are not components.

**D. "Control,"** when used as a noun, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or to exercise significant influence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the applicant or licensee; when used as a verb, "control" means to exert, directly or indirectly, such power, or to be in a position to exert such power.

**E. "Key executive"** means an executive of a licensee or other person having the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or whose annual base compensation exceeds \$75,000.

**F. "Foreign institutional investor"** means a government related pension plan or a person that meets the requirements of a qualified institutional buyer as defined by the governing financial regulatory agency of the country where the company primary operations are located, and is registered and/or licensed in that country as a bank; an insurance company; an investment company; an investment advisor; collective trust funds; an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the board; or a group comprised entirely of entities specified by this subsection.

**[F] G. "Licensed premises"** means the area that has been approved for gaming on the premises that is under the direct control of a gaming operator licensee and from which the licensee is authorized to operate and permit the play of gaming machines.

**[F] H. "Majority interest"** means an ownership interest, whether direct or indirect, of more than 50% in the licensee.

**[H] I. "Manage"** means to take charge of, direct, superintend, restrict, regulate, administer, or oversee the operation of a gaming activity or other activity or function.

**[H] J. "Manufacturer"** means a person who manufactures, fabricates, assembles, produces, programs, refurbishes, or makes modifications to any gaming device for use or play in the state or for sale, lease or distribution outside the state from any location within the state.

**[H] K. "Member"** means an individual who has qualified for and been granted full membership in a nonprofit organization by swearing in, approval vote of the membership, or approval vote of a designated committee pursuant to the nonprofit organization's charter, articles of incorporation, bylaws, or rules, and who is

in good standing.

**[K] L. “Modification”** means a change or alteration in an approved gaming machine that affects the manner or mode of play or the percentage paid by the gaming machine, including a change in control or graphics programs; “modification” does not include a conversion from one approved mode of play to another approved mode of play, replacement of one game for another approved game; replacement of one component with another pre-approved component, or the rebuilding of a previously approved gaming machine with pre-approved components.

**[L] M. “Person”** means a legal entity or an individual.

**[M] N. “Premises”** means the land together with all building’s improvements and personal property located on the land.

**[N] O. “State”** means the state of New Mexico.

**[O] P. “This title”** means Title 15, Chapter 1 of the state administrative code.

[11/30/98; 15.1.5.7 NMAC - Rn & A, 15 NMAC 1.5.7, 3/31/00; A, 5/31/00; A, 2/14/02; A, 2/28/05; A, 5/15/07]

#### 15.1.5.13 SPECIAL REQUIREMENTS FOR RACETRACK GAMING OPERATOR LICENSE APPLICANTS:

**A.** To qualify to hold and operate a gaming operator’s license, a racetrack shall be licensed by the state racing commission pursuant to the Horse Racing Act to conduct live horse races or simulcast races.

**B.** The applicant shall submit to the board a copy of the applicant’s current license from the horse racing commission to conduct pari-mutuel wagering, its current simulcast license, and its schedule of live race days during its licensed race meets for the current calendar year. Thereafter, a licensee shall submit to the board, within ten (10) days of issuance by the state horse racing commission, a copy of the licensee’s current license to conduct pari-mutuel wagering, its current simulcast license, and its schedule of live race days during its licensed race meets for the current calendar year.

**C.** Racetrack gaming operator licensees may permit the operation of gaming machines on their premises only on days when the racetrack is conducting live horse races or simulcasting horse race meets. The gaming machines may be played for a daily period not to exceed ~~twelve~~ eighteen hours and no more than one hundred twelve hours in a one-week period, beginning on Tuesday at 8 a.m. and ending at 8 a.m on the following Tuesday, at the licensee’s discretion. “Daily period” means the 24-hour period beginning at

12:01 a.m. and ending at 12:00 midnight. [11/30/98; 15.1.5.13 NMAC - Rn, 15 NMAC 1.5.13, 3/31/00; A, 2/14/02; A, 2/28/05; A, 5/15/07]

#### 15.1.5.16 APPLICATION FOR FINDING OF SUITABILITY; CERTIFICATION:

**A.** The public interest requires that all key executives of an applicant or licensee obtain findings of suitability.

**B.** Pursuant to the act, this rule constitutes a request and requirement by the board that each key executive employed by a licensee shall submit an application of finding of suitability within 30 days of the first day of employment as a key executive. The licensee shall send a facsimile or e-mail notice to the board no later than 96 hours after the first day of employment listing the date of employment, name, and title of position of the key executive.

**C.** The following persons are, or may be, subject to that requirement:

(1) any person who furnishes services or property to a gaming operator licensee under an agreement pursuant to which the person receives compensation based on earnings, profits or receipts from gaming;

(2) any person who does business on the gaming establishment;

(3) any person who provides goods or services to a gaming operator licensee for compensation that the board finds grossly disproportionate to the value of the goods or services;

(4) an officer, director, equity security holder of 5% or more, partner, general partner, limited partner, trustee or beneficiary of a company licensee or company applicant;

(5) the key executives of a company licensee or company applicant;

(6) if the applicant or licensee is or will be a subsidiary, the holder of 5% or more of the equity security of a holding company or intermediary company that is not a publicly traded corporation;

(7) an officer, director, or key executive of a holding company, intermediary company or publicly traded corporation that is or is to become actively and directly engaged in the administration or supervision of, or any other significant involvement with, the activities of a subsidiary licensee or applicant;

(8) each person who, individually or with others, acquires, directly or indirectly, beneficial ownership of 5% or more of any voting securities in a publicly traded corporation registered with the board if the board determines that the acquisition would otherwise be inconsistent with the policy of the state;

(9) each person who, individually

or with others, acquires, directly or indirectly, beneficial ownership of 10% or more of any class of voting securities in a publicly traded corporation certified by the board;

(10) the following members of a nonprofit organization gaming operator applicant or licensee: (a) the president or commander if the president or commander will have the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or will be directly involved in the gaming activities of the licensee; (b) officers with check-writing authority or other financial responsibility; (c) board members; (d) key executives, such as the gaming manager and the officers, employees, volunteers and other persons designated by the nonprofit organization as key executives; and (e) any person who has access to the internal structure or software of any gaming machine or associated equipment; and

(11) any other person as deemed necessary by the board to protect the public health, safety, morals and general welfare.

**D.** A finding of suitability relates only to the involvement specified in the application. A key executive shall ~~be required~~ seek a new determination from the board within 30 days if there is any change in the nature of the involvement from that for which the key executive was previously found suitable by the board.

**E.** The board may waive the requirement for finding of suitability of an institutional investor or foreign institutional investor unless the board determines that public policy requires that the institutional investor or foreign institutional investor apply for such a finding.

**F.** A beneficial owner of an equity interest required to apply for a finding of suitability pursuant to Paragraph (8) of Subsection C of 15.1.5.16 NMAC or Paragraph (9) of Subsection C of 15.1.5.16 NMAC above may be deemed suitable by the board if the person has been found suitable by a gaming regulatory authority in another jurisdiction and provided the board finds that the other jurisdiction has conducted a thorough investigation that is comparable to investigations conducted by the board to determine suitability.

**G.** In making a determination of suitability for any other person that applies for a finding of suitability pursuant to this section, the board may consider, to the extent deemed appropriate by the board, the contents of a finding of suitability issued for that person by a gaming regulatory authority in another jurisdiction or by another state or federal licensing authority.

**H.** The board may deny, revoke, suspend, limit, or restrict any finding of suitability or application for such finding on the same grounds as it may take such action with respect to other licenses



and licensees. The board also may take such action on the grounds that the person found suitable is associated with, controls, or is controlled by, an unsuitable person.

**I.** Upon final determination by the board of the applicant's suitability, the board shall issue a certification of such finding to the applicant.

**J.** A person seeking a finding of suitability as a key executive of a nonprofit gaming operator applicant or licensee is not required to be a member of the nonprofit organization. The key executive may provide services to the nonprofit gaming operator licensee on a paid or volunteer basis.

**K.** An applicant for a gaming license or a licensee is responsible for ensuring that key person applications are filed in accordance with the act and this rule. The board may delay approval of or deny an application for a gaming license on the grounds that a key executive application has not been submitted.

**L.** No person shall be employed as a key executive who has failed to file an application for finding of suitability as required by this rule. A licensee shall be subject to disciplinary action, including suspension or revocation of the license, imposition of a fine, or both, if the licensee fails to ensure that the key executive has made the required application or employs as a key executive anyone who is required to file an application for finding of suitability but has failed to do so.

[11/30/98; 15.1.5.16 NMAC - Rn & A, 15 NMAC 1.5.16, 3/31/00; A, 10/15/00; A, 2/14/02; A, 7/31/02; A, 2/28/05; A, 5/15/07]

#### 15.1.5.17 APPLICATION FOR WORK PERMIT:

**A.** Application for a work permit shall be made [~~processed, and determined~~] in the same manner as set forth in the act or this rule for other applications. At the board's discretion, the board may delegate authority to the executive director or another designee to process and make the initial determination on all work permits. Except as provided for in Subsection J of 15.1.5.17 NMAC, [N]no person [may] shall be employed as a gaming employee unless the board, the executive director or the board's designee has first approved the application for such a permit.

**B.** The applicant shall submit his or her fingerprints in duplicate on fingerprint cards and his or her photograph in duplicate. Fingerprints shall not be accepted unless the fingerprints were taken under the supervision of, and certified by, a state police officer, a county sheriff, municipal chief of police, or sworn peace officer, or, upon board approval, another entity providing the services of a certified identifica-

tion technician. The photographs shall be no smaller than 2" x 3" and must be satisfactory to the board. The photographs [~~also have been~~] shall be taken no earlier than three months before the date the application for work permit was filed.

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

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

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

**F.** A work permit expires unless renewed in accordance with this title or if the employee is not employed as a gaming employee for more than 90 days.

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

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

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

**J.** Upon the receipt of a completed application, an applicant shall be provided a provisional gaming license which shall be terminated upon the issuance of a permanent work permit or the written determination to deny the work permit.

[11/30/98; 15.1.5.17 NMAC - Rn & A, 15 NMAC 1.5.17, 3/31/00; A, 10/15/00; A, 2/14/02; A, 5/14/04; A, 2/28/05; A, 5/15/07]

#### 15.1.5.21 APPLICATION FEES:

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

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

(1) gaming machine manufacturer's license, \$10,000;

(2) associated equipment manufacturer's license, \$2,500;

~~(2)~~ (3) gaming machine distributor's license, \$5,000;

(4) associated equipment distributor's license, \$1,000.00;

~~(3)~~ (5) gaming operator's license for racetrack, \$25,000;

~~(4)~~ (6) gaming operator's license for nonprofit organization, \$100;

~~(5)~~ (7) approval of application to install pre-approved modification to a licensed gaming machine filed by gaming operator licensee, \$25;

~~(6)~~ (8) gaming machine license, \$100 per machine;

~~(7)~~ (9) work permit, \$25;

~~(8)~~ (10) certification of finding of suitability, [~~\$25~~] \$100 for each person requiring investigation; and

~~(9)~~ (11) approval of amended gaming operator license, \$50 for amended license due to addition or deletion of five or fewer machines; \$250 for all other amended licenses.

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

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

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

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

**D.** Investigative fees are charged at the rate of \$50 per hour for each

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

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

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

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

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

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

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

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

[11/30/98; 15.1.5.21 NMAC - Rn, 15 NMAC 1.5.21, 3/31/00; A, 10/15/00; A, 2/14/02; A, 5/14/04; A, 2/28/05; A, 5/15/07]

**15.1.5.27 REGISTRATION OF NONPUBLICLY TRADED HOLDING AND INTERMEDIARY COMPANIES:**

**A.** If a company applicant or company licensee is or becomes a subsidiary, each nonpublicly traded holding company or intermediary company with respect to the subsidiary company shall:

**(1)** qualify to do business in the state of New Mexico; and

**(2)** register with the board.

**B.** Registration shall be accomplished by notifying the board in writing of the registrant's status as a nonpublicly traded holding or intermediary company, specifically identifying the company applicant or licensee that is the registrant's subsidiary and specifically describing the relationship between the registrant and the company applicant or licensee, and providing to the board all information required by Section 60-2E-21(A)(2) of the act.

**C.** If at any time the board finds that any person owning, controlling or holding with power to vote all or any part of any class of securities of, or any interest in, any holding company or intermediary company is unsuitable to be connected with a licensee, it shall so notify both the unsuitable person and the holding company or intermediary company. The unsuitable person shall immediately offer the securities or other interest to the issuing company for purchase. The company shall purchase the securities or interest offered upon the terms and within the time period ordered by the board.

**D.** Beginning on the date when the board serves notice that a person has been found to be unsuitable pursuant to Subsection C of this section, it is unlawful for the unsuitable person to:

**(1)** receive any dividend or interest upon any securities held in the holding company or intermediary company, or any dividend, payment or distribution of any kind from the holding company or intermediary company;

**(2)** exercise, directly or indirectly or through a proxy, trustee or nominee, any voting right conferred by the securities or interest; or

**(3)** receive remuneration in any form from the licensee, or from any holding company or intermediary company with respect to that licensee, for services rendered or otherwise.

**E.** A holding company or

intermediary company subject to the provisions of Subsection A of this section shall not make any public offering of any of its equity securities unless such public offering has been approved by the board.

**E.** This section does not apply to a holding company or intermediary company that is a publicly traded corporation, the stock of which is traded on recognized stock exchanges, which shall instead comply with the provisions of Section 24 of the Gaming Control Act.

[15.1.5.27 NMAC - N, 5/15/07]

**NEW MEXICO GAMING CONTROL BOARD**

This is an amendment to 15.1.6 NMAC, Section 11 effective May 15, 2007.

**15.1.6.11 MODIFICATION OF LICENSED PREMISES:**

**A.** No gaming operator licensee shall modify its licensed premises without obtaining the prior written approval of the board or its designee. As used in this section, modification does not include painting walls or installing or removing flooring, as long as the placement of gaming machines on the licensed premises [are] is unchanged.

**B.** [Application to modify the licensed premises shall be made to the board and submitted with the non-refundable application fee set forth in the application.] A gaming operator licensee shall notify the board or its designee in writing prior to modifying the licensed premises. The board or its designee shall approve or disapprove the modification. The licensee shall not modify the licensed premises prior to receiving written approval from the board or its designee. The [application must] written notice shall include a detailed diagram showing the proposed [location of each gaming machine after the] modification. [The board, in its discretion, may waive the non-refundable application fee if it determines that the change is not substantial.]

**C.** No [application for] modification of a licensed premises shall be approved unless the licensed premises, as modified, shall meet all the requirements of the act and this rule.

**D.** Modification of a licensed premises includes changing the location of gaming machines on the licensed premises. Any licensee seeking to change the location of gaming machines on the licensed premises shall [submit an application to modify the licensed premises to] notify the board in accordance with the provisions of this rule.

[N, 11/30/98; 15.1.6.11 NMAC - Rn, 15 NMAC 1.6.11, 10/15/00; A, 2/28/05; A, 5/15/07]

## NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.7 NMAC, Sections 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, and 39 effective May 15, 2007.

**15.1.7.7 DEFINITIONS:** Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

**A. "Act"** means the Gaming Control Act.

**B. "Central monitoring system"** means the hardware and software at the board's central site used to control, monitor, and retrieve information from, all licensed gaming machines.

**C. "Component"** means a part of a gaming machine that is necessary for the proper operation and essential function of the gaming machine, including but not limited to a hopper, coin acceptor, microprocessor and related circuitry, programmed EPROM, bill acceptor, progressive system, monitoring system, and meter and any other parts the board determines are components; a component is necessary for the proper operation and essential function of a gaming machine if it affects, directly or indirectly, the gaming machine's operation, game outcome, security, recordkeeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses, batteries, handles, springs, brackets, and locks are not components.

**D. "Conversion"** means a change from one pre-approved configuration to another pre-approved configuration.

**E. "Event"** means an occurrence of elements or particular combinations of elements that are available on the particular gaming device.

**F. "Game outcome"** means the final result of the wager.

**G. "Modification"** means a change or alteration in an approved gaming machine that affects the manner or mode of play or the percentage paid by the gaming machine, including a change in control or graphics programs; ~~modification does not include a conversion from one approved mode of play to another approved mode of play, replacement of one game for another approved game, replacement of one component with another pre-approved component, or the rebuilding of a previously approved gaming machine with pre-approved components.~~

**H. "Multigame"** means a gaming device that offers a menu of more than one game to the player.

**I. "[site] Terminal controller"** means the central hardware and software that monitors and controls one or more gaming machines on the licensed premises.

**J. "State"** means the state of New Mexico.

[11/30/98; 15.1.7.7 NMAC - Rn, 15 NMAC 1.7.7, 3/31/00; A, 1/31/02; A, 5/15/07]

### 15.1.7.8 EVALUATION OF NEW GAMING MACHINES AND MODIFICATIONS TO PREVIOUSLY-APPROVED GAMING MACHINES:

**A.** All gaming [devices] machines operated in the state [must] shall meet the specifications set forth in this section and [must] shall conform to the exact specifications of the prototype tested and approved by the board.

**B.** No electronic or mechanical gaming [device may] machine shall be used prior to licensure by the board. Once the board has approved a new gaming machine or a modification to a pre-approved gaming machine, a gaming operator licensee [must] shall file an application to obtain a gaming machine license or a notice of modification to pre-approved gaming machine before offering the machine for play.

**C.** Except as otherwise determined by the board, the following [may] shall not be used for gaming by any gaming operator licensee without the prior written approval of the board: bill acceptors, coin or token acceptors, progressive controllers, progressive displays, or associated equipment as set forth in this rule.

**D.** Any license or approval issued by the board [must] shall specifically describe the gaming machine or gaming device approved.

**E.** All of the following must be tested before licensure or approval for use:

- (1) a gaming [device] machine;
- (2) other devices or equipment as the board deems necessary to ensure compliance with the act and this rule; and
- (3) any modification to the [devices] gaming machines and equipment described in this section.

