

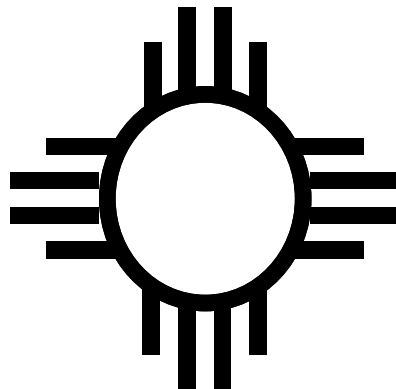
**NEW
MEXICO
REGISTER**



Volume XVIII
Issue Number 24
December 31, 2007

New Mexico Register

**Volume XVIII, Issue Number 24
December 31, 2007**



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2007

COPYRIGHT © 2007
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XVIII, Number 24

December 31, 2007

Table of Contents

Notices of Rulemaking and Proposed Rules

Environmental Improvement Board	
Notice of Public Hearing to Consider Proposed Revision of the Public Swimming Pools, Spas, and Baths Regulations, 7.18.2 Through 7.18.4 NMAC	1181
Human Services Department	
Income Support Division	
Notice of Public Hearing	1181
Optometry, Board of	
Legal Notice; Public Rule Hearing and Regular Board Meeting	1182
Public Regulation Commission	
Insurance Division	
Notice of Hearing on Proposed Rulemaking and Procedural Order (regarding 13.10.11 NMAC and 13.17.3 NMAC)	1182
Racing Commission	
Notice of Rulemaking and Public Hearing	1183
Taxation and Revenue Department	
Notice of Hearing and Proposed Rules	1183

Adopted Rules

Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Children, Youth and Families Department

Family Services Division

7.20.11 NMAC	A	Certification Requirements for Child and Adolescent Mental Health Services	1187
--------------	---	--	------

Coal Surface Mining Commission

19.8.1 NMAC	A	Coal Mining: General Provisions	1187
19.8.2 NMAC	A	Areas Designated by Acts of Congress	1187
19.8.4 NMAC	A	Process for Designating Lands Unsuitable for Surface Coal Mining Operations	1189
19.8.5 NMAC	A	General Requirements for Permits and Permit Applications	1190
19.8.6 NMAC	A	General Requirements for Coal Exploration	1190
19.8.7 NMAC	A	Permit Applications - Minimum Requirements for Legal, Financial, Compliance and Related Information	1191
19.8.8 NMAC	A	Permit Applications - Minimum Requirements for Information on Environmental Resources	1192
19.8.9 NMAC	A	Permit Applications - Minimum Requirements for Reclamation and Operations Plan	1193
19.8.10 NMAC	A	Requirements for Permits for Special Categories of Mining	1197
19.8.11 NMAC	A	Review, Public Participation, and Approval or Disapproval of Permit Applications, Terms and Conditions	1202
19.8.13 NMAC	A	Permit Reviews, Revisions and Renewals, and Transfer, Sale and Assignment of Rights Granted Under Permits	1207
19.8.14 NMAC	A	General Requirements for Bonding of Surface Coal Mining and Reclamation Operations	1209
19.8.19 NMAC	A	Performance Standards - Coal Exploration	1214
19.8.20 NMAC	A	Performance Standards - Surface Coal Mining Operations	1215
19.8.24 NMAC	A	Special Performance Standards - Operations on Prime Farmland	1221
19.8.26 NMAC	A	Special Performance Standards - Operations on Steep Slopes	1221
19.8.27 NMAC	A	Special Performance Standards - Coal Processing Plants and Support	

		Facilities Not Located at or Near the Mine Site or Not Within the Permit Area for a Mine	1222
19.8.29 NMAC	A	Inspections	1222
19.8.30 NMAC	A	Enforcement	1223
19.8.31 NMAC	A	Civil Penalties	1226
19.8.34 NMAC	A	Exemption for Coal Extraction Incidental to the Extraction of Other Minerals	1227
19.8.35 NMAC	A	Valid Existing Rights	1230
Cultural Affairs, Department of			
Historic Preservation Division			
4.10.10 NMAC	R	Certified Local Government Program	1231
4.10.10 NMAC	N	Certified Local Government Program	1231
Historic Preservation Division and Cultural Properties Review Committee			
4.10 NMAC	Rn	Re-number Title 4, Chapter 10, Parts 2, 3, 4, 5, 6, 7, 9, 11, 12 and 13.	1235
Energy, Minerals and Natural Resources Department			
State Parks Division			
19.5.2 NMAC	R	Park Visitor Provisions	1236
19.5.4 NMAC	R	Lease Lot Provisions.	1236
19.5.5 NMAC	R	Concession Activities	1236
19.5.2 NMAC	N	Park Visitor Provisions	1236
19.5.5 NMAC	N	Concession Activities	1242
19.5.7 NMAC	N	Filming in State Parks.	1247
18.17.3 NMAC	A	Construction Visitor Provisions	1249
19.5.1 NMAC	A	State Parks and Recreation: General Provisions	1253
19.5.3 NMAC	A	Park Management and Development Plan	1255
19.5.6 NMAC	A	Park Fees.	1256
Higher Education Department			
5.55.4 NMAC	R	Dual Credit	1258
5.7.23 NMAC	N	College Affordability Grant	1258
5.7.31 NMAC	N	Public Service Law Loan Repayment Program	1259
5.55.4 NMAC	N	Dual Credit	1261
Human Services Department			
Income Support Division			
8.102.500 NMAC	A	Cash Assistance Programs: Eligibility Policy - General Information	1265
8.106.500 NMAC	A	State Funded Assistance Programs: Eligibility Policy - General Information	1266
Medical Assistance Division			
8.315.6 NMAC	N	Comprehensive Community Support Services.	1266
8.200.510 NMAC	A	Medicaid Eligibility - General Recipient Policies: Resource Standards	1269
8.200.520 NMAC	A	Medicaid Eligibility - General Recipient Policies: Income Standards.	1270
8.231.400 NMAC	Rn & A	Medicaid Eligibility - Infants of Mothers Who are Medicaid Eligible (Category 031): Recipient Policies.	1272
8.231.500 NMAC	Rn & A	Medicaid Eligibility - Infants of Mothers Who are Medicaid Eligible (Category 031): Income and Resource Standards	1272
8.231.600 NMAC	Rn & A	Medicaid Eligibility - Infants of Mothers Who are Medicaid Eligible (Category 031): Benefit Description	1272
Livestock Board			
21.32.4 NMAC	Rn & A	Import Requirements (Transportation of Livestock Into New Mexico)	1273
Physical Therapy Board			
16.20.11 NMAC	N	Disciplinary Proceedings	1273
16.20.1 NMAC	A	Physical Therapists: General Provisions	1275
16.20.3 NMAC	A	Issuance of Licenses	1275
16.20.4 NMAC	A	Temporary Licenses	1277
16.20.5 NMAC	A	Schedule of Fees.	1278
16.20.6 NMAC	A	Physical Therapist Assistants	1278
16.20.7 NMAC	A	Supervision	1279
16.20.8 NMAC	A	Continuing Education	1279
16.20.9 NMAC	A	Education Criteria for Foreign Educated Applicants	1282
Public Education Department			
6.30.7 NMAC	R	Dual Credit	1282
6.30.7 NMAC	N	Dual Credit	1282
Public Records, Commission of			
1.17.216 NMAC	R	JRRDS, New Mexico Supreme Court	1286

New Mexico Register / Volume XVIII, Number 24 / December 31, 2007

1.18.430 NMAC	R	ERRDS, Public Regulation Commission	1286
1.18.644 NMAC	R	ERRDS, Division of Vocational Rehabilitation	1286
1.18.926 NMAC	R	ERRDS, School for the Visually Handicapped	1286
Letter		<i>Synopsis Approval Letter</i>	1287
1.17.216 NMAC	N	JRRDS, Supreme Court (<i>synopsis</i>).	1287
1.18.430 NMAC	N	ERRDS, Public Regulation Commission (<i>synopsis</i>)	1287
1.18.644 NMAC	N	ERRDS, Division of Vocational Rehabilitation (<i>synopsis</i>)	1288
1.18.926 NMAC	N	ERRDS, School for the Blind and Visually Impaired (<i>synopsis</i>).	1288
1.18.333 NMAC	A	ERRDS, Taxation and Revenue Department	1289
1.18.630 NMAC	A	ERRDS, Human Services Department	1289
1.18.665 NMAC	A	ERRDS, Department of Health	1290
Public Regulation Commission			
Insurance Division			
13.9.18 NMAC	N	Use of Preferred Risk Mortality Tables	1291
13.8.4 NMAC	Rn & A	Cancellation, Nonrenewal or Change in Coverages of Property and Casualty Insurance Policies	1292
13.18.2 NMAC	Rn & A	Credit Life and Credit Health Insurance	1292
Social Work Examiners, Board of			
16.63.1 NMAC	A	Social Workers: General Provisions	1293
16.63.3 NMAC	A	Application for Licensure	1293
16.63.6 NMAC	A	Licensure by Credentials; Reciprocity	1294
16.63.7 NMAC	A	Provisional License.	1294
16.63.8 NMAC	A	Fees	1295
16.63.9 NMAC	A	Baccalaureate Social Worker	1295
16.63.10 NMAC	A	Master Social Worker	1295
16.63.11 NMAC	A	Independent Social Worker.	1295
16.63.12 NMAC	A	Continuing Education	1295
Transportation, Department of			
18.27.2 NMAC	R	Division 100 - General Provisions Standard Specifications for Highway and Bridge Construction	1296
18.27.2 NMAC	N	Division 100 - General Provisions Standard Specifications for Highway and Bridge Construction	1296
Workers' Compensation Administration			
11.4.4 NMAC	A	Claims Resolution.	1297
11.4.7 NMAC	A	Payments for Health Care Services	1303