**F.** The board has the authority to take, authorize, or require any of the following actions with respect to testing a gaming [device] machine or modification to an existing gaming [device] machine:

- (1) employ the services of an outside independent gaming test laboratory to conduct the testing;
- (2) bill a licensee who requests

licensure or approval of a gaming [device] machine or equipment through any billing mechanism the board deems appropriate for all costs of testing;

(3) if not already in the laboratory's possession, require transportation of one working model of a new gaming machine to an independent gaming laboratory designated by the board or to some other location for review and inspection; with each gaming machine submitted for approval, the applicant must submit two copies of prints, schematics, block diagrams, circuit analyses, technical and operation manuals, program source codes, and any other information requested by the board; the gaming laboratory may disassemble the model and may destroy electronic components to fully evaluate the gaming machine;

(4) require that the applicant provide specialized equipment or the services of an independent technical expert to evaluate the gaming machine;

(5) require the manufacturer seeking approval of the gaming machine to pay all costs of transportation, review, inspection and testing; and

(6) if requested by the board, require transportation of one working model of a new gaming machine to the board for communications testing.

**G.** Any applicant whose application is denied by the board under this rule may request a hearing before the board to appeal the [test results] denial.

[11/30/98; 15.1.7.8 NMAC - Rn, 15 NMAC 1.7.8, 3/31/00; A, 5/15/07]

### 15.1.7.9 SECURITY AND AUDIT SPECIFICATIONS:

**A.** A gaming [device must] machine shall meet all of the following security and audit specifications:

(1) be controlled by a micro-processor;

(2) be connected and communicating to an approved central monitoring system and conform exactly to the protocol and internal control procedures employed by the central monitoring system provider and the board;

(3) have an internal enclosure for the logic board that is locked or sealed, or both, before game play;

(4) be capable of continuing a game without loss of data after a power failure;

(5) have game data recall for the current game and, at a minimum, the previous four games;

(6) have a random selection process that satisfies the 99% confidence level using any of the following tests: standard chi-squared, runs, serial correlation, or other standard mathematical test for ran-

domness as approved by the board;

(7) clearly display applicable rules of play and the payout schedule; and

(8) display an accurate representation of each game outcome utilizing rotating reels, video monitors, or other type of display mechanism that accurately depicts the outcome of the game.

**B.** The gaming [~~device must~~] machine shall display an external registration tag with the license number issued by the board. The registration tag [~~will~~] shall be placed on the approved gaming device at the licensed premises by an agent of the board.

[11/30/98; 15.1.7.9 NMAC - Rn, 15 NMAC 1.7.9, 3/31/00; A, 5/15/07]

#### 15.1.7.11 ACCOUNTING METER SPECIFICATIONS:

**A.** A gaming [~~device must~~] machine shall be equipped with both electronic and electromechanical meters.

**B.** A gaming [~~device's~~] machine's electromechanical meters [~~must~~] shall have no less than six digits.

**C.** A gaming [~~device's~~] machine's electronic meters [~~must~~] shall tally totals to eight digits and be capable of rolling over when the maximum value is reached.

**D.** A gaming [~~device's~~] machine's control program [~~must~~] shall provide the means for on-demand display of the electronic meters utilizing a key switch on the exterior of the machine.

**E.** The required electromechanical meters [~~must~~] shall comply with the following and [~~must~~] shall count and report data on a basis consistent with the meters described Subsection H of 15.1.7.11 NMAC below:

(1) the coin-in meter [~~must~~] shall cumulatively count the number of coins or tokens that are wagered by actual coins or tokens that are inserted, or credits bet, or both;

(2) the coin-out meter or amount won meter [~~must~~] shall cumulatively count the number of coins, credits, or tokens won as a result of game play including hand-paid jackpots; notwithstanding the foregoing, a manufacturer may choose to incorporate a coin-out meter and hand-pay jackpot meter as separate meters;

(3) the hand-pay jackpot meter [~~must~~] shall identify the number of coins, credits, or tokens won as a result of game play resulting in a hand-pay jackpot; and

(4) the coins-dropped meter [~~must~~] shall maintain a cumulative count of the number of coins or tokens diverted into a drop bucket plus the value of the bills inserted that have been inserted into the bill acceptor.

**F.** Electromechanical meters [~~must~~] shall meet a reasonable level

of accuracy, given the available technology, as approved by the board.

**G.** Electronic meters [~~must~~] shall have an accuracy rate of 99.99% or better.

**H.** The required electronic meters [~~must~~] shall comply with the following and [~~must~~] shall count and report data on a basis consistent with the meters described in Subsection E of 15.1.7.11 NMAC above:

(1) the coin-in meter [~~must~~] shall cumulatively count the value or number of coins or tokens that are wagered by actual coins or tokens that are inserted, or credits bet, or both;

(2) the coins-out meter or amount won meter [~~must~~] shall cumulatively count the value or number of coins, credits, or tokens won as a result of game play, including hand-paid jackpots; notwithstanding the foregoing, a manufacturer may choose to incorporate a coin-out meter and hand-pay jackpot meter as separate meters;

(3) the coins-dropped meter [~~must~~] shall maintain a cumulative count of the value or number of coins or tokens diverted into a drop bucket plus the value of the bills that have been inserted into the bill acceptor;

(4) the games played meter [~~must~~] shall display the cumulative number of games played;

(5) a cabinet door meter [~~must~~] shall display the number of times the front cabinet door was opened; and

(6) the drop door meter [~~must~~] shall display the number of times the drop door or the bill acceptor door was opened.

**I.** If a gaming device is equipped with a bill acceptor, then the device [~~must~~] shall be equipped with a bill acceptor meter that records the following:

(1) the total number of bills that were accepted;

(2) an accounting of the number of each denomination of bill accepted; and

(3) the total dollar amount of bills accepted.

**J.** A gaming [~~device must~~] machine shall be designed so that the replacement parts or modules required for normal maintenance do not require replacement of the electromechanical meters.

**K.** A gaming [~~device must~~] machine shall have meters that continuously display all of the following information relating to current play or monetary transaction:

(1) the number of coins, tokens, or credits wagered in the current game;

(2) the number of coins, tokens, or credits won in the current game, if applicable;

(3) the number of coins or tokens paid by the hopper for a credit cashout or a direct pay from a winning outcome; and

(4) the number of credits available for wagering, if applicable.

**L.** Electronically stored meter information required by this rule [~~must~~] shall be preserved after a power loss to the gaming device and must be maintained for a period of not less than 180 days.

**M.** A gaming [~~device may~~] machine shall not have a mechanism that causes the required electronic accounting meters to clear automatically when an error occurs.

**N.** The required electronic accounting meters [~~may~~] shall be cleared only if approved by the board.

**O.** Required meter readings [~~when possible, must~~] shall be recorded before and after the electronic accounting meter is cleared.

[11/30/98; 15.1.7.11 NMAC - Rn & A, 15 NMAC 1.7.11, 3/31/00; A, 1/31/02; A, 5/15/07]

#### 15.1.7.12 RANDOMNESS EVENTS AND RANDOMNESS TESTING:

**A.** A random event is an event with a given set of possible outcomes that has a given probability of occurrence called the distribution. Two events are called independent if the outcome of one event does not have an influence on the outcome of the other event and the outcome of one event does not affect the distribution of another event.

**B.** A gaming [~~device must~~] machine shall be equipped with a random number generator to make the selection process. A selection process is considered random if all of the following specifications are met:

(1) the random number generator satisfies not less than a 99% confidence level using the standard chi-squared analysis;

(2) the random number generator does not produce a statistic with regard to producing patterns of occurrences. The random number generator is considered random if it meets the 99% confidence level with regard to the runs test or any similar pattern testing statistic;

(3) the random number generator produces numbers that are independently chosen without regard to any other symbol produced during that play; this test is the correlation test; the random number generator is considered random if it meets the 99% confidence level using standard correlation analysis;

(4) the random number generator produces numbers that are chosen without reference to the series of outcomes in the previous game; this test is the serial correlation test; the random number generator is considered random if it meets the 99% confidence level using standard serial correla-

tion analysis;

(5) the random number generator and random selection process ~~[must]~~ shall be impervious to influences from outside the gaming device, including, but not limited to, electromagnetic interference, electrostatic interference, and radio frequency interference; and

(6) a gaming ~~[device must]~~ machine shall use appropriate communication protocols to protect the random number generator and random selection process from influence by associated equipment that is conducting data communications with the gaming ~~[device]~~ machine. [11/30/98; 15.1.7.12 NMAC - Rn, 15 NMAC 1.7.12, 3/31/00; A, 5/15/07]

#### 15.1.7.13 SAFETY AND POWER SUPPLY SPECIFICATION:

A. Electrical and mechanical parts and design principles ~~[must]~~ shall not subject a player to physical hazards. A gaming ~~[device must]~~ machine shall be electronically tested to the UL-22 standard for amusement and gaming devices or an equivalent standard. Testing may be done by any nationally or internationally recognized electrical safety testing laboratory.

B. Spilling a conductive liquid on the gaming ~~[device must]~~ machine shall not create a safety hazard or alter the integrity of the gaming device's performance.

C. The power supply used in a gaming ~~[device must]~~ machine shall be designed to minimize leakage of current in the event of an intentional or inadvertent disconnection of the alternate current power ground.

D. A surge protector ~~[must]~~ shall be installed on each gaming ~~[device]~~ machine. The surge protector may be internal to the power supply or external.

E. An on and off switch that controls the electrical current used to operate the gaming ~~[device must]~~ machine shall be located in an accessible place in the interior of the gaming ~~[device]~~ machine.

F. The gaming ~~[device]~~ machine power supply filtering ~~[must]~~ shall be sufficient to prevent disruption of the gaming ~~[device]~~ machine by a repeated switching on and off of the AC power.

G. Except in the case of total memory failure, if the gaming machine is still operable, a gaming ~~[device must]~~ machine shall be capable of continuing the current play with all the current play features after a gaming device malfunction is cleared.

[11/30/98; 15.1.7.13 NMAC - Rn, 15 NMAC 1.7.13, 3/31/00; A, 5/15/07]

#### 15.1.7.14 COIN AND TOKEN ACCEPTOR SPECIFICATIONS:

A. At least one electronic coin or token acceptor ~~[must]~~ shall be installed in each gaming ~~[device]~~ machine unless the gaming ~~[device]~~ machine accepts bills only.

B. A coin or token acceptor ~~[must]~~ shall be evaluated by ~~[the]~~ an independent testing laboratory ~~[designated]~~ approved by the board and approved by the board to indicate that it meets the requirements of this rule.

C. The coin or token acceptor ~~[must]~~ shall be designed to accept designated coins or tokens and to reject others.

D. The coin or token acceptor on a gaming ~~[device must]~~ machine shall be designed to prevent the use of cheating methods, including, but not limited to, slugging, stringing, or spooning.

E. A coin or token that is accepted but not credited to the current game ~~[must]~~ shall be returned to the player by activating the hopper or crediting toward the next play of the gaming device. The gaming device control program must be capable of handling rapidly fed tokens so that instances where a token is accepted but not credited to the current game are minimized.

F. A gaming device must use a coin or token acceptor that accepts or rejects a token on the basis of metal composition, mass, composite makeup, or equivalent security. [11/30/98; 15.1.7.14 NMAC - Rn, 15 NMAC 1.7.14, 3/31/00; A, 5/15/07]

#### 15.1.7.15 BILL ACCEPTOR SPECIFICATIONS:

A. A gaming device may have a bill acceptor installed into which a patron may insert currency or a ticket in exchange for an equal value of gaming device credits. The patron ~~[must]~~ shall be able to obtain an equal number of tokens or credits for the amount of currency that was inserted into the bill acceptor.

B. A bill acceptor ~~[must]~~ shall have software programs that enable the acceptor to differentiate between genuine and counterfeit bills to a high degree of accuracy. Bill acceptors may utilize flash technology upon approval of the board after evaluation by an independent testing laboratory.

C. A bill acceptor ~~[must]~~ shall be equipped with a bill acceptor drop box to collect the currency inserted into the bill acceptor. The bill acceptor ~~[must]~~ shall:

(1) be housed within the gaming ~~[device]~~ machine or, if mounted on the outside of the gaming ~~[device]~~ machine, be contained in a locked compartment; the key to such compartment ~~[must]~~ shall be different from any other key on the gaming

~~[device]~~ machine; and

(2) be equipped with a bill acceptor drop box that includes a stacker; the drop box ~~[must]~~ shall be identifiable to the gaming ~~[device]~~ machine from which it was removed and have a separate lock to access the contents of the bill acceptor drop box; the key to the lock ~~[must]~~ shall not access any other area of the gaming ~~[device]~~ machine.

[11/30/98; 15.1.7.15 NMAC - Rn, 15 NMAC 1.7.15, 3/31/00; A, 1/31/02; A, 5/15/07]

#### 15.1.7.16 AUTOMATIC LIGHT ALARM SPECIFICATIONS:

A light ~~[must]~~ shall be installed on the top of the gaming ~~[device]~~ machine that automatically illuminates when the door to the gaming ~~[device]~~ machine is opened or when associated equipment that may affect the security or operation of the gaming ~~[device]~~ machine is exposed, if the equipment is physically attached to the gaming ~~[device]~~ machine.

[11/30/98; 15.1.7.16 NMAC - Rn, 15 NMAC 1.7.16, 3/31/00; A, 5/15/07]

#### 15.1.7.18 HARDWARE SWITCH SPECIFICATIONS:

A. A hardware switch ~~[may]~~ shall not be installed if it alters the pay tables or payout percentages in the operation of a gaming ~~[device]~~ machine.

B. A hardware switch may be installed to control graphic routines, speed of play, sound, or other board-approved cosmetic play features.

[11/30/98; 15.1.7.18 NMAC - Rn, 15 NMAC 1.7.18, 3/31/00; A, 5/15/07]

#### 15.1.7.19 MULTIGAMES:

A. A multigame may have various games with configurable percentages. A multigame may be approved by the board if, in addition to any other requirements in this rule, the following eight-digit electronic meters are available upon display for each game offered on the menu: credits wagered or equivalent, and credits won or equivalent.

B. If the method of configuring the game menu may be accomplished by entering a configuration mode of the device, then the method employed ~~[must]~~ shall meet both of the following standards:

(1) the method has sufficient safeguards to prevent unauthorized access; and

(2) the method does not result in data loss or corruption of data sent to the central monitoring system.

[11/30/98; 15.1.7.19 NMAC - Rn, 15 NMAC 1.7.19, 3/31/00; A, 5/15/07]

#### 15.1.7.20 DISPLAY OF RULES OF PLAY:

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

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

C. The rules of play shall be kept under glass or other transparent substance.

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

E. Except for posting of odds pursuant to Section 15.1.10.21 NMAC and the display of the rules of play, stickers or other removable devices shall not be placed on the gaming device face unless their placement is approved by the board. [11/30/98; 15.1.7.20 NMAC - Rn, 15 NMAC 1.7.20, 3/31/00; A, 5/14/04; A, 5/15/07]

#### 15.1.7.21 ERROR CONDITIONS AND AUTOMATIC CLEARING:

A. A gaming ~~[device]~~ machine shall be capable of detecting and displaying the following conditions: power reset, door open, and inappropriate coin-in or token-in if the coin or token is not automatically returned to the player.

B. The conditions described in Subsection (A) of 15.1.7.21 NMAC above ~~[must]~~ shall be automatically cleared by the gaming ~~[device]~~ machine upon initiation of a new play sequence. [11/30/98; 15.1.7.21 NMAC - Rn, 15 NMAC 1.7.21, 3/31/00; A, 5/15/07]

#### 15.1.7.22 ERROR CONDITIONS AND CLEARING BY AN ATTENDANT:

A. A gaming ~~[device]~~ machine shall be capable of detecting and displaying, and an attendant may clear, all of the following error conditions:

- (1) coin- or token-in jam;
- (2) coin- or token-out jam;
- (3) hopper empty or timed-out;
- (4) RAM error;
- (5) hopper runaway or extra coin or token paid out;
- (6) coin- or token-in error conditions;
- (7) reel spin error of any type, including a misindex condition of rotating reels; the specific reel number must be identified in the error indicator; and
- (8) low RAM battery, for batteries external to the RAM itself, or low power

source.

B. A description of the gaming ~~[device]~~ machine error codes and their meanings ~~[must]~~ shall be contained inside each gaming ~~[device]~~ machine.

[11/30/98; 15.1.7.22 NMAC - Rn, 15 NMAC 1.7.22, 3/31/00; A, 5/15/07]

#### 15.1.7.23 HOPPER MECHANISM SPECIFICATIONS:

A. If a gaming ~~[device]~~ machine is equipped with a hopper, the hopper ~~[must]~~ shall be designed to detect all of the following and force the gaming device into a tilt condition if one of the following occurs:

- (1) jammed coin or token;
- (2) extra coin or token paid out;
- (3) hopper runaway; or
- (4) hopper empty condition.

B. The gaming ~~[device]~~ machine control program ~~[must]~~ shall monitor the hopper mechanism for the error conditions specified in Subsection (A) of 15.1.7.23 NMAC above in all game conditions.

C. All coins or tokens paid from the hopper mechanism ~~[must]~~ shall be accounted for by the gaming ~~[device]~~ machine, including, to the extent possible, coins or tokens paid as extra coins or tokens during a hopper malfunction.

D. Hopper pay limits ~~[must]~~ shall be designed to permit compliance by a gaming operator licensee with all applicable tax laws, rules and regulations. [11/30/98; 15.1.7.23 NMAC - Rn, 15 NMAC 1.7.23, 3/31/00; A, 5/15/07]

#### 15.1.7.24 TICKET PRINTER SPECIFICATIONS:

A. A ticket printer ~~[must]~~ shall be capable of producing the following:

- (1) date and time;
- (2) identification number of the gaming machine;
- (3) credits and their values; and
- (4) validation number.

B. The ticket printer ~~[must]~~ shall be capable of sensing a paper out condition and completing printing of any unprinted tickets after the paper out fault has been cleared.

C. The machine shall either keep a duplicate copy or print only one (1) copy to the player but have the ability to retain the last ticket-out information to resolve player disputes. In addition, an approved system shall be used to validate the payout ticket, and the ticket information on the system shall be retained at least as long as the ticket is valid at that location.

[11/30/98; 15.1.7.24 NMAC - Rn, 15 NMAC 1.7.24, 3/31/00; A, 5/15/07]

#### 15.1.7.25 BIDIRECTIONAL COMMUNICATION: A gaming ~~[device]~~

machine that is capable of bidirectional communication with internal or external associated equipment ~~[must]~~ shall use a communication protocol that ensures that erroneous data or signals will not adversely affect the operation of the gaming device.

[11/30/98; 15.1.7.25 NMAC - Rn, 15 NMAC 1.7.25, 3/31/00; A, 5/15/07]

#### 15.1.7.26 THEORETICAL PERCENTAGE PAYOUT REQUIREMENTS:

A. During the expected lifetime of the gaming machine, the gaming machine shall not pay out less than 80%.

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

C. A gaming machine ~~[must]~~ shall have a probability of obtaining the single highest posted maximum payout of more than 1 in 50,000,000.

[11/30/98; 15.1.7.26 NMAC - Rn, 15 NMAC 1.7.26, 3/31/00; A, 1/31/02; A, 5/14/04; A, 5/15/07]

#### 15.1.7.27 REVOCATION OF LICENSE OR APPROVAL:

A. The board may revoke the license or approval of a gaming machine ~~[or gaming device]~~ if the board determines, in its discretion, that the gaming machine ~~[or gaming device]~~:

- (1) does not perform in the manner described in the application;
- (2) is defective or malfunctions frequently;
- (3) has a detrimental impact on the conduct of the gaming operation; or
- (4) adversely affects the computation of taxes due, but not limited to, inaccurate computation, defects, or malfunctions.

B. The board ~~[will]~~ shall notify, in writing, the manufacturer or distributor of the gaming machine ~~[or gaming device]~~ of the revocation of the license or approval. The board ~~[will]~~ shall advise the manufacturer or distributor of the date on which use of the gaming machine ~~[or gaming device]~~ must cease.

C. The board ~~[will]~~ shall notify, in writing, the gaming operator licensees that use the gaming machine ~~[or gaming device]~~ of the revocation of the license or approval. The board ~~[will]~~ shall advise the licensees of the date on which use of the gaming machine ~~[or gaming device]~~ must cease.

D. A gaming operator licensee or applicant ~~[must]~~ shall cease using, on the date established by the board, the gaming machine ~~[or gaming device]~~ for which the license or approval has been revoked. The licensee ~~[must]~~ shall notify

the board, in writing, if the licensee believes it cannot cease use of the gaming machine ~~[or device]~~ by the established date and ~~[must]~~ shall request an extension of time. The board ~~[will]~~ shall advise the gaming operator licensee or applicant, in writing, whether the requested extension is approved or denied.  
[11/30/98; 15.1.7.27 NMAC - Rn, 15 NMAC 1.7.27, 3/31/00; A, 1/31/02; A, 5/15/07]

**15.1.7.28 NEW OR MODIFIED GAMING [MACHINES] DEVICES; ADDITIONAL NOTICE REQUIREMENTS:**

A. The manufacturer or distributor of gaming ~~[devices must]~~ machine shall notify the board, in writing, of any problems, defects, or malfunctions of any gaming ~~[device]~~ machine that has been approved by the board if the problem, defect, or malfunction affects game integrity or is recurring.

B. The manufacturer or distributor of a gaming ~~[device must]~~ machine shall advise the board, in writing, if any other jurisdiction has revoked the approval of any gaming ~~[device]~~ machine approved or licensed by the board.

C. A gaming operator licensee or applicant ~~[must]~~ shall notify the board, in writing, of any ~~[material]~~ problems, defects, or malfunctions that affect the fairness or integrity of the operation or play of any gaming ~~[device]~~ machine that has been approved by the board and is used by the licensee, or is proposed for use by the applicant, in the state.

D. A gaming operator licensee or applicant ~~[must]~~ shall notify the board, in writing, if the approval of a gaming ~~[device]~~ machine approved by the board and used by the gaming operator licensee, or proposed to be used by the gaming operator licensee applicant, has been revoked by any other jurisdiction.  
[11/30/98; 15.1.7.28 NMAC - Rn, 15 NMAC 1.7.28, 3/31/00; A, 5/15/07]

**15.1.7.29 APPROVAL OF ASSOCIATED EQUIPMENT AND MODIFICATION OF PREVIOUSLY APPROVED ASSOCIATED EQUIPMENT; APPROVAL REQUIRED:** Except as otherwise determined by the board, a manufacturer or distributor of associated equipment ~~[may]~~ shall not distribute associated equipment or any modification thereto to a gaming operator licensee unless the board has approved the associated equipment or modification.  
[11/30/98; 15.1.7.29 NMAC - Rn, 15 NMAC 1.7.29, 3/31/00; A, 5/15/07]

**15.1.7.30 ASSOCIATED**

**EQUIPMENT AND MODIFICATIONS; APPLICATION FOR APPROVAL:**

A. An applicant for approval of, or modification of existing associated equipment ~~[must]~~ shall; submit an application to the board on forms provided or approved by the board.

B. The following information ~~[must]~~ shall be included on the application:

(1) the name, business address, and business telephone number of the manufacturer or distributor;

(2) the federal identification number and New Mexico taxpayer identification number, or social security number of the manufacturer or distributor;

~~[(3) if the manufacturer or distributor is a company licensee, the information required in paragraphs 15.1.7.30(B)(1) and 15.1.7.30(B)(2) and in subsection 15.1.7.30(D) of this rule must shall be provided for the manufacturer's or distributor's key executives, officers, directors, persons owning, directly or indirectly, beneficial interest of 5% or more of its outstanding stock, or any other person who is in a position to exercise control over the company licensee;]~~

~~[(4) (3) a list of the jurisdictions that have approved the associated equipment and a copy of the document of approval from each jurisdiction; and~~

~~[(5) (4) additional information deemed necessary by the board to enable complete understanding of the operation and function of the associated equipment for which approval is sought.~~

C. The board has the authority to take, authorize, or require each of the following actions:

(1) employ the services of an outside independent gaming test laboratory to conduct the testing;

(2) bill a licensee who requests licensure or approval of associated equipment through any billing mechanism the board deems appropriate for all costs of testing;

(3) require transportation of not more than two working models of the associated equipment to a designated independent laboratory for review and inspection. The laboratory may dismantle the associated equipment and may destroy the electronic components in order to fully evaluate the equipment;

(4) require that the applicant provide specialized equipment or the services of an independent technical expert to evaluate the associated equipment; and

(5) require the manufacturer or distributor seeking approval of the associated equipment to pay all the costs of transportation, review, inspection and testing.

D. If the board requires the

manufacturer or distributor of associated equipment to submit the associated equipment to an independent laboratory for testing, then the manufacturer or distributor ~~[must]~~ shall provide the following information to the independent laboratory:

(1) the information set forth in Paragraphs (1) through (5) of Subsection B of 15.1.7.30 NMAC above;

(2) a complete, comprehensive, and technically accurate description and explanation of the associated equipment and its intended use in both technical and lay language; the document must be signed under penalty of perjury;

(3) detailed operating procedures of the associated equipment; and

(4) details of all tests previously performed on the associated equipment, the conditions and standards under which the tests were performed, and the person or persons who conducted the tests.

E. Upon testing of any associated equipment, the independent laboratory ~~[must]~~ shall provide the board with documentation of the following:

(1) details of the tests performed on the associated equipment;

(2) results of tests performed on the associated equipment;

(3) detailed operating procedures of the associated equipment;

(4) percentage calculations of the associated equipment, if applicable, and

(5) any other information deemed necessary by the board to ensure compliance with the act and this rule.

F. A gaming operator licensee ~~[may]~~ shall only install or use associated equipment that has been approved by the board after determination that the associated equipment is in compliance with the technical standards set forth in this rule.

G. After the board determines whether to approve or disapprove the associated equipment, the board ~~[will]~~ shall notify the manufacturer or distributor of its decision, in writing.

H. A gaming operator licensee ~~[may]~~ shall not alter the manner in which associated equipment operates or revise or modify the associated equipment without the prior written approval of the board.  
[11/30/98; 15.1.7.30 NMAC - Rn, 15 NMAC 1.7.30, 3/31/00; A, 5/15/07]

**15.1.7.32 REVOCATION OF APPROVAL OF ASSOCIATED EQUIPMENT OR MODIFICATION:**

A. The board may revoke approval of associated equipment or any modification thereto, if the board finds that the associated equipment:

(1) does not perform in the manner described in the application;

- (2) is defective or malfunctions frequently;
- (3) has a detrimental impact on the conduct of a gaming operation; or
- (4) adversely affects the computation of taxes for reasons including, but not limited to, inaccurate computation, defects, or malfunctions.

**B.** The board ~~will~~ shall notify, in writing, the manufacturer or distributor of the associated equipment of the revocation of approval. The board shall advise the manufacturer ~~of~~ or distributor of the associated equipment of the date on which use of the associated equipment must cease.

**C.** The board ~~will~~ shall notify, in writing, the gaming operator licensees that use, or applicants that propose to use, the associated equipment of revocation of approval. The board will advise the gaming operator licensee or applicant of the date on which the use of the associated equipment must cease.

**D.** A gaming operator licensee or applicant ~~must~~ shall cease using the associated equipment for which approval has been revoked by the date established by the board. The licensee ~~must~~ shall notify the board, in writing, if the licensee believes it cannot cease use of the associated equipment by the established date and ~~must~~ shall request an extension of time. The board ~~will~~ shall advise the gaming operator licensee or applicant, in writing, whether the requested extension is approved or denied.

[11/30/98; 15.1.7.32 NMAC - Rn, 15 NMAC 1.7.32, 3/31/00; A, 1/31/02; A, 5/15/07]

**15.1.7.33 ASSOCIATED EQUIPMENT; ADDITIONAL NOTICE REQUIREMENTS:**

**A.** The manufacturer or distributor of associated equipment ~~must~~ shall notify the board, in writing, of any problems, defects, or malfunctions of any associated equipment that has been approved by the board if the problem, defect, or malfunction affects game integrity or is recurring.

**B.** The manufacturer or distributor of associated equipment must advise the board, in writing, if any other jurisdiction has revoked the approval of any associated equipment approved by the board.

**C.** A gaming operator licensee or applicant ~~must~~ shall notify the board, in writing, of any material problems, defects, or malfunctions that affect the fairness or integrity of the operation or play of any associated equipment that has been approved by the board and is used by the licensee, or is proposed for use by the applicant, in the state.

**D.** A gaming operator licensee or applicant ~~must~~ shall notify the board, in writing, if the approval of associated equipment approved by the board and used by the gaming operator licensee, or proposed to be used by the gaming operator licensee applicant, has been revoked by any other jurisdiction.  
[11/30/98; 15.1.7.33 NMAC - Rn, 15 NMAC 1.7.33, 3/31/00; A, 5/15/07]

**15.1.7.34 RETENTION OF ASSOCIATED EQUIPMENT RECORDS:**

**A.** A manufacturer or distributor of associated equipment ~~must~~ shall maintain the following records:

(1) all applications for approval of associated equipment submitted to the board;

(2) detailed operating procedures of the associated equipment;

(3) approvals of associated equipment received from any gaming jurisdiction;

(4) a complete, comprehensive, and technically accurate description and explanation of the associated equipment and its intended use in both technical and lay language;

(5) any alterations, modifications, or revisions and the requisite approvals that have been conducted on associated equipment used by gaming operator licensees or applicants;

(6) details of tests performed on the associated equipment by the manufacturer or distributor of the associated equipment; and

(7) the revocation of any approval for associated equipment issued by any gaming jurisdiction.

**B.** Manufacturer, distributor, and gaming operator licensees ~~must~~ shall maintain documentation that indicates problems, defects, or malfunctions of the associated equipment and any other information or records the board deems necessary to ensure compliance with the act and this rule.

[11/30/98; 15.1.7.34 NMAC - Rn, 15 NMAC 1.7.34, 3/31/00; A, 5/15/07]

**15.1.7.35 MARKING OF GAMING MACHINES:**

**A.** A manufacturer or distributor ~~may~~ shall not distribute a gaming machine in New Mexico unless the machine has:

- (1) a unique, permanent serial number, which ~~must~~ shall be clearly visible and permanently stamped or engraved on the metal frame or other permanent component of the gaming machine or on a metal plate attached to the metal frame or other permanent component of the gaming machine;

(2) a metal plate that provides the manufacturer's name, model, date of manufacture, and permanent serial number of the machine; the metal plate must be attached to the cabinet of the gaming machine, and

(3) the board-issued license number and any modification approval number affixed to all program storage media placed in the machine.

**B.** Each manufacturer or distributor ~~must~~ shall keep a written list of the date of each distribution, the serial numbers of the gaming machines, and the names, addresses, and telephone numbers of the persons to whom the machines have been distributed and ~~must~~ shall provide the list to the board immediately upon request.

**C.** In addition to the requirements in Subsection A of 15.1.7.35 NMAC above, no gaming operator ~~may~~ shall place a gaming machine in a licensed premises for play unless the gaming machine bears the board-issued license number affixed to the machine. No person other than the board or its authorized employee or other agent ~~may~~ shall affix or remove the license number.

[11/30/98; 15.1.7.35 NMAC - Rn, 15 NMAC 1.7.35, 3/31/00; A, 1/31/02; A, 5/15/07]

**15.1.7.36 SUMMARY SUSPENSION OF APPROVAL OF GAMING DEVICES:**

**A.** The board, with or without prior notice to the manufacturer, distributor, or licensee, may issue a summary order suspending approval of a gaming device if the board determines that the device does not operate, or is not being operated, in the manner certified by the manufacturer or as approved by the board.

**B.** After issuing the summary suspension order, the board may seal or seize all modes of that gaming device and ~~must~~ shall thereafter comply with provisions of the act and this rule governing emergency orders of the board.

[11/30/98; 15.1.7.36 NMAC - Rn, 15 NMAC 1.7.36, 3/31/00; A, 5/15/07]

**15.1.7.37 MAINTENANCE, REPAIR AND SERVICING OF GAMING DEVICES:**

**A.** A licensee ~~may~~ shall not alter the operation of approved gaming machines or associated equipment and ~~must~~ shall ensure that the gaming machines and associated equipment are maintained in proper condition.

**B.** Only the following persons ~~may~~ shall service or repair a gaming ~~device~~ machine or associated equipment:

- (1) a licensed manufacturer;
- (2) an employee of a licensed manufacturer; or



(3) technician certified by a manufacturer and employed by a licensed distributor or gaming operator licensee.

C. A licensed manufacturer ~~must~~ shall maintain a certification program for the purpose of training and certifying technicians to service and repair gaming devices manufactured by the licensed manufacturer. Upon request, the licensed manufacturer ~~must~~ shall provide evidence of such program to the board, including a full description of the program, models of gaming devices for which training is provided, criteria for certification, information concerning instructor qualifications, and copies of training materials and tests. Any program deemed insufficient by the board ~~must~~ shall be modified at the board's request.

D. The licensed manufacturer ~~must~~ shall ensure that its technician employees have received sufficient and appropriate training in the service and repair of each of its approved gaming ~~device~~ machine models before the gaming ~~device~~ machine may be placed in operation in New Mexico.

E. A licensed manufacturer that certifies other persons as technicians ~~must~~ shall ensure that the technicians have received sufficient and appropriate training in the service and repair of the approved gaming ~~device~~ machine to be operated by the gaming operator licensee, or distributed by the licensed distributor, employing the technician.

F. Upon request by the board, the certified technician, or the licensed manufacturer, distributor, or gaming operator employing the technician, ~~must~~ shall provide proof satisfactory to the board proof of the technician's certification.

G. The gaming operator licensee ~~is responsible for ensuring~~ shall ensure that all service and repairs on its gaming ~~devices~~ machines, including the installation or repairs of component parts such as bill acceptors, monitoring systems, or other parts that would significantly alter the current or subsequent operation of a gaming machine, are made correctly and in compliance with board requirements.

H. Except for certified technicians, no employee of the gaming operator licensee ~~may~~ shall perform service or repairs on the licensee's gaming machines other than incidental repairs. Incidental repairs are repairs that do not affect any of the machine's major systems or require that the person making the repair access any internal space of the gaming machine.

I. The board may allow, at the board's discretion, on-site training by a certified technician as long as the technician

has received the manufacturer's equivalent of certification as set forth in Subsection E of 15.1.7.37 NMAC above. Technicians in training ~~must~~ shall work under the direct supervision of a certified technician and ~~must have obtained~~ shall obtain certification by satisfactorily completing all required training within 30 days of employment.

J. The gaming operator licensee ~~must~~ shall keep a written maintenance log inside the main cabinet access area of each gaming machine. Every person who gains entry into any internal space of a gaming machine ~~must~~ shall sign the maintenance log, indicate the date and time of entry ~~[, indicate the mechanical meter readings,]~~ and list all areas inspected, repaired or serviced. The gaming operator licensee ~~must~~ shall retain the maintenance log for a period of five years and ~~must~~ shall make the maintenance log available to the board or its authorized agents upon request.

[11/30/98; 15.1.7.37 NMAC - Rn & A, 15 NMAC 1.7.37, 3/31/00; A, 1/31/02; A, 5/15/07]

**15.1.7.39 RETENTION OF RECORDS:** The licensee ~~must~~ shall maintain all records required pursuant to this rule within New Mexico for a period of five years.

[11/30/98; 15.1.7.39 NMAC - Rn, 15 NMAC 1.7.39, 3/31/00; A, 5/15/07]

## NEW MEXICO GAMING CONTROL BOARD

**This is an amendment to 15.1.8 NMAC, Sections 10 and 12 effective May 15, 2007.**

**15.1.8.10 REPORTING AND PAYMENT PROCEDURES:**

A. Fees required under the act and all reports relating to taxes and fees shall be received by the board not later than the due date specified by law. In addition, reports relating to taxes shall be received by taxation and revenue not later than the due date specified by law. Fees and reports shall be deemed to be timely filed if the licensee shows, to the board's satisfaction, that the licensee deposited the fees and reports in a United States post office or mailbox, with first-class postage prepaid, properly addressed to the board, and in the case of tax reports, to taxation and revenue, within the time allowed for payment of the fees and filing of the reports.

B. All gaming operator licensees shall remit to the state the gaming tax as provided for by the act. Tax payments shall be calculated based on net take from the gaming operator licensee's gaming

machines, as verified by the machines' soft meters.