Other Material Related to Administrative Law

Public Records, Commission of			
Historical Records Advisory Board			
		Notice of Regular Meeting	1315
Workers' Compensation Administration			
		Director's Response to Public Comment	1315

The *New Mexico Register*
Published by
The Commission of Public Records
Administrative Law Division
1205 Camino Carlos Rey
Santa Fe, NM 87507

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail staterules@state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED REVISION OF THE PUBLIC SWIMMING POOLS, SPAS, AND BATHS REGULATIONS, 7.18.2 THROUGH 7.18.4 NMAC

The New Mexico Environmental Improvement Board ("Board" or "EIB") will hold a public hearing on March 4, 2008 at 9:00 a.m. and continuing thereafter as necessary in Room 317, State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87501. The hearing location may change prior to March 4, 2008 and those interested in attending should check the EIB website: <http://www.nmenv.state.nm.us/oots/eib.htm> prior to the hearing. The purpose of the hearing is to consider proposed amendments to 7.18.2 NMAC, 7.18.3 NMAC and 7.18.4 NMAC of the Public Swimming Pool, Spas and Baths Regulations. The New Mexico Environment Department ("NMED") is the proponent of these regulations.

The proposed amendments relate to several specific areas, including (i) specific regulatory requirements for hot springs public baths, (ii) provisions pertaining to required upgrades upon the modification of existing pools, (iii) amendments to the design and construction provisions in the rules to make them conform to American National Standards Institute ("ANSI") standards, (iv) revisions to the lifeguard requirements, changes to the public pool enclosure and barrier requirements, and (vi) the addition of definitions.

Please note formatting and minor technical changes in the regulations may occur. In addition, the Board may make other amendments as necessary to accomplish the purpose of providing public health and safety in response to public comments submitted to the Board and evidence presented at the hearing.

The proposed regulations 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. Copies of the proposed regulations may be obtained by contacting Joyce Medina at (505) 827-2425 or by email at joyce_medi-

na@nmenv.state.nm.us. Please refer to Docket No. EIB 07-12(R). The proposed regulations can also be found on the NMED website at http://www.nmenv.state.nm.us/fod/swim_pools/poolrules.html. Written comments regarding the new regulations may be addressed to Ms. Medina at the above address, and should reference docket number EIB 07-12(R).

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

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

Persons wishing to present technical 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 their education and work background;
 - summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
 - list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and
 - attach the text of any recommended modifications to the proposed changes.
- Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board by no later than 5:00 pm on February 18, 2008, and should reference the name of the regulation, the date of the hearing, and docket number EIB 07-12(R). Notices of intent to present technical testimony should be submitted to:

Joyce Medina
Board Administrator

NMED Boards and Commissions
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 Judy Bentley at the Personnel Services Bureau by February 19, 2008. The Personnel Services Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-2844. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779).

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

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to propose an addition to the Cash Assistance Program. The hearing will be held at 1:00 p.m. on January 31, 2008. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The Department proposes adding a new part to Chapter 102 of Title 8 at 8.102.501 NMAC. The Department proposes taking this action in order to establish an Employment Retention Bonus Program. The Employment Retention Bonus Program encourages New Mexico Work participants to retain employment while offering cash assistance and supportive services for doing so. New Mexico work participants can potentially be eligible for a \$200.00 monthly cash bonus if they meet and maintain defined criteria. The Department will also be removing regulation Subsection C of 8.102.520.12 NMAC now titled, "Excess Hours Work Deduction", in accordance with House Bill 342 simultaneously with the implementation of the Employment Retention Bonus Program effective July 1st, 2008.