C. A gaming operator licensee shall establish and maintain a single gaming tax transfer account exclusively for gaming tax payments to ~~the State Treasurer~~ taxation and revenue. In maintaining such bank account:

(1) the gaming operator licensee shall maintain a minimum balance at all times in the gaming tax transfer account; alternatively, the account shall be secured at all times by a ~~line~~ letter of credit or bond issued by a bank or security company acceptable to the board; for purposes of this subsection, "bond" includes cash, cash equivalent instruments or such other instruments as the board determines provide immediate liquidity;

(2) the minimum balance or the security shall be equivalent to at least 6% of the previous month's net take from all gaming machines of the non-profit gaming operator licensee and at least 15% of the previous month's net take from all gaming machines of the racetrack gaming operator licensee;

(3) no withdrawals from the gaming tax transfer account shall cause the account balance to be less than the minimum balance requirement described above;

(4) the gaming tax is due on or before the date designated by taxation and revenue; funds in the gaming tax transfer account shall be transmitted no later than the designated day; any account found with insufficient funds shall constitute a violation of this subsection and an unsuitable method of operation;

(5) tax liability shall be calculated based on gaming machine polling for the previous month; and

(6) any delinquent monies not available in the bank and account designated by ~~the State Treasurer~~ taxation and revenue at the time of any required tax payment shall be subject to an interest penalty as determined by taxation and revenue; the interest penalty is in addition to any other penalties imposed by the board or taxation and revenue.

D. All gaming operator licensees shall be liable for all portions of gaming revenue from such times as the funds are received into the gaming machine until the funds are deposited into the designated bank and account of ~~the State Treasurer~~ taxation and revenue.

[12/31/98; 15.1.8.10 NMAC - Rn & A, 15 NMAC 1.8.10, 10/15/00; A, 12/28/01; A, 5/15/07]

**15.1.8.12 RETENTION OF RECORDS:** ~~Each licensee shall provide to the audit and compliance services division, upon request, the records required to~~

~~be maintained by Section 11 of this rule. Unless the board otherwise approves or requires, the licensee shall retain all such records within the state for at least five years or for such longer period as required by law. Failure to keep and provide such records upon request constitutes an unsuitable method of operation.] The licensee shall maintain all records required pursuant to this rule within New Mexico for a period of five years.~~

[12/31/98; 15.1.8.12 NMAC - Rn & A, 15 NMAC 1.8.12, 10/15/00; A, 2/28/05; A, 5/15/07]

## NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.9 NMAC, Section 8 effective May 15, 2007.

### 15.1.9.8 G E N E R A L REQUIREMENTS:

**A.** The gaming operator licensee or applicant shall develop, implement and maintain appropriate written internal procedures and controls for the operation of gaming machines on the licensed premises which shall be reviewed by the board or board's designated representatives. The procedures and controls shall be sufficient, as determined by the board, to ensure the accuracy, reliability, and security of the function performed, process used, and information produced. The gaming operator licensee's internal controls shall provide at least the level of control described in this rule, and shall, at a minimum conform to the standards established in the minimum internal controls for ~~nonprofits or racetracks~~ nonprofit gaming operations licensees dated March, 2007 or the minimum internal controls for racetrack gaming operations, dated August, 2006, appended hereto as appendix 1 and 2 respectively, unless a variance has been approved by the board.

**B.** Whether or not specified in a particular section or paragraph, the gaming operator licensee's internal controls shall identify the employees authorized to perform each function and shall ensure an appropriate level of security for each function.

**C.** Computer applications that provide controls equivalent in accuracy, reliability, and security to the standards set forth in this rule or otherwise adopted by the board shall be acceptable to the board.

**D.** Any amendment to a licensee's internal controls shall be provided in writing to the board or the board's designee before implementation by the licensee.

**E.** Any amendment that does not meet the standards of the minimum

internal controls shall come before the board for approval.

**F.** Failure to develop and implement the necessary internal controls, implementation of substandard internal controls, or failure to obtain board approval before amending internal controls, constitutes an unsuitable method of operation.

**G.** The board, in its discretion, may waive specific standards contained in this rule upon submission by the licensee of alternative procedures that ensure a comparable level of security.

[N, 12/31/98; 15.1.9.8 NMAC - Rn & A, 15 NMAC 1.9.8, 1/31/02; A, 2/28/05; A, 5/15/07]

## NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.10 NMAC, Sections 7, 9, 13, 15, 20, 25, 28, 32, 45, and 47 effective May 15, 2007.

### 15.1.10.7 D E F I N I T I O N S :

Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

**A.** "act" means the Gaming Control Act;

**B.** "additional payout" means a supplemental cash payout, based on a jackpot, that is not reflected in the gaming machine pay table (e.g., double jackpot);

**C.** "affiliate" means a corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation;

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

**E.** "allocation agreement" means a written contract between an allocating racetrack and a receiving racetrack;

**F.** "allocating racetrack" means a racetrack gaming operator licensee that has allocated or is proposing to allocate a number of its authorized gaming machines to a receiving racetrack pursuant to a valid allocation agreement;

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

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

**H.** "balance of net take" means the amount of net take remaining after the gaming operator licensee pays the gaming tax, income and other applicable taxes, and allowable gaming expenses as set forth in this rule;

**I.** "charitable purposes" means activities that promote, directly or indirectly, the well-being of the public at large or the benefit of an indefinite number of persons in the state; the term "charitable purposes" does not include operating expenses of the organization;

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

**K.** "educational purposes" means activities or uses that develop the capabilities of individuals by formal instruction;

**L.** "gaming credit" means an accumulation of awards on a gaming machine display screen rather than from the dispensing of winnings from a hopper; one gaming credit equals the denomination of the game being played;

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

**N.** "receiving racetrack" means a racetrack gaming operator licensee that is proposing to receive, or has received pursuant to a valid allocation agreement, allocated gaming machines from an allocating racetrack;

**O.** "management contractor" means any person that has entered into a management contract with a gaming operator licensee; a management contractor may not be an affiliate of the licensee;

**P.** "nonprofit operator licensee" means a qualified nonprofit organization that has obtained a gaming operator's license pursuant to the provisions of the act and board regulations;

**Q.** "periodic payments" means a series of payments that are paid at least annually and includes annuities;

**R.** "person" means a legal entity or individual;

**S.** "personal property award" means an award of personal property based on gaming machine play;

[S] **T.** "promotion" means a short-term program designed to stimulate participation in gaming activities by patrons

through advertising and the award of cash and non-cash prizes, not based on a jackpot; "promotion" includes the gift of nominal value items, such as T-shirts and mugs; and includes player's clubs or similar programs in which gaming patrons accumulate points, which can be exchanged for cash, machine credits, merchandise or any other thing of value;

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

U. "state" means the state of New Mexico;

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

W. "trust" means an irrevocable fiduciary relationship in which one person is the holder of the title to property subject to an equitable obligation to keep or use the property for the benefit of another. [12/31/98; 15.1.10.7 NMAC - Rn & A, 15 NMAC 1.10.7, 3/31/00; A, 04/30/02; A 5/14/04; A, 5/15/07]

**15.1.10.9 UNSUITABLE METHODS OF OPERATION:** Any activity by any licensee or its agents or employees that is contrary to the health, safety, morals, or welfare of the public, is deemed an unsuitable method of operation. Without limitation, and in addition to any other specific methods of operation or conduct identified in this title as unsuitable, the following shall be determined to be unsuitable methods of operation:

A. failing to exercise discretion and sound judgment in the operation of the activity authorized under the license;

B. permitting persons who are obviously intoxicated to participate in gaming;

C. serving or allowing possession of alcoholic beverages by any person on the licensed premises of a race-track gaming operator licensee;

D. directly or indirectly assisting, employing, or associating with persons or businesses of disreputable character that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

E. employing as a key executive any person who has been denied a gaming license, work permit, or finding of suitability in any jurisdiction, or who has failed or refused to apply for such permit or finding;

F. failing to comply with all federal, state and local laws and regulations governing the operations of a gaming establishment, including without limitation the payment of all fees and taxes;

G. possessing or permit-

ting the operation of any unlicensed gaming machine, gaming device, or other unauthorized device on the gaming establishment;

H. conducting, operating, or dealing with any cheating game or device on the gaming establishment, knowingly or unknowingly, that alters or tends to alter the normal random selection of criteria that determine the results of the game;

I. except as otherwise provided in this rule, selling, transferring or otherwise assigning interest in the license or revenues from the license;

J. denying the board or its agents or other authorized persons access to a gaming establishment or records, wherever located, as authorized by the act and rules adopted by the board;

K. a nonprofit operator licensee knowingly or unknowingly permitting persons other than members or auxiliary members to participate in gaming on the licensed premises;

L. employment of, association with, or participation in any enterprise or business with a documented or identifiable organized crime group or recognized organized crime figure;

M. misrepresentation of any material fact or information to the board;

N. engaging in, furthering, or profiting from any illegal activity or practice or any violation of the act or this title;

O. obstructing or impeding the activities of the board or its employees or agents;

P. facilitating, participating in, or allowing the issuance of any loans or extending credit to a patron for gaming purposes;

Q. conducting or permitting the conduct, knowingly or unknowingly, of any gaming activity other than that allowed pursuant to the license;

R. cashing or permitting the cashing of governmental assistance checks, including welfare checks, social security checks, and child support payments;

S. failing to follow, or to ensure that employees follow, the minimum internal controls established by regulation or failure to notify the board of any changes to the minimum internal controls;

T. failing to require employees to wear work permits or key executive identification as required in this title;

U. employment of, contracting with, associating with, or participating in any enterprise or business that has failed to obtain a license as required by the act;

V. failing to adhere to the

compulsive gambling guidelines or plan; and

W. otherwise failing to conduct gaming operations in accordance with the act or this title.

[12/31/98; 15.1.10.9 NMAC - Rn & A, 15 NMAC 1.10.9, 3/31/00; A, 12/28/01; A, 5/14/04; A, 2/28/05; A, 5/15/07]

**15.1.10.13 REPORTS OF VIOLATIONS:** Each licensee shall immediately notify the board's enforcement division by telephone and in writing of the discovery of any violation or suspected violation of the act, rules promulgated under the act, or of any other state or federal [gaming] law on the licensed premises or related to the gaming operation.

[12/31/98; 15.1.10.13 NMAC - Rn, 15 NMAC 1.10.13, 3/31/00; A, 5/14/04; A, 5/15/07]

**15.1.10.15 PLAY BY PERSONS UNDER THE AGE OF 21 PROHIBITED:**

A. Persons under 21 years of age are prohibited from entering the gaming premises.

~~A. B.~~ Licensees shall display posters in full public view at both the entrance to and inside the licensed premises stating, at a minimum, "THESE PREMISES ARE RESTRICTED BY LAW TO PERSONS 21 YEARS OF AGE OR OLDER."

~~B. The board shall prescribe the form and size of the poster and will make copies available to all licensees.~~

C. A gaming operator licensee shall be responsible for taking all reasonable measures to ensure that persons under 21 years of age do not enter the gaming premises.

~~C. D.~~ In the event a person under 21 years of age attempts to claim cash or non-cash winnings, the gaming operator licensee shall treat the play of the game as void. The underage player shall not be entitled to any prize won or to a refund of any amounts bet.

[12/31/98; 15.1.10.15 NMAC - Rn & A, 15 NMAC 1.10.15, 3/31/00; A, 2/28/05; A, 5/15/07]

**15.1.10.20 ADDITIONAL PAYOUTS; PROMOTIONS; PERSONAL PROPERTY AWARDS:**

A. Additional payouts and [promotions] personal property awards shall be conducted in a manner that promotes responsible gaming. All advertising (any printed, television, newspapers, posters, direct mail, etc., excluding radio) shall include an appropriate responsible gaming message and toll free telephone number for compulsive gambling assistance. [The gaming operator licensee shall

notify the board in writing at least ten business days before the beginning date for the proposed additional payouts. The written notice must include a description of the proposed additional payouts (e.g., double jackpots for all dollar gaming machines), the proposed effective dates for the additional payouts, which may not exceed 90 days without written approval from the board, the times and conditions necessary for additional payouts to occur, the license numbers of the gaming machines offering the additional payouts, and the dollar value of the additional payouts. The same information shall be clearly posted on the gaming premises in a clearly visible location during the effective dates of the additional payout program.

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

**C.** The value of additional payouts and substantial cash or non-cash prizes awarded as part of a promotion and based on gaming machine wagers may be deducted from gaming machine revenue provided the gaming operator licensee complies with all applicable requirements of this section. The cost of advertising, promotional materials, reimbursements to patrons, and promotions involving gifts of nominal value may not be deducted from gaming machine revenue. The racetrack gaming operator licensee shall notify the board in writing (using the form approved by the board) at least ten business days before the beginning date of the proposed additional payout promotion that will be conducted by the licensee. The written notification shall include a description of the proposed additional payout promotion (e.g., double jackpots for all dollar gaming machines), the proposed effective dates (beginning and ending dates) for the additional payouts, which shall not exceed 90 days without written approval from the board, the times and conditions necessary for additional payouts to occur, the license numbers of the gaming machines offering the additional payouts, and the dollar value of the additional payouts. The rules or any special conditions of how the additional payout promotion shall be conducted shall be written on the notification. The same information shall be clearly posted on the gaming premises in a clearly visible location during

the effective dates of the additional payout promotion

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

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

**B.** The gaming operator licensee shall notify the board in writing at least ten business days before the beginning date of the proposed additional payouts or personal property award. The written notice must include a description of the proposed additional payouts (e.g., double jackpots for all dollar gaming machines), the proposed effective dates for the additional payouts the times and conditions necessary for additional payouts to occur, the license numbers of the gaming machines offering the additional payouts, and the dollar value of the additional payouts. The rules or any

special conditions of how the additional payout or personal property award shall be conducted shall be clearly described in the notification. The same information shall be clearly posted on the gaming premises in a clearly visible location during the effective dates of the additional payout program.

**C.** Advertising media for additional payouts and personal property awards shall not offer free or discounted food or beverages as an enticement to game. The use of the casino logo in display advertising shall not constitute an enticement to game when the advertising depicts the casino restaurant(s) and/or bar(s) or grill(s) or vendor(s).

**D.** The value of additional payouts of any amount and personal property awards with a value of \$500.00 or more shall be deductible from gaming machine revenue provided the gaming operator licensee complies with all applicable requirements of this part and all other board rules. The cost of advertising, promotional materials, reimbursements to patrons, and promotions shall not be deductible from gaming machine revenue. The gaming licensee shall prepare and remit deduction information no later than the 3<sup>rd</sup> day of the following month to the NMGCB in a manner specified by the board.

**E.** A licensee shall take reasonable steps to remove advertising media for expired additional payouts and personal property awards within 24 hours of the expiration of the additional payout or personal property award.

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

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

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

**G.** The licensee shall notify the board immediately in writing if there is any change in the beginning and ending

dates of the additional payout or personal property award or if there are any changes or modifications as to how the additional payout or personal property award shall be conducted.

[H.] Nothing in this rule permits the award of an additional payout, cash, or non-cash prize the value of which exceeds jackpot limits established by the act or these rules.

I. Promotions shall be conducted in a manner that promotes responsible gaming. All advertising media shall include an appropriate responsible gaming message and toll free telephone number for compulsive gambling assistance.

J. Rules of the promotion shall be made available to any person requesting them. Any flyer, poster or other advertisement for the promotion shall identify the location where the rules of the promotion are available.

K. Advertising media for promotions shall not offer free or discounted food or beverages as an enticement to game. The use of the casino logo in display advertising shall not constitute an enticement to game when the advertising depicts the casino restaurant(s) and/or bar(s) or grill(s) or vendor(s).

L. A licensee shall take reasonable steps to remove advertising media for expired promotions within 24 hours of the expiration of the promotion.

M. The cost of advertising, promotional materials, reimbursements to patrons, and promotions may not be deducted from gaming machine revenue.

N. The board may direct the gaming operator licensee to cancel, modify or discontinue the promotion if the board determines the promotion is contrary to law or otherwise contrary to the public health, safety, morals, or general welfare. [12/31/98; 15.1.10.20 NMAC - Rn & A, 15 NMAC 1.10.20, 3/31/00; A, 12/28/01; A, 5/14/04; A, 5/15/07]

#### **15.1.10.25 PAYMENT OF WINNINGS:**

**A.** No gaming machine offered for play by a nonprofit operator licensee shall award a prize that exceeds \$4,000. Nonprofit operator licensees shall not offer periodic payments of cash or non-cash winnings and shall remit the total winnings and non-cash prizes awarded to a patron as the result of any licensed game upon validation of the win.

**B.** Except as otherwise provided in this rule, a racetrack gaming operator licensee shall remit the total winnings and non-cash prizes awarded to a patron as the result of any licensed game upon validation of the win.

**C.** Nonpayment of winnings and non-cash prizes awarded shall subject the gaming operator licensee to disciplinary action, including suspension or revocation of the license, imposition of a fine, or both, if nonpayment is due to:

(1) the gaming operator licensee's failure or refusal to maintain minimum bankroll requirements established in this title;

(2) the gaming operator licensee's failure or refusal to fund or maintain annuities as required by this title;

(3) the gaming operator licensee's failure or refusal to pay winnings after the board has issued a final order in a patron dispute, unless an appeal of the board's order is pending and enforcement of the order has been stayed by the board or a court of competent jurisdiction;

(4) use of unfair, deceitful, or illegal practice by the gaming operator licensee, its agent, or employee; or

(5) any other reason deemed appropriate by the board.

D. If a gaming operator licensee uses ticket-in/ticket out technology, a patron shall be required to personally present the ticket for redemption at the licensee's premises. A licensee shall not redeem tickets by mail or by any common carrier.

[12/31/98; 15.1.10.25 NMAC - Rn, 15 NMAC 1.10.25, 3/31/00; A, 12/28/01; A, 2/28/05; A, 5/15/07]

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

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

**B.** ~~[When a patron advises a licensee or any of its agents of an alleged gaming machine error in a payout and the dispute cannot be resolved, the licensee will take the necessary steps to secure the machine until such time as an agent with the gaming control board arrives and collects the necessary data from the gaming machine.]~~ In the event of any unresolved patron dispute involving any jackpot or credits of \$500 or more on a gaming machine the licensee shall remove the game from play and secure it until such time as the board's agents have inspected the machine.