The proposed regulation is available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegister.shtml>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 P.M. on the date of the hearing. Please send comments to:

Pamela S. Hyde, J.D., Secretary
Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to:
vida.tapia-sanchez@state.nm.us

NEW MEXICO BOARD OF OPTOMETRY

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Optometry Examiners Board will hold a Rule Hearing on Monday, February 11, 2008. Following the Rule Hearing the New Mexico Optometry Examiners Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Optometry Examiners Board Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held in the Rio Grande Room at the Regulation and Licensing Department, Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.16.1 NMAC: General Provisions; 16.16.3 NMAC: Requirements for Licensure by Examination; 16.16.4 NMAC: Requirements for Licensure by Endorsement; 16.16.5 NMAC: Examination for Optometric Licensure; 16.16.7 NMAC: Pharmaceutical Certification; 16.16.8 NMAC: DEA Registration Requirements; 16.16.10 NMAC: Renewal of New Mexico Optometry Licenses; 16.16.11 NMAC: License Expiration Due to Non-Renewal; Reactivation; 16.16.12 NMAC: Retirement and Reinstatement of Optometry License;

16.16.13 NMAC: Continuing Education; and 16.16.16 NMAC: Practice Location; Ownership.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4630 after January 11, 2008. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than January 28, 2008. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4630 at least two weeks prior to the meeting or as soon as possible.

Martha L. Gallegos, Administrator
PO Box 25101- Santa Fe, New Mexico
87504

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

STATE OF NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

IN THE MATTER OF AMENDING 13.10.11 NMAC, HEALTH INSURANCE ALLIANCE PLAN OF OPERATION AND ELIGIBILITY CRITERIA AND REPEALING 13.17.3 NMAC, SUBSEQUENT INJURY FUND DOCKET NO. 07-00452-IN

NOTICE OF HEARING ON PROPOSED RULEMAKING AND PROCEDURAL ORDER

NOTICE IS HEREBY GIVEN that the New Mexico Superintendent of Insurance ("Superintendent") proposes to amend 13.10.11 NMAC, Health Insurance Alliance Plan of Operation and Eligibility Criteria and to repeal 13.17.3 NMAC, Subsequent

Injury Fund. The Superintendent, being fully advised, **FINDS** and **CONCLUDES**:

1. The Superintendent is proposing amendments to 13.10.11 NMAC Health Insurance Alliance Plan of Operation and Eligibility Criteria, requested by the board of directors of the New Mexico Health Insurance Alliance. The amendments are intended to address certain administrative issues that require changes in the plan of operation, including requiring inactive agents to be recertified and clarifying eligibility for certain individual continuation coverage. Additionally, the plan of operation is being conformed to changes in statute requiring dependent coverage through age 25.

2. The Superintendent is proposing a repealer of 13.17.3 NMAC, Subsequent Injury Fund because the rule's statutory authority has been repealed and the fund was closed out as of June 30, 2002.

3. Copies of the proposal are available as follows:

a. by downloading from the Public Regulation Commission's website, www.nmprc.state.nm.us, under Proposed Rules, Insurance: Amending 13.10.11 NMAC, Health Insurance Alliance Plan of Operation and Eligibility Criteria and Repealing 13.17.3 NMAC, Subsequent Injury Fund;

b. by sending a written request with the docket number, rule names, and rule numbers to the Public Regulation Commission's Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$5.00 made payable to the Public Regulation Commission to cover the cost of copying; or

c. for inspection and copying during regular business hours in the Public Regulation Commission's Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

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

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

IT IS FURTHER ORDERED that an informal public hearing pursuant to Section 59A-4-18 NMSA 1978 be held on **Wednesday January 30, 2008** at 9:30 a.m. in the Public Regulation Commission, Fourth Floor Hearing Room, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposal. All interested persons wishing to present oral comments may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time, and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposal on or before **Monday, January 28, 2008**. An original and two copies of written comments must be filed with the Public Regulation Commission's Docketing Office, Room 406, P.O. Box 1269, Santa Fe, NM 87504-1269. The docket number must appear on each submittal. If possible, please also e-mail a copy of written comments in Microsoft Word format to michael.batte@state.nm.us. Comments will be available for public inspection during regular business hours in the Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

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

IT IS FURTHER ORDERED that Insurance Division Staff shall cause a copy of this Notice to be published once in the *New Mexico Register* and once in the *Albuquerque Journal*.

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, Section 2-11-1 *et seq.*, NMSA 1978 regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any for-

mal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

PLEASE BE ADVISED THAT individuals with a disability, who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, may contact the Docketing Office at (505) 827-4526. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should also be addressed to the Docketing Office.