**C.** A gaming operator licensee shall notify the board within 48 hours of the time the dispute arises if the licensee refuses to pay alleged winnings to a patron, and the licensee and the patron are

unable to resolve the dispute to the patron's satisfaction, or the dispute involves \$500 or more. The board shall conduct whatever investigation it deems necessary and shall determine whether payment should be made. An agent of the board may conduct the investigation and report to the board for a final decision.

**D.** Within 30 days of receipt of notice of the dispute, the board shall notify the licensee and patron in writing of the board's decision regarding the dispute.

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

[12/31/98; 15.1.10.28 NMAC - Rn, 15 NMAC 1.10.28, 3/31/00; A, 5/14/04; A, 2/28/05; A, 5/15/07]

#### **15.1.10.32 USE OF GAMING RECEIPTS BY NONPROFIT OPERATOR LICENSEE:**

**A.** A nonprofit operator licensee may utilize up to 65% of net take, after payment of the gaming tax and income taxes, to pay allowable expenses in reasonable amounts for conducting gaming activities on its licensed premises. If the nonprofit operator licensee has entered into a valid lease or other arrangement for furnishing gaming machines, the 65% maximum shall be distributed as follows:

(1) ~~up to~~ the maximum of 40% of net take after gaming taxes or no greater than the contract amount if less than 40% for payment to licensed distributors pursuant to a lease or other arrangement for furnishing a gaming machine; and

(2) for payment of other allowable gaming expenses, an amount equal to the difference between 65% of net take less the amount paid to the distributor as described above.

**B.** The percentage set forth in this section constitutes the maximum amount that may be paid annually for allowable gaming expenses from net take. No other expenses related to or arising out of gaming activities shall be paid from net take or gaming revenues, including but not limited to supplies, fees for management and other services, and repairs to and maintenance of licensed premises and gaming devices.

**C.** A nonprofit operator licensee shall not under any circumstances pay to any distributor licensee the percentage payment allowed in this section until the gaming tax and other applicable taxes have been paid and provided all taxes and fees are current.

~~[D.] A nonprofit operator licensee or distributor licensee shall not enter into a contract, written or oral, in which the distributor's compensation or other payment is based on a percentage of net take for furnishing gaming machines under a lease or other arrangement until the contract has been reduced to writing and approved by the board.~~

[E] D. The nonprofit operator licensee shall distribute at least 60% of the balance of net take to charitable or educational purposes, which purposes do not include gaming expenses. All funds required to be spent for charitable or educational purposes must be expended each year within 120 days after close of the nonprofit operator licensee's fiscal year end. The maximum 40% of net take, after gaming taxes, remaining after such distribution may be used for other expenses at the discretion of the nonprofit operator licensee, provided none of those expenses shall be incurred to compensate a licensed distributor for the furnishing of gaming machines.

~~[F.] All distributions for charitable and educational expenses shall be made no later than 120 days after the close of the nonprofit licensee's fiscal year end.~~

[G] E. Distributions for charitable purposes shall be made solely for benevolent, social welfare, philanthropic, humane, public health, civic or other objectives or activities to benefit the welfare of the public at large or an indefinite number of persons.

(1) Charitable distributions shall not be used to fund operating or capital expenses of any nonprofit gaming operator or any affiliated organization of a nonprofit gaming operator.

(2) A charitable distribution shall be made to an organization outside the state of New Mexico only if the organization is either a charitable organization under Section 501(c)(3) of the Internal Revenue Code or the organization is the nonprofit gaming operator's national organization and the distribution is used for charitable purposes.

~~[H.] E.~~ Educational distributions shall be expended solely to benefit an educational institution or organization or to provide financial assistance to individuals in their pursuit of educational goals.

~~[H.] G.~~ The executive director of the board shall disallow any distribution for charitable and educational purposes not in compliance with this rule. If a charitable or educational distribution is disallowed by the executive director, the nonprofit gaming operator may appeal that decision to the board pursuant to Section 60-2E-59 of the act.

[12/31/98; 15.1.10.32 NMAC - Rn & A, 15 NMAC 1.10.32, 3/31/00; A, 7/31/02; A, 5/14/04; A, 2/28/05; A, 5/15/07]

#### 15.1.10.45 NONPROFIT CONTRACTS:

A. A nonprofit gaming operator and distributor licensee jointly shall submit any contract or lease agreement between the nonprofit gaming operator licensee or distributor licensee and any other licensee to the board for review not less than 30 calendar days before the contract or lease agreement goes into effect. The term "contract or lease agreement" shall include any amendment of an existing contract or lease agreement.

B. Any contract or lease agreement submitted for review shall include copies of any ancillary agreement.

C. The contract or lease agreement shall be deemed approved unless the board disapproves the contract or lease agreement in writing prior to the effective date of the contract or lease agreement. The board shall disapprove a contract or lease agreement submitted for review if the contract or lease agreement was not submitted in compliance with this rule or if it directly or indirectly permits another licensee to manage or otherwise control the nonprofit gaming operator licensee.

D. The factors that may be considered by the board to be indicia of direct or indirect management or control include, but are not limited to:

(1) whether the amount and terms of any loans made to the nonprofit gaming operator licensee, including the principal amount, interest rate, monthly payment and re-payment period, are disproportionate to the assets of the nonprofit gaming operator licensee or create an excessive debt to income ratio;

(2) whether the terms and conditions of any gift, donation or other benefit conferred to the non-profit gaming operator licensee permit another licensee to exercise any direct or indirect management or control over the day-to-day operations of the nonprofit gaming operator licensee;

(3) whether the contract or agreement contains a provision that calls for automatic renewal of the contract or agreement without notice,

(4) whether the term of the contract or agreement is greater than five (5) years,

(5) whether any other term or condition of the lease agreement or contract permits any licensee to effectively exercise direct or indirect management or control over any of the day-to-day operations of the nonprofit gaming operator licensee.

[15.1.10.45 NMAC - N, 5/14/04; A, 5/15/07]

#### 15.1.10.47 PLAYER TRACKING SYSTEMS:

A. Player tracking systems shall be approved by the board or its

designee in accordance with rules governing approval of associated equipment.

B. A gaming operator licensee shall delete a player's name from the system immediately upon the player's request.

C. Names deleted from the player tracking system at the player's request shall not be reprogrammed into the system except upon express authorization by the player.

[15.1.10.47 NMAC - N, 5/15/07]

## NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.13 NMAC, Section 9 effective May 15, 2007.

#### 15.1.13.9 RENEWAL FEES:

A. Renewal license fees are as follows:

(1) manufacturer's license, [~~\$2,000~~] \$3,500;

(2) distributor's license, [~~\$400~~] \$750;

(3) gaming operator's license for racetrack, [~~\$4,000~~] \$5,000;

(4) gaming operator's license for nonprofit organization, \$100;

(5) gaming machine license, [~~\$25~~] \$50 per machine ~~and~~ for nonprofit organizations;

(6) gaming machine license, \$100 per machine for racetracks;

~~(6)~~ (7) work permit, [~~\$25~~] \$40 for nonprofit organization;

(8) work permit \$75.00 for manufacturers, distributors and racetracks;

(9) certification of finding of suitability \$100 for each person requiring investigation for nonprofit organizations;

(10) certification of finding of suitability, \$225 for each person requiring investigation for manufacturers, distributors and racetracks.

B. Any renewal application shall be deemed incomplete, and shall be subject to late fees and penalties, if the applicant does not include full payment for the license renewal fee with the application or if the applicant's check is returned due to insufficient funds.

C. The board or its designee may prorate the license fee in cases it deems appropriate.

[12/31/98; 15.1.13.9 NMAC - Rn, 15 NMAC 1.13.9, 3/31/00; A, 11/30/05; A, 5/15/07]

## NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.24 NMAC, Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 effective May 15, 2007.

### 15.1.24.7 DEFINITIONS:

Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

**A. "Act"** means the New Mexico Gaming Control Act.

**B. "Administrator"** means a New Mexico licensed racetrack gaming operator authorized to host a multi-link progressive system in which two or more New Mexico licensed racetrack gaming operators participate.

**[B] C. "Base amount"** means the amount of the progressive jackpot before it increases.

**[C] D. "Central monitoring system"** means the hardware and software at the board's central site used to control, monitor, and retrieve information from, all licensed gaming machines.

**[D] E. "Incremental amount"** means the difference between the amount of the progressive jackpot and its base amount.

**[E] E. "Jackpot pool"** means the sum of money from which progressive prize payoffs are made.

**[F] "mystery jackpot"** means a set prize, the payoff of which is triggered by a predetermined combination or other criteria; a mystery jackpot may be triggered from any game on a gaming machine and is not limited to a particular manufacturer.]

**G. "Media"** means any storage device or medium that contains software which can only be used in a gaming device, affects game outcome, and is programmed by the gaming machine manufacturer. "Media" includes but is not limited to EEPROM's, EPROM's, compact flash memory, flash RAM, CDROM's or hard drives.

**H. "Multi-link"** means a wide area progressive in which two or more licensed gaming operators participate in a linked progressive.

**[G] I. "Progressive display"** means the electronic display designed to show the current amount of a progressive jackpot.

**[H] J. "Progressive gaming machine"** means a licensed gaming machine [with a potential payoff that increases as the machine, or one or more of a number of linked machines, is played] of one or more linked machines, that are played with a potential award that increases based on a percentage of coin, token or

credit play.

**[I] K. "Progressive jackpot"** means a gaming machine [payoff] award that increases automatically over time [or] based on a percentage of coin, token or credit play as the machine or another linked machine is played. [~~progressive jackpots include traditional and mystery jackpots.~~]

**[J] L. "Progressive central system"** means the hardware and software that controls all communications among the linked machines participating in a multi-link configuration.

**[K] M. "Progressive controller"** means the hardware and software that controls all communications among the linked machines.

**[L] N. "Progressive tracking log"** means a form that documents information about, and changes to, progressive banks.

**[J] O. "Progressive system"** means one or more gaming machines linked to a common progressive jackpot; the system includes an approved electronic configuration consisting of a [site] progressive controller, [with jackpot version EPROMs, site expansion module, management ring interface to control] progressive displays, and gaming machines with [VLC protocol jackpot version EPROMs] progressive capable gaming media.

**[K] P. "Reserve pool"** means the sum of money available for the start of the next progressive jackpot; the start is determined by the restart value, percentage in the reserve pool, and base amount.

[15.1.24.7 NMAC - N, 5/31/00; A, 5/15/07]

### 15.1.24.8 ELIGIBILITY; REQUIREMENTS FOR AN ADMINIS- TRATOR:

**A.** Any New Mexico racetrack gaming operator licensee is eligible to operate a progressive system upon approval of the progressive system by the board and compliance with this rule.

**B.** Any New Mexico racetrack gaming operator licensee who intends to act as an administrator of a multi-link progressive system shall submit an application to the board.

**C.** The application shall be submitted on forms supplied or approved by the board and shall contain such information and documents as specified.

**D.** A New Mexico racetrack gaming operator licensee shall not act as an administrator for a multi-link progressive system unless the board has approved the licensee's application in writing.

[15.1.24.8 NMAC - N, 5/31/00; A, 5/15/07]

**15.1.24.9 TESTING:** All [com-  
puter chips] gaming media capable of running a progressive jackpot [must] shall be

submitted to the board and to an independent testing laboratory selected by the board before a licensed manufacturer may release the progressive-capable [chip] gaming media for distribution in New Mexico.

[15.1.24.9 NMAC - N, 5/31/00; A, 5/15/07]

### 15.1.24.10 MULTIPLE LINK- AGE OF PROGRESSIVE GAMING MACHINES; TECHNICAL REQUIRE- MENTS:

**A.** There is no administrative limit on the number of progressive gaming machines that may be linked at a New Mexico licensed gaming [premises] premise. Each linked gaming machine must have the same probability of hitting the combination or other event that will trigger an award of the progressive jackpot. [~~Gaming machines that are part of the linked system must have jackpot meters, support multiple jackpots, and follow the jackpot terminal protocol developed by the board~~] All progressive gaming machines on any link shall be located on the licensed premises of one establishment; or they may be linked across telecommunication lines among more than one licensed establishment provided they comply with the following requirements.

**(1)** The method of communication over the multi-link system shall consist of either dedicated on-line communication lines (direct connect) or dial-tone lines which may be subject to certain restrictions imposed by the board.

**(2)** All communication packets between each multi-link location and the progressive central system shall be encrypted, and encryption keys shall be alterable upon demand.

**(3)** All multi-link systems shall be on-line with a maximum one-way communication time to or from the linked slot machines of no more than 15 seconds.

**(4)** Acceptable method of obtaining meter reading values shall consist of either pulses leading from the slot machine computer board or associated wiring, or the use of communication interface to the gaming device's RAM or other non-volatile memory.

**(5)** Because the polling cycle does cause a delay, the jackpot meter need not precisely show the actual monies in the progressive pool at each instance. In addition, nothing shall prohibit the use of odometer or other "paced" updating progressive displays. In the case of the use of "paced" updating displays, the progressive meter shall display the winning value within 30 seconds of the jackpot being recognized by the progressive central system, if the remote site is communicating to the progressive central system. If a jackpot is recognized in the middle of a system-wide poll

cycle, the overhead display may contain a value less than the aggregated jackpot amount calculated by the progressive central system. The coin values from the remaining portion of the poll cycle shall be received by the progressive central system but not the local site, in which case the jackpot amount paid shall always be the higher of the two reporting amounts.

(6) Approval by the board of any multi-link system shall occur in two phases: i) initial approval; and ii) on-site testing. The approval of any multi-link system shall include a phase I system approval whereby the underlying progressive gaming machines and communication hardware shall be tested and approved by the board, or its authorized agents. Phase II approval shall include field inspection at the progressive central computer site to ensure compliance with these rules. Operation of the system shall be authorized only after the board is satisfied that the system meets both the phase I and phase II testing requirements, as well as any other requirements that the board may impose to assure the integrity, security, and legal operation of the multi-link.

(7) The progressive central computer site shall be equipped with non-interruptible power supply and the progressive central computer shall be capable of on-line data redundancy should hard disk peripherals fail during operation.

(8) The progressive central system for the multi-link shall be in a secure location approved by the board. The progressive central system memory device shall be approved for use in the state of New Mexico. The licensee operating the progressive central system shall provide sufficient internal controls to address the security of the equipment.

(9) If all progressive gaming machines connected to a multi-link system do not offer the same maximum bet value, all such gaming machines shall equalize the expected value of winning the progressive jackpot by setting the odds of winning the progressive jackpot in proportion to the amount wagered on each device, or by requiring the same wager value on each device to win the progressive jackpot. The method of equalizing the expected value of winning the progressive jackpot shall be conspicuously displayed on each device connected to the system.

(10) A licensee utilizing a multi-link system shall suspend play on the multi-link at the premises of that licensee if a communication failure in the system cannot be corrected within 24 hours.

~~[B. Linkage of progressive gaming machines between racetrack operator licensees, with progressive systems or gaming machines operated at tribal casinos or casinos located outside of New Mexico,~~

~~or with gaming machines operated by any other person, shall be electronically verifiable by the board.]~~

[15.1.24.10 NMAC - N, 5/31/00; A, 5/14/04; A, 5/15/07]

**15.1.24.11 [SITE \_\_\_\_\_ CONTROLLER; MONITORING OF PROGRESSIVE GAMING MACHINES;] NORMAL MODE OF PROGRESSIVE SLOT MACHINE GAME PLAY:**

~~[A. Progressive gaming machines must be controlled by a site controller. The site controller and progressive display must be compatible with central monitoring system requirements for progressive jackpots and must be approved in advance by the board before use by the gaming operator licensee.]~~

[B] A. During the normal operating mode of progressive gaming machines, the [site] progressive controller [must] shall continuously monitor each gaming machine on the link for inserted coins or cash and [must] shall multiply the accepted coins or cash by the rate of progression in order to determine the correct amounts to apply to the progressive jackpot. The progressive display shall be constantly updated as play on the link continues.

B. If a progressive gaming machine has been offered for play, the progressive jackpot amount for that game shall not be changed to a lower amount until after the progressive jackpot has been awarded. The amount shall be changed prior to any subsequent play.

C. [If a progressive jackpot is recorded on a progressive gaming machine and that gaming machine is linked to a site controller with other gaming machines, the site progressive controller must identify the machine that caused the progressive meter to activate and must display the winning progressive jackpot amount.] A meter that shows the amount of the progressive jackpot shall be placed in a clearly visible location at or near the progressive gaming machines to which the jackpot applies and shall be visible to any person playing a machine linked to the progressive system. The licensee shall maintain a daily record of the amount shown on a progressive jackpot meter.

~~[D. If more than one progressive gaming machine is linked to the site progressive controller, the site controller may automatically reset to the minimum amount and continue normal play only if the progressive meter displays the following information:~~

(1) the identity of the machine that caused the progressive meter to activate;

(2) the winning progressive jackpot amount; and

(3) the restart value that is used by

the other players on the link.]

[15.1.24.11 NMAC - N, 5/31/00; A, 5/15/07]

**15.1.24.12 [PROGRESSIVE METERS; PROGRESSIVE DISPLAYS; INFORMATION TO BE MAINTAINED BY SITE CONTROLLER OR PROGRESSIVE METER;] REQUIREMENTS FOR PROGRESSIVE CONTROLLER:**

A. [A meter that shows the amount of the progressive jackpot must be placed in a clearly visible location at or near the gaming machines to which the jackpot applies and must be visible to any person playing a machine linked to the progressive system. The licensee must maintain a daily record of the amount shown on a progressive jackpot meter.] Each progressive controller linking one or more progressive gaming machines shall be housed in a double-keyed compartment or secured in a manner approved by the board. The licensee offering the progressive game shall establish key control procedures that ensure no one person has access to the controller's configuration data. There shall be a progressive entry authorization log within each controller and the log shall be completed by any person gaining entrance to the controller.