DONE, this 13th day of December 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION

INSURANCE DIVISION

/s/

MORRIS J. CHAVEZ, Superintendent of Insurance

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 Board room, at 4900 Alameda Blvd. NE, Suite A, Albuquerque, New Mexico. The public session will begin at 10:30 o'clock a.m. on Thursday, January 10, 2008. The Commission will consider adoption of the proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No. 15.2.1.8 (regarding issuance of a license/ Indian tribe or pueblo comment) and No. 15.2.6.9 (regarding medications and prohibited substances).

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: December 13, 2007

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to adopt the following regulations:

Gross Receipts and Compensating Tax Act

3.2.247.7 NMAC Section 7-9-112 NMSA 1978

(Definitions)

3.2.247.8 NMAC Section 7-9-112 NMSA 1978

(Written Statement)

3.2.247.9 NMAC Section 7-9-112 NMSA 1978

(Good Faith Acceptance of Buyer's Written Statement)

These proposals were placed on file in the Office of the Secretary on December 17, 2007. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about March 14, 2008.

A public hearing will be held on the proposals on Wednesday, February 27, 2008, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals

should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before February 27, 2008.

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 247: DEDUCTION - GROSS RECEIPTS TAX - SOLAR ENERGY SYSTEMS

3.2.247.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
 [3.2.247.1 NMAC - N, XXX]

3.2.247.2 SCOPE: This part applies to each person engaging in business in New Mexico.
 [3.2.247.2 NMAC - N, XXX]

3.2.247.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
 [3.2.247.3 NMAC - N, XXX]

3.2.247.4 DURATION: Permanent.
 [3.2.247.4 NMAC - N, XXX]

3.2.247.5 EFFECTIVE DATE: XXX, unless a later date is cited at the end of a section, in which case the later date is the effective date.
 [3.2.247.5 NMAC - N, XXX]

3.2.247.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
 [3.2.247.6 NMAC - N, XXX]

3.2.247.7 DEFINITIONS: The terms and phrases defined in 3.2.247.7 NMAC apply to the implementation of the deduction pursuant to Laws 2007, Chapter 204, Section 10.

A. Equipment: "Equipment" means an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system. Equipment is included in the solar energy system when the cost can be included in the basis of the solar energy system as established under the applicable provisions of the Internal Revenue Code of 1986.

B. Trombe wall: A "trombe wall" is a sun-facing wall built from material that can act as a thermal mass, such as stone, concrete, adobe or water tanks, combined with an air space and glass

to form a solar thermal collector.

C. Solar panel: A "solar panel" is a solar thermal collector, such as a solar hot water or air panel used to heat water, air or otherwise collect solar thermal energy. "Solar panel" may also refer to a photovoltaic system.

D. Solar thermal collector: A "solar thermal collector" means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating.

E. Solar thermal energy: "Solar thermal energy" is a technology for harnessing solar power for practical applications from solar heating to electrical power generation.

F. Photovoltaic system: A "photovoltaic system" means an energy system that collects or absorbs sunlight for conversion into electricity.

G. Installation of a solar energy system: The "installation of a solar energy system" includes replacement of some part of the system, or a similar change to the system that would qualify as an adjustment to basis for federal income tax purposes. Labor for maintenance or service of a solar energy system does not qualify for the deduction in the absence of an installation of some part of the system. Labor to perform post-installation adjustments to the solar energy system qualifies for the deduction when the adjustments are performed to optimize the operation of the solar energy system as part of the initial installation and are performed within one year of the initial installation.

H. Solar energy system: A "solar energy system" as defined in Subsection B of Laws 2007, Chapter 204, Section 10, includes components or systems for collecting and storing energy, but does not include components or systems related to the use of the energy. Examples of use would include the pipes carrying heated water to a faucet or the electrical wire carrying electricity to an outlet.
 [3.2.247.7 NMAC - N, XXX]

3.2.247.8 WRITTEN STATEMENT

A. Receipts from selling equipment or installation services to persons who state in writing that they are purchasing the equipment or installation services for the exclusive use in installation and operation of a solar energy system pursuant to Laws 2007, Chapter 204, Section 10, may be deducted from the seller's gross receipts pursuant to Laws 2007, Chapter 204, Section 10 if the statement:

(1) contains a declaration that the purchaser-signer will be using the equipment or component part in a qualified solar energy system pursuant to Laws 2007,

Chapter 204, Section 10;

(2) that the equipment purchased or installed is an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system;

(3) that the equipment or component part can be included in the basis of the qualified solar energy system as established under the applicable provisions of the Internal Revenue Code of 1986;

(4) is personally signed by the purchaser or the purchaser's agent who makes the statement, and

(5) is accepted in good faith by the seller.