~~[In addition to the metering requirements, each gaming machine attached to one or more progressive meters must have a separate software meter that counts the number of times each progressive meter is activated. The meter must increment each time a portion of a bet is used to increment the progressive system] If more than one progressive gaming machine is linked to the progressive controller, in the event of a progressive jackpot the progressive controller shall automatically reset to the minimum amount and continue normal play and the progressive meter shall display the following information:~~

(1) the identity of the progressive gaming machine that caused the progressive meter to activate;

(2) the winning progressive amount; and

(3) the new base amount that is used by the other players on the link;

(4) when a progressive jackpot is awarded, the progressive display or overhead display must indicate, "WIN."

C. [Each gaming machine must have a separate key and key switch to reset the progressive meter or meters or another reset mechanism approved by the board or its designee] If this part prescribes multiple items of information to be displayed on a slot machine, it is sufficient to have the information displayed in an alternating fashion.

D. [The progressive display must be constantly updated to reflect



~~play on any gaming machine or linked gaming machine. Amounts on all linked and stand alone progressive displays must be taken at the time meter readings are taken. A meter to display reconciliation must be conducted on a per drop or daily basis to ensure that the correct amount appears on the progressive display and that the site controller is functioning properly with all linked progressive gaming machines.] A progressive meter or progressive controller shall keep the following information in non-volatile memory which shall be available upon demand:~~

~~(1) the maximum amount of the progressive payout for each meter displayed;~~

~~(2) the base amount of the progressive payout for each meter displayed; and~~

~~(3) the rate of progression for each meter.~~

~~E. Neither the progressive jackpot nor the amount displayed on a progressive jackpot meter or display may be reduced unless:~~

~~(1) a player wins the progressive jackpot; or~~

~~(2) the progressive jackpot meter is adjusted to correct a malfunction or to prevent the display of an amount greater than a limit imposed pursuant to this rule and the adjustment and reasons for the adjustment are documented;~~

~~[(3)] the incremental amount is distributed to another progressive jackpot at the licensee's establishment and the distribution is documented, and any machine offering the jackpot to which the increment amount was distributed does not require that more money be played on a single play to win the jackpot than the machine from which the incremental amount is distributed, and any machine offering the jackpot to which the incremental amount is distributed complies with the minimum theoretical payout requirement of these rules, and the distribution is completed within 30 days after the progressive jackpot is removed from play or within such longer period as the board or its designee may for good cause approve; or~~

~~(4) the executive director or its designee, upon a showing of exceptional circumstances, approves a reduction, elimination, distribution, or procedure not otherwise described in this subsection, which approval is confirmed in writing.~~

~~F. A site progressive controller or progressive meter must keep the following information in nonvolatile memory. The information must be capable of being displayed demand:-~~

~~(1) the number of progressive jackpots won on each progressive meter if the progressive display shows more than~~

~~one winning amount;~~

~~(2) the cumulative amounts paid on each progressive meter if the progressive display has more than one winning amount;~~

~~(3) the maximum amount of the progressive jackpot for each meter displayed;~~

~~(4) the minimum amount or restart amount of the progressive jackpot for each meter displayed;~~

~~(5) the rate of progression for each meter; and~~

~~(6) the progressive jackpot amount for the gaming machine on which the jackpot was won.]~~

[15.1.24.12 NMAC - N, 5/31/00; A, 5/15/07]

#### 15.1.24.13 PARAMETERS; FUNDING; CASH REQUIREMENTS:

~~A. [All progressive jackpot parameters will be set and maintained by the board at the central server. Progressive jackpot parameters are determined by the progressive prize pool, jackpot type, restart method, minimum bet, and security features.] All or an incremental amount of a progressive jackpot may be transferred to another progressive gaming machine at the same location provided that the progressive liability transfer is immediately documented on the progressive tracking log and the liability is maintained by the licensee offering the progressive until the progressive transfer is completed. Once a progressive award has been offered for play, it shall be permitted to remain until it is won by a player or transferred to other progressive games.~~

~~B. Any machine offering the jackpot to which all or an incremental amount of another progressive jackpot was distributed shall not require that more money be played on a single play to win the jackpot than the machine from which the incremental amount was distributed, and any machine offering the jackpot to which the incremental amount is distributed shall comply with the minimum theoretical payout requirement of these rules. The distribution shall be completed within 30 days after the progressive jackpot is removed from play or within such longer period as the board or its designee may for good cause approve~~

~~C. The executive director or its designee, upon a showing of exceptional circumstances, may approve a reduction, elimination, distribution, or procedure not otherwise described in this subsection, which approval is confirmed in writing~~

~~[B] D. A licensee may limit a progressive jackpot to an amount that is equal to or greater than the amount of the jackpot when the limit is imposed. The licensee [must] shall post a conspicuous~~

notice of the limit at or near the gaming machine or machines to which the limit applies. The minimum jackpot amount, and the maximum jackpot amount if a maximum has been set, [must] shall be posted.

~~[C] E. The progressive jackpot and reserve pool [are] shall be funded by the licensee at a contribution rate approved in advance by the board.~~

~~[D] E. Unless the board has approved the payment of progressive jackpots by annuity, a licensee who operates a progressive gaming system [must] shall maintain a minimum cash reserve equal to the total of all progressive jackpots that may be won at the location. The board or its designee [must] shall approve all such cash reserves.~~

~~[E] G. [When a progressive jackpot is awarded, the progressive display or overhead display must indicate, "WIN." The central monitoring system will disable the gaming machine until the site controller verifies the win and performs a ROM signature check on the gaming machine. A new progressive jackpot may not be initiated until final verification of the win by the central monitoring system. Upon verification, the site controller will delete information relating to the progressive jackpot awarded.] Records shall be maintained that record the amount shown on a progressive jackpot meter. Supporting documents shall be maintained to explain any reduction in the pay off amount from a previous entry.~~

~~[F] The licensee may determine whether a jackpot will restart automatically or only after reset by the board.]~~

[15.1.24.13 NMAC - N, 5/31/00; A, 5/15/07]

#### 15.1.24.14 ANNUITIES:

~~A. Payments of progressive jackpots exceeding \$50,000 may be paid in annual equal installments over periods and in amounts set forth in Title 15, Chapter 1, Part 24, paragraph 26 of the New Mexico Administrative Code or as otherwise approved by the board or its designee. A progressive gaming machine paying by annuity [must] shall have a notice prominently posted on it that the jackpot will be paid over time. The posted notice also [must] shall disclose the number of payments and the time interval between the payments. The first payment [must] shall be made immediately after verification of the jackpot as set forth in this [rule] part.~~

~~B. Progressive jackpots that are to be paid by annuities [must] shall be reviewed and verified in writing submitted to the board by an independent certified public accountant prior to payment of any amount due.~~

~~C. A racetrack gaming operator licensee that is liable for payment~~

of an annuity, cash, or other prize with a cash value exceeding \$50,000 ~~[must]~~ shall secure the amount by a cash deposit, irrevocable bond, irrevocable letter of credit, irrevocable trust, or other security instrument satisfactory to the board or its designee.

[15.1.24.14 NMAC - N, 5/31/00; A, 5/15/07]

**15.1.24.15 DISCONTINUANCE OF PROGRESSIVE GAMING MACHINE:**

**A.** A racetrack gaming operator licensee ~~[may]~~ shall not discontinue availability of a progressive gaming machine until all of the advertised progressive payouts or prizes, or both, have been awarded. The executive director may approve transfer of a progressive payout or prize, or both, from a progressive gaming machine to another progressive device that is licensed to the same or another licensee.

**B.** If a racetrack gaming operator licensee files for bankruptcy or ceases operations permanently, the board may allow the transfer of any progressive gaming machine to another licensee making sure to maintain the integrity of the amount shown on the progressive meter. The amount of the progressed liability must be paid by certified check to the licensee assuming the progressive amount.

**C.** In addition to the requirements outlined for progressive machines, the vendor operating the multi-link progressive system shall submit a written plan for discontinuance and receive approval from the board prior to discontinuing any multi-link progressive system. The plan shall include the projected discontinuance date, detailed accounting of the multi-link progressive system fund including any outstanding expenses and fees due the vendor for operating the system, in accordance with the vendor's written agreement with licensees, the distribution of the fund balance, and the final reporting requirements of the system. The final distribution amount is transferred to another multi-link progressive system operated by the vendor or disbursed in a manner approved by the board. The final distribution amount is the fund balance less the cost of paying the current jackpot less any outstanding expenses and fees due the vendor for operating the multi-link progressive system.

[15.1.24.15 NMAC - N, 5/31/00; A, 5/15/07]

**15.1.24.16 RECORDS :** Licensees ~~[must]~~ shall preserve the records required by this section for at least five years after they are made unless the board or its designee approves otherwise in writing.

[15.1.24.16 NMAC - N, 5/31/00; A,

5/15/07]

**15.1.24.17 REQUIREMENTS APPLY TO SINGLE MACHINES:** The requirements of this rule are intended to apply equally to one progressive gaming machine linked to a ~~[site]~~ progressive controller as well as several progressive gaming machines linked to one ~~[site]~~ progressive controller.

[15.1.24.17 NMAC - N, 5/31/00; A, 5/15/07]

**15.1.24.18 INCREASING PROBABILITY AND PROGRESSIVE BONUS SLOT MACHINE GAMES:**

**A.** An increasing probability is an award on a gaming machine game or games of either coins, credits, or free play games, where the chance of winning the award increases as the slot machine game(s) is played.

**B.** A progressive award is a progressive award on one gaming machine that does not use an exterior controller. Progressive awards do not include top and secondary payable progressive awards.

**C.** If an award is greater than \$500, the licensee shall record the date initiated, conditions for the award, and the date removed using the progressive tracking log. The licensee is required to notify the board to transfer the award when a gaming machine game with a award over \$500 is discontinued. If a award is \$500 or less, the licensee is not required to record the amount on a progressive jackpot log or to transfer the award when the game is discontinued. Licensees are required to notify the board when any award is placed into play. Awards can not be altered through the use of any switches or any other means, i.e. shutting the slot machine's power off to reset the award.

[15.1.24.18 NMAC - N, 5/15/07]

**15.1.24.19 GENERAL REQUIREMENTS; JACKPOT VERIFICATION; ACCOUNTING; RECORDKEEPING:**

**A.** Jackpot verification procedures shall include the following: When a jackpot is won, the person operating or controlling, the progressive system shall have the opportunity to inspect the machine, gaming media, the error events received by the progressive central system, and any other data which could reasonably be used to ascertain the validity of the jackpot. The progressive central system shall produce reports that will clearly demonstrate the method of arriving at the payoff amount. This shall include the coins contributed beginning at the polling cycle immediately following the previous jackpot and shall include all coins contributed up to,

and including, the polling cycle, which includes the jackpot signal. Coins contributed to the system after the jackpot occurs in real-time, but during the same polling cycle shall be deemed to have been contributed to the progressive amount prior to the jackpot. Coins contributed to the system before the jackpot message is received shall be deemed to have been contributed to the progressive amount prior to the current jackpot. Coins contributed to the system subsequent to the jackpot message being received shall be deemed to have been contributed to the progressive amount of the next jackpot. The jackpot may be paid in installments as long as each machine clearly displays the fact that the jackpot will be paid in installments. In addition, the number of installments and time between installments must be clearly displayed on the face of the machine in a non-misleading manner. Two jackpots that occur in the same polling cycle shall be deemed to have occurred simultaneously; and therefore, each "winner" shall receive the full amount shown on the meter.

**B.** Any person authorized to control or operate a progressive system, shall supply reports to the board or its designee(s) which support and verify the economic activity on the system. Any person authorized to control or operate a multi-link system, shall supply, as requested, reports and information to the board or its designee(s) indicating the amount of, and basis for, the current jackpot amount. Such reports may include an "aggregate report" and a "detail report". The "aggregate report" may show only the balancing of the system with regard to system-wide totals. The "detail report" shall be in such form as to indicate for each machine, summarized by location, the coin-in and coin-out totals as such terms are commonly understood in the industry. In addition, upon the invoicing of any licensee participating in a multi-link system, each such licensee shall be given a printout of each machine owned by the licensee, the coins contributed by each machine to the jackpot for the period for which an invoice is remitted, and any other information required by the board to confirm the validity of the licensee's contributions to the jackpot amount.

**C.** In calculating net win for purposes of calculating gaming tax, a licensee shall deduct its contribution to any progressive jackpot pool during the preceding month. This amount shall be listed on the detailed accounting records provided by the entity authorized to control or operate the progressive system.

**D.** The entity authorized to operate or control a progressive system shall maintain a copy of all lease and contractual agreements with licensees and supply a copy to the board upon request.

E. The entity authorized to control or operate a progressive system, shall hold a valid gaming operator license issued by the board and shall obtain approval from the board as to the methods of funding the progressive prize pool and calculating and receiving payments from participating retailers for operating and managing the multi-link system.

F. A gaming operator licensee shall transfer all contributions to the progressive jackpot fund no later than the 28th day of the following month to a non-interest bearing bank account or to the administrator of the progressive jackpot fund.

G. The progressive system prize fund (the amount of money contributed by the participating licensees) shall be audited, in accordance with generally accepted auditing standards, on the multi-link system operator's year-end basis, by an independent certified public accountant approved by the board. Two copies of this report shall be submitted to the board within 90 days after the end of the multi-link system operator's business year-end.  
[15.1.24.19 NMAC - N, 5/15/07]

## NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.25 NMAC, Sections 7, 8, 9, 10, 11, 12, and 13 effective May 15, 2007.

**15.1.25.7 DEFINITIONS:** Unless other wise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

**A.** "Act" means the New Mexico Gaming Control Act.

**B.** "Associated equipment" means equipment or a mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming.

**C.** "Board" means the gaming control board or its designee.

**D.** "Central monitoring system" means the hardware and software used by the board to control, monitor, and retrieve information from, all licensed gaming machines.

**E.** "Executive director" means the executive director of the board.

~~**F.** "Component" means a part of a gaming machine that is necessary for the proper operation and essential function of the gaming machine, including but not limited to a hopper, coin acceptor, microprocessor and related circuitry, programmed EPROM, bill acceptor, progressive system, monitoring system, and meter and any other parts the board determines are~~

~~components; a component is necessary for the proper operation and essential function of a gaming machine if it affects, directly or indirectly, the gaming machine's operation, game outcome, security, recordkeeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses, batteries, handles, springs, brackets, and locks are not components.]~~

**F.** "EPROM" means erasable programmable read-only memory used for storing program instructions in a gaming device, including game programs and video graphics.

**G.** "Game outcome" means the final result of the wager.

**H.** "Modification" means a change or alteration in the associated equipment or component that affects the manner or mode of its operation or function.

**I.** "Principal" means a key person directly involved in day-to-day operations of the manufacturer.

**J.** "State" means the state of New Mexico.

**K.** "Tier one associated equipment" means associated equipment for which waiver of licensure is required to be approved by the board.

**L.** "Tier two associated equipment" means associated equipment for which waiver of licensure is required to be approved by the executive director.

~~**M.** "Waiver" means a determination by the board to exempt a manufacture of associated equipment from the requirement to obtain a manufacturer's license under the act.~~  
[15.1.25.7 NMAC - N, 5/15/02; A, 5/15/07]

### 15.1.25.8 WAIVER REQUESTS; TIER ONE ASSOCIATED EQUIPMENT; FORM AND GENERAL REQUIREMENTS:

**A.** Any person who manufactures tier one associated equipment for use or play in the state or for sale, lease or distribution outside the state from any location within the state may request a waiver by filing a written waiver request form with the board.

**B.** Waiver requests ~~[must]~~ shall be submitted in writing on forms supplied or approved by the board and must contain such information and documents as specified. Every waiver request ~~[must]~~ shall include payment of a \$25.00 non-refundable fee.

**C.** A separate waiver request ~~[must]~~ shall be submitted for each item of associated equipment ~~[or component]~~ the manufacturer intends to manufacture, fabricate, assemble, produce, program, or modify.

**D.** All information

required to be included in the waiver request ~~[must]~~ shall be true and complete as of the date of board action sought.

**E.** By requesting a waiver or other approval of the board, the manufacturer is requesting review of the equipment and a waiver of licensing requirements as a manufacturer. In addition, by requesting the waiver, the manufacturer accepts all risks of adverse public notice, embarrassment, criticism, or damages relating to the request with the board.

**F.** Any waiver granted by the board is ~~[deemed]~~ a revocable privilege. No person holding such a waiver ~~[is deemed to]~~ shall have any property rights therein.

**G.** By requesting a waiver, the holder agrees to abide by all provisions of the act and ~~[the board's rule]~~ board rules. [15.1.25.8 NMAC - N, 5/15/02; A, 5/15/07]

### 15.1.25.9 EVALUATION OF ASSOCIATED EQUIPMENT:

~~**A.** The board [will evaluate the equipment and information submitted pursuant to the waiver request and will determine whether the equipment is associated equipment] shall maintain and publish from time to time a list of tier one associated equipment and tier two associated equipment.~~

~~**B.** The equipment will be deemed associated equipment if it affects a gaming machine's:~~

- ~~(1) game outcome;~~
- ~~(2) recordkeeping;~~
- ~~(3) security; or~~
- ~~(4) communication with the central monitoring system.]~~

~~**C.** If the [board determines that the equipment is not associated equipment, the board will notify the manufacturer in writing that no further action is required] equipment for which a manufacturer seeks waiver of licensure is not listed as tier one or tier two associated equipment no further action is required and the manufacturer may manufacture or distribute the equipment in the state.~~

~~**D.** C.~~ If the ~~[board determines that the equipment is associated equipment, the board will notify]~~ equipment is associated equipment the manufacturer shall ~~[in writing that it must]~~ register as a manufacturer of associated equipment. ~~[Upon completion of the registration process, the board will either grant or deny the waiver request.]~~  
[15.1.25.9 NMAC - N, 5/15/02; A, 5/15/07]

### 15.1.25.10 REGISTRATION REQUIREMENTS; TIER ONE ASSOCIATED EQUIPMENT:

**A.** Registration ~~[will]~~ shall be for a one-year period.

**B.** All manufacturers of

tier one associated equipment seeking a waiver of licensure ~~[must]~~ shall register with the board on forms supplied and approved by the board and ~~[must]~~ shall provide all information and documents requested.

C. The registration form ~~[must]~~ shall be accompanied by payment of a \$100.00 nonrefundable registration fee.

D. The registration form ~~[will]~~ shall require the following information:

- (1) manufacture's name;
- (2) manufacturer's business address;
- (3) name, title, date of birth and social security number for principals directly involved in operations of the manufacturer and owners;
- (4) disclosure of all other gaming licenses held by manufacturer; and
- (5) any other information deemed necessary by the board.

E. The information and documents provided ~~[will]~~ shall be used by the board for the purpose of conducting a limited background investigation.

F. Any information submitted in connection with registration under this section shall be deemed confidential to the same extent as information submitted with an application for licensure.

[F] G. Once a manufacturer is registered, it may submit additional waiver requests without re-registration as long as the registration is in effect.  
[15.1.25.10 NMAC - N, 5/15/02; A, 5/15/07]

#### **15.1.25.11 CRITERIA FOR GRANTING A LICENSE WAIVER; TIER ONE ASSOCIATED EQUIPMENT:**

A. The decision to grant a waiver of licensure for the manufacture of tier one associated equipment is within the absolute discretion of the board. Waivers will be granted on the terms and conditions the board deems necessary and provided the waiver is consistent with the purposes of the act.

B. ~~[A waiver will be granted unless the manufacturer is manufacturing a combination of two or more categories of the components described in this paragraph B or any component described in paragraph C:]~~ The board may consider the following factors, where applicable, in determining whether to grant a waiver:

(1) ~~[an assembled electronic circuit that cannot reasonably be demonstrated to have any use other than in a gaming machine]~~ whether the manufacturer is licensed by another jurisdiction with standards for licensure comparable to the standards of the state;

(2) ~~[a cabinet with electrical~~

~~wiring and provisions for mounting a coin, token or currency acceptor and provisions for mounting a dispenser of coins, tokens or anything of value]~~ whether requiring licensure would inhibit the entry of a particular technology into the state;

(3) ~~[a storage medium that contains source language or executable code of a computer program, other than a game, that cannot be reasonably demonstrated to have any use other than in a gaming machine]~~ whether the cost of obtaining a license is disproportionate to the economic benefit the manufacturer would gain from licensure;

(4) ~~[an assembled video display unit]~~ whether requiring licensure would inhibit economic development in the state;

(5) ~~[an assembled mechanical or electromechanical display unit intended for use in gaming]~~ whether the manufacturer or any of its principles has been denied a license or certification in this state or another state, has had a certification, permit or license issued pursuant to the laws of this state, another state or the United States permanently suspended or revoked for cause or is currently under suspension or other limiting action in this state or another state involving gaming activities or licensure for gaming activities;

(6) ~~[an assembled mechanical or electromechanical display unit that cannot be demonstrated to have any use other than in a gaming machine; or]~~ whether the manufacturer or any of its principles have been convicted of a crime in any jurisdiction;

(7) ~~[any combination of one or more of the components described in paragraphs 1 through 6 of Subsection B of 15.1.25.11 NMAC and any other component the board determines is associated equipment]~~ whether the associated equipment for which the waiver is sought affects the security of any game or gaming device;

(8) whether the associated equipment for which a waiver is sought has been verified by an independent laboratory or approved by another jurisdiction with standards comparable to the standards of the state; and

(9) any other factors the board deems appropriate.

C. A waiver will not be granted if the manufacturer is manufacturing any of the following:

(1) an EPROM or other storage medium containing game source language or executable code of a computer program that cannot be reasonably demonstrated to have any use other than in a gaming machine;

(2) any mechanical, electrical, or other device that may be connected to or used with a gaming machine to alter the normal criteria of random selection or affect the outcome of a game;

(3) a system for the accounting or

management of any game ~~[in which the result of the wager is determined electronically by using any combination of hardware or software for computers]~~ or gaming machines;

(4) any hardware or software that interfaces directly with the central monitoring system or with a slot accounting system; or

~~(4)~~ (5) any other component that the board determines by regulation to be a gaming device used directly or remotely in connection with gaming or any game that affects the results of a wager by determining a win or loss.

[15.1.25.11 NMAC - N, 5/15/02; A, 5/15/07]

#### **15.1.25.12 FINAL DECISION; EFFECT OF WAIVER OF LICENSURE; TIER ONE ASSOCIATED EQUIPMENT:**

A. The board ~~[will]~~ shall make the final decision to either grant or deny the waiver request. If the waiver request is granted, the manufacture will receive a written waiver indicating the specific tier one associated equipment it may manufacture without obtaining a manufacturer's license from the board.

B. If the waiver request is denied the manufacture ~~[must]~~ shall obtain a full manufacturer's license pursuant to the provisions of the act and board rules before manufacturing or distributing the associated equipment.

C. A manufacture who has been issued a waiver ~~[may]~~ shall only manufacture or distribute the tier one associated equipment or components that are specifically identified in the waiver.

D. The manufacture of, distribution of or modification of any other tier one associated equipment not listed on the waiver is a violation of the act and is subject to criminal penalty and imposition of an administrative fine or both.

E. Associated equipment for which a waiver is granted is not subject to approval requirements set forth in 15.1.7.30 NMAC.

F. A manufacturer who has registered with the board and been granted a waiver of licensure to manufacture tier one associated equipment shall notify the board within 30 days of any change of ownership of the manufacturer or any change of the manufacturer's principles.

G. A manufacturer who has registered with the board and been granted a waiver of licensure to manufacture tier one associated equipment shall notify the board within 10 days if the manufacturer or any of the manufacturer's principles has had a license, permit or certification issued in connection with gaming

activities or manufacture of gaming machines or associated equipment revoked, suspended or placed under limiting action in another jurisdiction.

**H.** A manufacturer who has registered with the board and been granted a waiver of licensure to manufacture tier one associated equipment shall notify the board within 10 days if the manufacturer or any of the manufacturer's principles has been arrested, charged or convicted of a crime in any jurisdiction. This subsection does not apply to misdemeanor traffic offenses.

**I.** A manufacturer who has registered with the board and been granted a waiver of licensure to manufacture tier one associated equipment shall immediately notify the board in writing of any material problem, defect or malfunction of any associated equipment for which licensure has been waived.

**J.** A manufacturer who has registered with the board and been granted a waiver of licensure to manufacture tier one associated equipment shall immediately notify the board in writing if approval of the associated equipment for which licensure has been waived is suspended or revoked in any other jurisdiction. [15.1.25.12 NMAC - N, 5/15/02; A, 5/15/07]

### **15.1.25.13 WAIVER REQUESTS; TIER TWO ASSOCIATED EQUIPMENT; FORM AND GENERAL REQUIREMENTS:**

**A.** A manufacturer seeking waiver of licensure for tier two associated equipment shall apply for approval of the tier two associated equipment pursuant to the requirements set forth in 15.1.7.30 NMAC.

**B.** The manufacturer shall submit with the application a request for waiver of licensure as a manufacturer of associated equipment.

**C.** Upon approval of the associated equipment pursuant to 15.1.7.30 NMAC, the waiver of licensure for manufacture of tier two associated equipment shall be granted.

**D.** The executive director shall notify the applicant in writing that the waiver has been granted. [15.1.25.13 NMAC - N, 5/15/07]

## **NEW MEXICO HIGHER EDUCATION DEPARTMENT**

**TITLE 5 POST-SECONDARY EDUCATION  
CHAPTER 2 ESTABLISHMENT OF POST-SECONDARY EDUCATION-**

### **AL INSTITUTIONS**

#### **PART 3 ESTABLISHMENT OF NEW PROGRAMS AND SERVICE AREAS FOR FOUR-YEAR PUBLIC POST-SECONDARY INSTITUTIONS**

**5.2.3.1 ISSUING AGENCY:** State of New Mexico Higher Education Department  
[5.2.3.1 NMAC - N, 05/15/07]

**5.2.3.2 SCOPE:** All public four-year post-secondary institutions operating within and receiving financial support from the state of New Mexico.  
[5.2.3.2 NMAC - N, 05/15/07]

**5.2.3.3 STATUTORY AUTHORITY:** Authority for 5.2.3 NMAC is found in NMSA 1978 Sections 21-1-26, 21-1-26.3, 21-2-5, and 21-2A-11 (1996 Repl. Pamph.).  
[5.2.3.3 NMAC - N, 05/15/07]

**5.2.3.4 DURATION:** Permanent.  
[5.2.3.4 NMAC - N, 05/15/07]

**5.2.3.5 EFFECTIVE DATE:** May 15, 2007, unless a later date is cited at the end of a section.  
[5.2.3.5 NMAC - N, 05/15/07]

**5.2.3.6 OBJECTIVE:**  
A. The objective of 5.2.3 NMAC is to establish the effective planning and delivery of four-year public post-secondary educational programs and services throughout New Mexico, with due regard for economy and efficiency of delivery and the avoidance of unnecessary program duplication.

B. This policy recommendation acknowledges that New Mexico is a diverse state and flexibility in serving different regions must be embedded and honored in the implementation of this policy. Since state resources are limited, the purpose of 5.2.3 NMAC is to create a more efficient structure for the delivery of programs and services, without limiting local community options for services to be provided by preferred educational providers.  
[5.2.3.6 NMAC - N, 05/15/07]

**5.2.3.7 DEFINITIONS:**  
A. "Department" means the New Mexico higher education department.

B. "DFA" means the state of New Mexico division of finance and administration.

C. "LC" means the state of New Mexico legislative council.

D. "LESC" means the state of New Mexico legislative education

study committee.

E. "LFC" means the state of New Mexico legislative finance committee.

F. "Advisory board" means the New Mexico higher education advisory board.  
[5.2.3.7 NMAC - N, 05/15/07]

#### **5.2.3.8 ESTABLISHMENT OF NEW PROGRAMS AND SERVICES:**

A. As four-year institution begins preparation, or wishes to expand, to offer instructional programs in a community wherein it has not previously offered programs or if it wishes to expand current offerings in a community other than the one in which the institution is located, it must notify the department. The department then notifies all public institutions, DFA, LFC, and the state board of finance. Objections must be filed with the department within thirty (30) days. Objections may be filed by any notified entity.

B. Following notification of an objection, the presidents and the chairs of the governing boards of the involved institutions are required to meet with the secretary of higher education to discuss the problem and develop a resolution. If the department is the objector, a representative of the DFA or state board of finance will preside over the meeting.

C. If a resolution cannot be developed, the secretary of higher education will convene a third party to review the context and details of the objection. The third party review will occur within sixty (60) days. The third party will be a nine (9) member committee authorized to make a final recommendation. The makeup of the committee as determined by the secretary and confirmed with the governor's chief of staff will be the following:

(1) three (3) executive members (DFA, governor's office, NMHED);

(2) three (3) legislative members (LC, LESC, LFC);

(3) three (3) higher education members (community college, regional university, research university); these individuals are selected by the higher education advisory board.

D. Every effort must be made to partner for the delivery of new programs and the opportunity for partnerships will be part of the review process.

E. Committee determinations are final and apply for a set period of time up to five (5) years after the decision of the committee. The decision will be filed with the department as a matter of public record.

[5.2.3.8 NMAC - N, 05/15/07]

HISTORY OF 5.2.3 NMAC:  
[RESERVED]

## NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.10 NMAC, Part Name and Section 13, effective 5-15-07.

### PART 10 FURLOUGH, REDUCTION IN FORCE, REEMPLOYMENT, SEPARATION WITHOUT PREJUDICE

#### 1.7.10.13 ~~[INVOLUNTARY OR VOLUNTARY SEPARATION]~~ SEPARATION WITHOUT PREJUDICE:

A. Employees who have suffered an injury or illness which is compensable under the workers' compensation act and are physically or mentally unable to perform the essential functions of their pre-injury/pre-illness position, with or without reasonable accommodation, shall be ~~[involuntarily or voluntarily]~~ separated from the service without prejudice provided:

(1) the employee has been afforded modified duty in accordance with 1.7.10.12 NMAC;

(2) the employee has reached maximum medical improvement prior to the completion of up to 12 months of modified duty; or, the employee has not reached maximum medical improvement upon the expiration of up to 12 months of modified duty;

(3) all efforts to accommodate the medical restrictions of the employee have been made and documented; and

(4) the employing agency has made reasonable efforts to find other suitable vacant positions within the agency at the same or lower midpoint than the midpoint of the pre-injury/pre-illness position for which:

(a) the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation, or

(b) the agency certifies that the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job, either with or without reasonable accommodation.

B. Employees who have suffered an illness or injury that is not compensable under the workers' compensation act and are unable to perform the essential functions of their pre-injury/pre-illness position, with or without reasonable accommodation, as a result of the physical or mental disability created by the non job-related injury or illness shall be ~~[involuntarily or voluntarily]~~ separated from the service

without prejudice provided:

(1) all efforts to reasonably accommodate the medical restrictions of the employee have been made and documented; and

(2) the employing agency has made reasonable efforts to find other suitable vacant positions within the agency at the same or lower midpoint than the midpoint of the pre-injury/pre-illness position for which:

(a) the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation; or

(b) the agency certifies that the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job, either with or without reasonable accommodation.

C. Agencies may provide modified duty to employees for a period of up to 4 months during the separation process if required to meet the provisions of this rule.

D. Notice of contemplated separation without prejudice:

(1) to initiate the ~~[involuntary]~~ separation without prejudice of an employee who has completed the probationary period, the agency shall serve a notice of contemplated separation without prejudice on the employee which: describes the circumstances which form the basis for the contemplated separation without prejudice; gives a general explanation of the evidence the agency has; advises the employee of his or her right to inspect and obtain copies of any documentary evidence relied upon; specifies what the contemplated action is; and states that the employee has 11 calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an oral response;

(2) when the notice of contemplated separation without prejudice is served by mail, the employee receiving service shall have 3 additional calendar days in which to file a response;

(3) at the time the notice of contemplated separation without prejudice is served on the employee, the agency shall notify the director and the risk management division of the general services department of the proposed separation without prejudice and submit a copy of the separation notice along with documentation to support efforts to provide modified duty and to support efforts to find other suitable vacant positions.

E. Response to notice of contemplated separation without prejudice:

(1) a representative of the employee's choosing may respond in writing to the notice of contemplated separation without prejudice on behalf of the employ-

ee;

(2) if there is a request for an oral response to the notice of contemplated separation without prejudice, the agency shall meet with the employee within 11 calendar days of a request for an oral response, unless the employee and the agency agree in writing to an extension of time; a representative of the employee's choosing may represent the employee;

(3) the purpose of the oral response is not to provide an evidentiary hearing but is an opportunity for the employee to present his or her side of the story; it is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to support the proposed involuntary separation without prejudice.

F. Notice of final separation without prejudice:

(1) if the employee does not respond to the notice of contemplated separation without prejudice the agency shall issue a notice of final separation within 11 calendar days following the response period;

(2) if the employee has filed a written response or has been provided an opportunity for oral response, the agency shall issue a notice of final separation without prejudice no later than 11 calendar days from the date of receipt of the response;

(3) the notice of final separation without prejudice shall:

(a) specify the action to be taken;  
(b) describe the circumstances which form the basis for the ~~[involuntary]~~ separation without prejudice, which may not include allegations not included in the notice of contemplated separation without prejudice;

(c) give a general explanation of the evidence the agency has;

(d) specify when the final separation without prejudice will be effective, which must be at least 24 hours from the time of service of the notice of final separation without prejudice; ~~[and]~~

(e) inform the employee that the final separation without prejudice may be appealed to the board with a written statement of the grounds for the appeal delivered to the state personnel office in Santa Fe, New Mexico, and received by the director within 30 calendar days of the effective date of the separation without prejudice; and

(f) the adjudication process is outlined in 1.17.12 NMAC.

[1.7.10.13 NMAC - Rp, 1 NMAC 7.10.13, 07/07/01; A, 11/14/02; A, 06/08/04; A, 10/29/04; A, 7-15-05; A, 5/15/07]

## NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.12 NMAC, Sections 8, 18 and 24, effective 5-15-07.

### 1.7.12.8 FILING AN APPEAL:

**A.** Employees who have completed the probationary period as required by *Subsection A of 1.7.2.8 NMAC* and have been demoted, dismissed, or suspended have the right to appeal to the board for a public hearing before a hearing officer designated by the board.

**B.** A notice of appeal must be in writing and filed with the director no later than 30 calendar days from the effective date of the dismissal, demotion, or suspension. A copy of the notice of final action and a statement of the grounds for the appeal must accompany the notice of appeal. Appeals not filed within 30 calendar days shall be dismissed by the hearing officer for lack of jurisdiction.

**C.** Within fifteen days from the date of dismissal, an appellant may request a hearing in which to present evidence challenging a dismissal for lack of jurisdiction. If a hearing on the dismissal is held, the hearing officer shall submit a recommended decision to the board which shall contain a summary of the evidence and findings of fact and conclusions of law. The board, at a regularly scheduled meeting, shall then issue a final decision.

~~[C.]~~ **D.** Upon acceptance of a notice of appeal, the hearing officer shall send the agency a copy of the notice of appeal and issue a scheduling order directing the parties, in part, to submit to the hearing officer a stipulated pre-hearing order for his/her approval, which shall contain at least: a statement of any contested facts and issues; proposed stipulation of those facts not in dispute; the relief or remedy requested by the appellant; a deadline for disclosure of all probable witnesses with a brief summary of their anticipated testimony and documentary evidence; a list of exhibits; a deadline for the completion of discovery and filing of motions; ~~and~~ a deadline for requesting subpoenas; and whether the parties agree to participate in voluntary alternative dispute resolution.

(1) The hearing officer may further revise the pre-hearing order.

(2) Any discussion concerning possible settlement of an appeal shall not be a part of the pre-hearing order and may not be introduced at the hearing.

[1.7.12.8 NMAC - Rp, 1 NMAC 7.12.8, 07/07/01; A, 7-15-05; A, 5/15/07]

### 1.7.12.18 HEARINGS:

**A.** The hearing shall be

open to the public unless the parties agree that it shall be closed.

**B.** A party may appear at the hearing through a representative, provided such representative has made a written entry of appearance prior to the hearing date.

**C.** The hearing officer may clear the room of witnesses not under examination, if either party so requests, and of any person who is disruptive. The agency is entitled to have a person, in addition to its representative, in the hearing room during the course of the hearing, even if the person will testify in the hearing.