B. Receipts from selling or installing solar energy systems pursuant to Laws 2007, Chapter 204, Section 10 may not be deducted from gross receipts unless the sale is made to a person who makes a written statement which is in compliance with 3.2.247.8 NMAC, or can provide evidence acceptable to the department that the service or equipment is purchased solely for use in a qualified solar energy system.

C. For the purposes of Laws 2007, Chapter 204, Section 10 it is sufficient if the seller receives one written statement from each purchaser. The one written statement may cover multiple purchases of equipment or installation services used solely in a qualified solar energy system provided the seller maintains that statement on file.
 [3.2.247.8 NMAC - N, XXX]

3.2.247.9 GOOD FAITH ACCEPTANCE OF BUYER'S WRITTEN STATEMENT

A. When a seller accepts in good faith a person's written statement that the person is purchasing the service or equipment for the sole use of the sale and installation of a solar energy system pursuant to Laws 2007, Chapter 204, Section 10, the written statement shall be conclusive evidence that the proceeds from the transaction with the person having made this statement are deductible from the seller's gross receipts.

B. Example 1: X is installing a non-vented trombe wall in his home. Y sells adobe blocks to X for the trombe wall. X gives Y the proper written statement that the block is for the sole use of installing a solar energy system. X may deduct the gross receipts received from the sale of the adobe blocks.

C. Example 2: Same facts as example 1, but some of the adobe blocks being purchased from Y are to be used for the construction of a block wall around the perimeter of X's property. X is not using the adobe blocks solely to construct a non-vent-

ed trombe wall in his home. X gives Y the proper written statement that the block is for the sole use of installing a solar energy system. Y accepts the statement in good faith and may deduct the gross receipts received from the sale of the block. Because X is not using the block for the sole use of installing a solar energy system, X will be liable for the compensating tax on the value of the block and may be liable for making false statements.

D. Example 3: C buys a tractor from E, to haul materials used to construct a non-vented trombe wall in his personal residence. The equipment is not an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system and is not includable in the basis of the solar energy system to which the equipment is installed under the provisions of the Internal Revenue Code of 1986; E may not take the deduction.

E. Example 4: S is a contractor who performs construction services which includes the sale and installation of solar energy systems. S purchases materials and services from T. S may provide T with a buyers written statement pursuant to 3.2.247.8 NMAC. T cannot substantiate the deduction for the solar energy system materials and installation services with a nontaxable transaction certificate for the sale of construction materials that will become ingredients or components of a construction project pursuant to Section 7-9-51 NMSA 1978, or for construction services performed on a construction project pursuant to 7-9-52 NMSA 1978, because the next sale is not subject to gross receipts tax upon completion of the construction project.

F. Example 5: Same facts as example 4. When S sells the completed construction project to home owner H, S may deduct the materials and installation costs of the solar energy system pursuant to Laws 2007, Chapter 204, Section 10, with sufficient documentation to include the written statement pursuant to 3.2.247.8 NMAC, or other evidence acceptable to the department that the service or equipment is sold for the sole use of the sale and installation of a qualified energy system.

[3.2.247.9 NMAC - N, XXX]

**End of Notices and
Proposed Rules Section**

This page intentionally left blank.

Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION

Explanatory paragraph: This is an amendment to 7.20.11 NMAC, Sections 7 and 33, effective January 1, 2008. In Section 7, two new definitions for Comprehensive Community Support Services (CCSS) and Multisystemic Therapy (MST) are added and the existing definitions are renumbered. A new Section 33, Comprehensive Community Support Services is also added.

7.20.11.7 DEFINITIONS:

Z. COMPREHENSIVE COMMUNITY SUPPORT SERVICES (CCSS) coordinates and provides services and resources to adolescents and family members to promote recovery, rehabilitation and resiliency. CCSS identifies and addresses the barriers that impede the development of skills necessary for independent functioning in the community as well as strengths that may aid the adolescent and family in the recovery or resiliency process.

BY. MULTISYSTEMIC THERAPY (MST) is an intensive family and community-based treatment program that addresses the known determinants of serious antisocial behavior in adolescents and their families. MST treats the factors in the youth's environment that are contributing to his or her behavior problems. Such factors might pertain to individual characteristics of the youth (poor problem solving skills), family relations (inept discipline), peer relations (association with deviant peers) and school performance. Treatment goals for therapeutic change are developed on an individualized basis in collaboration with the family.