**D.** The agency shall present its evidence first.

**E.** Oral evidence shall be taken only under oath or affirmation.

**F.** Each party shall have the right to:

- (1) make opening and closing statements;
- (2) call and examine witnesses and introduce exhibits;
- (3) cross-examine witnesses;
- (4) impeach any witness;
- (5) rebut any relevant evidence;

and

(6) introduce evidence relevant to the choice of discipline if it was raised as an issue in the pre-hearing order.

**G.** The hearing shall be conducted in an orderly and informal manner without strict adherence to the rules of evidence that govern proceedings in the courts of the state of New Mexico. However, in order to support the board's decisions, there must be a residuum of legally competent evidence to support a verdict in a court of law.

**H.** The hearing officer shall admit all evidence, including affidavits, if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. The hearing officer shall exclude immaterial, irrelevant, or unduly cumulative testimony.

**I.** If scientific, technical, or other specialized knowledge will assist the hearing officer to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise. In the case of evidence relating to polygraph examinations, the proponent must have followed all the provisions of rule *11-707 NMRA*.

**J.** The hearing officer may take administrative notice of those matters in which courts of this state may take judicial notice.

**K.** The rules of privilege shall be effective to the extent that they are required to be recognized in civil actions in

the district courts of the state of New Mexico.

**L.** The hearing officer shall admit evidence relevant only to those allegations against the appellant included in both the notice of contemplated action and the notice of final action or which are contested issues as set forth in the pre-hearing order.

**M.** The hearing shall be recorded by a ~~sound~~ video and/or audio-recording device under the supervision of the hearing officer. No other recording of the hearing, by whatever means, shall be permitted without the approval of the hearing officer.

**N.** The board shall provide an interpreter to appellants whose hearing is so impaired that they can not understand voice communications. Appellants must provide proof of disability.

**O.** The hearing officer shall appoint an interpreter to appellants who do not understand English well enough to understand the proceedings.

[1.7.12.18 NMAC - Rp, 1 NMAC 7.12.18, 07/07/01; 1.7.12.18 NMAC - Rn, 1.7.12.17 NMAC, 7-15-05; A, 5/15/07]

**1.7.12.24 REPORT OF DECISIONS:** ~~[The director shall prepare a synopsis of each decision made by the board and shall make copies available to all agencies and interested parties.]~~ When the board renders a final decision in an appeal, the board's decision including the hearing officer's recommended decision will be available to the public pursuant to the Inspection of Public Records Act, NMSA 1978, Section 14-2-1 (as amended through 2003). Copies of the board's final order and the hearing officer's recommended decision shall be stored at the state personnel office, separate from case files, and will be available to the public when provided to the parties. The director will redact any privileged and confidential information pursuant to state and federal law.

[1.7.12.24 NMAC - Rp, 1 NMAC 7.12.24, 07/07/01; A, 11/14/02; 1.7.12.24 NMAC - Rn, 1.7.12.23 NMAC, 7-15-05; A, 5/15/07]

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.7 NMAC, Sections 2, 6, 7, 8, 9, 10, 12, 13 and 14, effective 05/15/07.

**1.13.7.2 SCOPE:** Scholars meeting the eligibility requirements set forth in 1.13.7 NMAC ~~and seeking financial assistance to pursue qualifying historical research at the state records center and~~

~~archives] to pursue research at New Mexico archival repositories.~~

[1.13.7.2 NMAC - N, 06/30/05; A, 05/15/07]

**1.13.7.6 OBJECTIVE:** To promote an understanding and appreciation of New Mexico history by providing financial ~~[assistance to fellows conducting historical research at the state records center and archives] incentive to fellows conducting research on New Mexico history and cultures.~~

[1.13.7.6 NMAC - N, 06/30/05; A, 06/01/06; A, 05/15/07]

**1.13.7.7 DEFINITIONS:**

**A. Fellowship** means a stipend awarded by the ~~office of the state historian, a division of the state records center and archives [to conduct historical research at the state records center and archives] to conduct research.~~

**B. [Historical] Research** means, for purposes of 1.13.7 NMAC, research conducted using primary sources from ~~[the archival collections at the state records center and archives] New Mexico archival repositories containing material relative to the history and cultures of New Mexico.~~

**C. Independent scholar** means an individual, regardless of academic credentials, who is recognized as an authority in any field or discipline that advances an understanding and appreciation of New Mexico history. Independent scholars may include individuals such as community historians, tribal elders, etc.

**D. Archival repository** means an archival repository in New Mexico that contains material relative to the history and cultures of New Mexico.

[1.13.7.7 NMAC - N, 06/30/05; A, 06/01/06; A, 05/15/07]

**1.13.7.8 ELIGIBILITY:** Applicants for fellowships shall meet the requirements described below.

**A.** An applicant shall ~~[be a citizen of the United States or a foreign national who is legally residing in the United States and who]:~~

(1) ~~[is]~~ be enrolled in a graduate program in an accredited college or university and ~~[is]~~ conducting research toward a graduate degree at that institution, subject to the provisions of Subsection B of 1.13.7.8 NMAC; or

(2) ~~[holds]~~ hold a graduate degree in a field or discipline from an accredited college or university, subject to the provisions of Subsection B of 1.13.7.8 NMAC; or

(3) ~~[is]~~ be an independent scholar.

**B.** An applicant may be studying or working in any field or disci-

pline, provided that the research proposed shall foster an understanding and appreciation of New Mexico history and that his or her academic or work experience shall qualify him or her to conduct the proposed research.

~~[C. An applicant shall demonstrate financial need.]~~

[1.13.7.8 NMAC - N, 06/30/05; A, 06/01/06; A, 05/15/07]

**1.13.7.9 FELLOWSHIPS - TERMS AND CONDITIONS:**

**A.** Fellowships shall be awarded for a maximum of \$1,000 per month. The amount of a fellowship shall be determined by ~~[the financial need demonstrated by the successful applicant and] budget availability.~~ The funding shall be used to support research relating to the advancement of an understanding and appreciation of New Mexico history and cultures.

**B.** The duration of a fellowship shall be one to two months, except as provided in Subsection C of 1.13.7.9 NMAC, and shall be determined by the nature of the proposed research project and budget availability.

**C.** A fellowship with duration of greater than two months may be awarded, if the proposed research is sufficiently extensive and the benefit to the state of New Mexico and to the advancement of an understanding and appreciation of New Mexico history is determined to be sufficiently significant. The sufficiency of the research and the significance of the benefit shall be determined by the fellowship awards committee.

**D.** Fellowships shall be awarded only for research projects based on research conducted using primary sources available in ~~[the state archives of the state records center and archives] New Mexico archival repositories containing material relative to the history and cultures of New Mexico.~~ A minimum of 80 hours per month of on-site research in ~~[the state archives] these archival repositories~~ shall be required.

**E.** Fellowships shall be awarded only for research projects that shall benefit the state of New Mexico and its citizens by advancing an understanding and appreciation of New Mexico history.

**F.** Each fellow shall be required to meet the post-award requirements set forth in 1.13.7.13 NMAC.

[1.13.7.9 NMAC - N, 06/30/05; A, 06/01/06; A, 05/15/07]

**1.13.7.10 APPLICATION FOR FELLOWSHIP:**

**A.** An applicant for a fellowship shall complete an application package that shall contain the following items.

(1) A signed cover letter that shall

contain, at a minimum:

(a) a statement explaining the applicant's interest in the scholar's program;

(b) the eligibility criterion under which the application is being made (see 1.13.7.8 NMAC);

(c) the length of the fellowship requested and the preferred dates of the fellowship (within the time limits set forth in 1.13.7.14 NMAC); and

(d) the amount of the fellowship requested ~~[and a detailed explanation of financial need]~~ (see 1.13.7.9 NMAC).

(2) An abstract, not to exceed 300 words, which shall define the topic of the proposed research and summarize its purpose and objectives.

(3) A research proposal, no more than six pages in length, which shall describe what is to be accomplished during the fellowship period; the status of the applicant's research on the proposed research topic; the specific relevance of the ~~[state records center and archives] proposed archival repository~~ collections to the project; the significance of the research to the advancement of an understanding and an appreciation of New Mexico history; and the expected results or products of the research.

(4) An up-to-date curriculum vitae, which shall not exceed four pages and which shall also, in addition to academic and work experience, reflect the applicant's full name; residential and, if applicable, business addresses; and residential and, if applicable, business telephone numbers and e-mail addresses.

(5) Copies of certified transcripts or of diplomas, if the application is made pursuant to an eligibility criterion requiring award of academic degrees or enrollment in an academic program (see 1.13.7.8 NMAC).

(6) Two letters of support. If the applicant is a graduate student enrolled in a Ph.D. program, one of the letters shall be from the applicant's dissertation chair or advisor. If the applicant is enrolled in a master's degree program, one of the letters shall be from the student's graduate advisor. Original copies of the letters ~~[may]~~ shall be included with the application or may be forwarded directly from the supporters. If the applicant chooses the latter option, he or she shall include a statement to that effect in the application package, and the applicant shall be responsible for ensuring that the letters of support are received ~~[timely]~~ by the deadline.

**B.** The cover letter, the abstract, the proposal and the curriculum vitae shall be produced using word processing software, shall be in 12-point type (preferably Times New Roman) and shall be double-spaced, with one-inch margins on



all sides.

C. The application package shall be collated (clipped, not stapled) and five copies submitted by the deadlines provided in 1.13.7.14 NMAC.

D. Incomplete applications shall not be considered for funding; however, they shall not be returned.

[1.13.7.10 NMAC - N, 06/30/05; A, 05/15/07]

#### 1.13.7.12 REVIEW AND AWARD PROCESS:

A. The staff of the office of the state historian, a division of the state records center and archives, ~~[(office of the state historian)]~~ shall conduct an initial review of all applications to ensure that all required materials have been received and that the applicant meets the minimum qualifications. Applicants who do not meet minimum qualifications or whose applications are incomplete shall be notified in writing; however, application packages shall not be returned.

B. Qualifying applications shall be reviewed and rated and fellowships awarded, using an established rating system which shall take into consideration such factors as qualifications of the applicant, ~~[demonstration of financial need]~~, proposed use of [state] identified archival collections, practicality of the proposal, value and use of proposed research in the advancement of the understanding and appreciation of New Mexico history and budget availability.

C. Qualifying applications shall be reviewed and rated and awards made by a fellowship awards committee. Members of the committee shall be ~~[the state records administrator, the state historian, the director of the archives and historical services division of the state records center and archives and two members from outside the state records center and archives]~~ the state historian, two archivists, and two historians who shall be qualified by academic credentials or experience to evaluate the significance of the historical research proposed. The ~~[two]~~ four members shall be appointed by the state historian, subject to the approval of the state records administrator. Members of the committee shall serve without compensation and shall declare any conflict of interest with respect to any applicant and shall not participate in the evaluation of any application where such a conflict may exist.

D. During the review process, the committee may request clarifying information from applicants, but the decisions of the committee shall be final.

[1.13.7.12 NMAC - N, 06/30/05; A, 05/15/07]

#### 1.13.7.13 POST-AWARD

**REQUIREMENTS:** Successful fellowship applicants shall comply with the following post-award requirements.

A. Research work shall take place at ~~[the state records center and archives]~~ New Mexico archival repositories containing material relative to the history and cultures of New Mexico.

B. Prior to the conclusion of the fellowship period, each fellow shall be required to give a public lecture based on the research accomplished during the fellowship period.

C. Each fellow shall be required to submit a report of research findings within one week of completing a fellowship. Each fellow shall produce and submit a three-page or longer, historical essay that may be included in the New Mexico history web project. In addition, the fellow shall submit any completed research findings that result in reports, papers, chapters and manuscripts to the state records center and archives. All submitted material shall be included in the state archives unpublished manuscript collection and shall be accessible to the public. Failure to comply with this requirement shall require immediate reimbursement to the state of the fellowship award. These requirements shall be further defined in the acceptance agreement.

[1.13.7.13 NMAC - N, 06/30/05; A, 06/01/06; 05/15/07]

#### 1.13.7.14 TIMETABLE - APPLICATIONS AND AWARDS:

A. Completed applications shall be received ~~[in the state records center and archives]~~ by the office of the state historian by the deadline set forth in the call for proposals.

B. The staff of the ~~[state records center and archives]~~ office of the state historian shall conduct an initial review to determine if applications are complete and applicants meet minimum qualification within ten working days of the receipt of applications.

C. The fellowship review committee shall conduct its review and evaluation process of qualifying applications and award fellowships within one month of ~~[receipt of applications]~~ deadline set forth in the call for proposals. Successful applicants shall be notified by e-mail or, if an applicant has no e-mail address, by registered mail, return receipt requested. An applicant shall satisfy the requirements of Subsections D and E of 1.13.7.14 NMAC prior to beginning research and within the timeframes specified or the award may be rescinded.

D. Successful applicants shall notify the office of the state historian, a division of the state records center and

~~archives [(office of the state historian)]~~, of their acceptance or rejection of fellowships within five days of notification of award. Notification shall be made by e-mail, or if the applicant has no e-mail address, by registered U.S. mail, return receipt requested.

E. Acceptance agreements shall be completed and signed prior to the beginning of research or within one month of notification of acceptance, whichever is earlier.

F. All research and deliverables identified in the acceptance agreement shall be completed by the end of the fellowship period, but in all cases no later than June 30 of the fiscal year in which the fellowship is awarded.

[1.13.7.14 NMAC - N, 06/30/05; A/E, 04/14/06; A, 06/01/06; A, 05/15/07]

### NEW MEXICO TAXATION AND REVENUE DEPARTMENT

#### TITLE 3: TAXATION CHAPTER 13: BUSINESS TAX CREDITS PART 6: RESEARCH AND DEVELOPMENT SMALL BUSINESS TAX CREDIT

3.13.6.1 **ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630

[3.13.6.1 NMAC - N, 5/15/07]

3.13.6.2 **SCOPE:** This part applies to persons conducting qualified research at a qualified facility in New Mexico.

[3.13.6.2 NMAC - N, 5/15/07]

3.13.6.3 **STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.

[3.13.6.3 NMAC - N, 5/15/07]

3.13.6.4 **DURATION:** Permanent.

[3.13.6.4 NMAC - N, 5/15/07]

3.13.6.5 **EFFECTIVE DATE:** 5/15/07, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.13.6.5 NMAC - N, 5/15/07]

3.13.6.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Research and Development Small Business Tax Credit Act.

[3.13.6.6 NMAC - N, 5/15/07]

3.13.6.7 **DEFINITIONS:**  
[Reserved.]

3.13.6.8 **EQUIVALENT OF ONE FULL-TIME EMPLOYEE:** To calculate the number of full-time-equivalent employees, add the average weekly hours worked or expected to be worked by all employees whose regular weekly work hours are or are expected to be less than forty hours. Divide the total by 40 and round down to the nearest whole number. The rounded number plus the number of employees who work or are expected to work an average of 40 or more hours per week is the number of full-time equivalent employees.

[3.13.6.8 NMAC - N, 5/15/07]

History of 3.13.6 NMAC: [Reserved]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.13.2 NMAC, Sections 15 and 16, effective 5/15/07.

### **3.13.2.15 REPORTING NUMBER OF EMPLOYEES - ESTIMATES:**

To meet the employment requirement, the credit claimant must report the number of full-time-equivalent employees employed on the day the credit is applied for. This number is to be compared with the number of full-time-equivalent employees on the same day in the prior year. Because complete employee data may not be available for the day on which the credit is applied for, a credit claimant may estimate the number of full-time-equivalent employees employed on the day the credit is applied for, provided that the claimant must provide the actual number of full-time-equivalent employees within forty-five days from the end of the calendar quarter in which the claim is applied for. The fact that an estimate is used in the claim must be clearly indicated. The department may withhold approval of the claim until the correct number is provided and will deny the claim if the correct number is not provided.

[3.13.2.15 NMAC - N, 5/15/07]

### **3.13.2.16 WHEN CLAIM**

**BARRED:** If a taxpayer claims any amount of research and development small business tax credit with respect to a reporting period, the taxpayer may not claim any amount of approved investment credit with respect to that same period. If for the same reporting period an amount of investment credit is claimed in addition to any amount of research and development small business tax credit, the amount of investment credit will be disallowed by the department, which

may result in an underpayment of tax. The taxpayer is not barred from applying for approval of new or additional investment credit with respect to qualified equipment purchased or introduced into New Mexico during that reporting period.

[3.13.2.16 NMAC - N, 5/15/07]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.13.5 NMAC, Sections 10 and 11, effective 5/15/07.

### 3.13.5.10 **ELIGIBILITY REQUIREMENTS - ADDITIONAL CREDIT - ESTIMATES:**

**A.** A taxpayer claiming the additional credit must compute annual payroll expense for the period specified in the application and must compute base payroll expense as of a date one year prior to the annual payroll date.

**B.** Because complete payroll data to calculate "annual payroll expense" and "base payroll expense" may not be available on the day the credit is applied for, a credit claimant may estimate the number of these two amounts on the credit application, provided that the claimant must provide the actual "annual payroll expense" and "base payroll expense" amounts within forty-five days from the end of the calendar quarter in which the claim is applied for. The fact that an estimate is used in the claim must be clearly indicated. The department may withhold approval of the claim until the correct numbers are provided and will deny the claim if the correct numbers are not provided.

[3.13.5.10 NMAC - N, 10/31/05; A, 5/15/07]

### 3.13.5.11 **WHEN CLAIM**

**BARRED:** If a taxpayer claims any amount of research and development small business tax credit with respect to a reporting period, the taxpayer may not claim any amount of technology jobs tax credit with respect to that same period. If for the same reporting period an amount of technology jobs tax basic credit is claimed in addition to any amount of research and development small business tax credit, the amount of technology jobs tax credit will be disallowed by the department, which may result in an underpayment of tax. The taxpayer is not barred from applying for approval of new or additional technology jobs tax credit with respect to qualified expenditures in that reporting period.

[3.13.5.11 NMAC - N, 5/15/07]

## End of Adopted Rules Section

**SUBMITTAL DEADLINES AND PUBLICATION DATES**

**2007**

<b>Volume XVIII</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 2	January 16
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Issue Number 4	February 15	February 28
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Issue Number 23	December 3	December 14
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