[7.20.11.7 NMAC - Rp 7 NMAC 20.11.7, 03/29/02; A, 04/14/05; A, 01/01/08]

7.20.11.33 COMPREHENSIVE COMMUNITY SUPPORT SERVICES:

A. Agencies certified for case management under these regulations or agencies receiving children's behavioral health contract funding for case management services as of 01/01/08 will receive provisional certification as a comprehensive community support services provider.

B. The provisional certification will be valid until the expiration of the agencies case management certification at which time a survey will be completed by the licensing and certification authority. Children's behavioral health contract agencies will have a survey completed within twelve (12) months of the issuance of the

provisional certification.

C. All comprehensive community support services providers will have to meet the general provisions of these requirements and requirements in Medicaid regulation Title 8, Chapter 315, Part 6. [7.20.11.33 NMAC - N, 01/01/08]

NEW MEXICO COAL SURFACE MINING COMMISSION

Explanatory Paragraph: This is an amendment to 19.8.1 NMAC, Section 7; it corrects a misspelling within the definition of "basal area", and updates a rule citation in the definition of "reclamation". It also adds a provision within the definition of "government financed construction" to include government funding at less than 50% of the construction costs, if the construction is undertaken as part of an approved Abandoned Mine Land reclamation project, as allowed by federal regulations. This amendment will become effective 12-31-2007.

19.8.1.7 DEFINITIONS:

...

B. Definitions beginning with the letter "B"

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

...

G. Definitions beginning with the letter "G"

(1) GOVERNMENT FINANCED CONSTRUCTION - means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of SMCRA.

...

N. Definitions beginning with the letter "N"

(1) NATURAL HAZARD LANDS - means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment.

(2) NET WORTH - means total

assets minus total liabilities and is equivalent to owners' equity. For the purposes of Subparagraph (b) of Paragraph (3) of Subsection A of 19.8.14.1410 ~~[A(3)(b)]~~ NMAC plants, facilities and equipment used for the production, transportation or processing of coal, and land or coal in place shall not be considered assets in a calculation of net worth.

...

R. Definitions beginning with the letter "R"

(3) RECLAMATION - means those actions taken to restore mined land as required by the act and 19.8 NMAC ~~[Parts 1-34]~~ Parts 1-35 to a postmining land use approved by the director.

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.2 NMAC, Sections 201 and 202, effective 12-31-2007.

19.8.2.201 AREAS WHERE MINING IS PROHIBITED OR LIMITED:

Subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, unless those operations existed on the date of enactment:

A. on any lands which will adversely affect any publicly owned park or any places included on the national register of historic places, unless approved jointly by the director, and the federal, state or local agency with jurisdiction over the park or places;

B. within 100 feet measured horizontally of the outside right-of-way line of any public road except:

(1) where mine access roads or haulage roads join such right-of-way line; or

(2) where the director allows the public road to be relocated or the area affected to be within 100 feet of such road, after:

(a) public notice and opportunity for a public hearing in accordance with ~~[19.8.2.202-C]~~ Subsection D of 19.8.2.202 NMAC; and

(b) making a written finding that the interests of the affected public and landowners will be protected;

C. within 300 feet measured horizontally from any occupied dwelling, unless the owner thereof has provided a written waiver consenting to surface coal mining operations closer than 300 feet, or unless an access or haul road connects with an existing public road on the side of

the public road opposite the dwelling;

D. within 300 feet measured horizontally of any public building, school, church, community or institutional building or public park; or

E. within 100 feet measured horizontally of a cemetery; this prohibition does not apply if the cemetery is relocated in accordance with all applicable laws and regulations;

F. on any lands within the boundaries of:

(1) the national park system;

(2) the national wildlife refuge system,

(3) the national system of trails, the national wilderness preservation system;

(4) the wild and scenic rivers system, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act 16 U.S.C. 1276(a) or study rivers or study river corridors as established in any guidelines pursuant to that act, and national recreation areas designated by act of congress;

(5) federal lands within a national forest; this prohibition does not apply if the secretary of interior finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations; and:

(a) any surface operations and impacts will be incident to an underground coal mine; or

(b) with respect to lands that do not have significant forest cover within national forests west of the 100th meridian, the secretary of agriculture has determined that surface mining is in compliance with the act, the Multiple-Use Sustained Yield Act of 1960, 16 U.S.C. 528-531; the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C. 181 et seq.; and the National Forest Management Act of 1976, 16 U.S.C. 1600 et seq.

[11-29-97; 19.8.2.201 NMAC - Rn 19 NMAC 8.2.2.201, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

19.8.2.202 PROCEDURES:

A. Upon receipt of a complete application for a surface coal mining and reclamation operations permit, the director shall review the application to determine whether surface coal mining operations are limited or prohibited under 19.8.2.201 NMAC on the lands which would be disturbed by the proposed operation.

B. The director must reject any portion of the application that would locate surface coal mining operations on land protected under 19.8.2.201 NMAC unless:

(1) the site qualifies for the exception for existing operations under

19.8.2.203 NMAC;

(2) a person has valid existing rights for the land, as determined under 19.8.35 NMAC;

(3) the applicant obtains a waiver or exception from the prohibitions of 19.8.2.201 NMAC in accordance with Subsections D, E and G of 19.8.2.202 NMAC.

C. If the director is unable to determine whether the proposed operation is located within the boundaries of any of the lands listed in Subsection F of 19.8.2.201 NMAC or closer than the limits provided in Subsections D and E of 19.8.2.201 NMAC, the director shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it has 30 days from receipt of the request in which to respond. The national park service or the U.S. fish and wildlife service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have 30 days from receipt of the notification in which to respond. The director, upon request by the appropriate agency, shall grant an extension to the 30-day period of an additional 30 days. If no response is received within 30-day period or within the extended period granted, the director may make the necessary determination based on the information he has available.

D. Where the proposed mining operation is to be conducted within 100 feet measured horizontally of the outside right-of-way line of any public road (except where mine access roads or haulage roads join such right-of-way line) or where the applicant proposes to relocate or close any public road, the director shall:

(1) require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;

(2) provide notice in a newspaper of general circulation in the affected locale of a public hearing at least 2 weeks before the hearing;

(3) hold a public hearing in the locality of the proposed mining operations where any member of the public may participate for the purpose of determining whether the interests of the public and affected landowners will be protected; and

(4) make a written finding based upon information received at the public hearing within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations.

E. Where the proposed surface coal mining operations would be conducted within 300 feet measured hori-

zontally of any occupied dwelling, the applicant shall submit with the application a written waiver from the owner of the dwelling, consenting to such operations within a closer distance of the dwelling as specified in the waiver. The waiver must clarify that the owner and signatory had the legal right to deny mining and knowingly waived that right.

(1) A new waiver is not required if an effective waiver from the owner of the occupied building exists at the time of the application.

(2) A valid waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to New Mexico law or if surface coal mining operations have entered the 300-foot zone before the date of purchase.

F. Review by other agencies.

(1) Where the proposed surface coal mining operations may adversely affect any public park or any places included on the national register of historic places, the director shall transmit to the federal, state or local agencies with jurisdiction over a statutory or regulatory responsibility for the park or historic place a copy of the completed permit application containing the following:

(a) a request for that agency's approval or disapproval of the operations, including a copy of applicable parts of the permit application;

(b) a notice to the appropriate agency that it must respond within 30 days from receipt of the request, with a notice that another 30 days is available upon request;

(c) the notice will also state that failure to interpose an objection within the time specified under Subparagraph (b) of Paragraph (1) of Subsection F of 19.8.2.202 NMAC will constitute approval of the proposed operation.

(2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

(3) Paragraphs (1) and (2) of Subsection F of 19.8.2.202 NMAC do not apply to:

(a) lands for which a person has valid existing rights, as determined under 19.8.35 NMAC;

(b) lands within the scope of the exception for existing operations in 19.8.2.203 NMAC.

G. When a new surface coal mining operation or boundary revision for an existing surface coal mining operation is proposed that will include federal lands within a national forest, the director

may not issue the permit or approve the boundary revision before the secretary of the interior makes a finding based on information submitted pursuant to 30 CFR Part 761.13.

H. If the director determines that the proposed surface coal mining operation is not prohibited under Section 69-25A-26 NMSA 1978 of the act, and this part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to 19.8.3 and 19.8.4 NMAC.

[11-29-97; 19.8.2.202 NMAC - Rn 19 NMAC 8.2.2.202, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.4 NMAC, Sections 401 and 402, effective 12-31-2007.

19.8.4.401 PROCEDURES: INITIAL PROCESSING, RECORD-KEEPING, AND NOTIFICATION REQUIREMENTS:

A. Initial processing.

(1) Within 30 days of receipt of a petition, the director shall notify the petitioner by certified mail whether or not the petition is complete under Subsection B of 19.8.4.400 NMAC or Subsection C of 19.8.4.400 NMAC.

(2) The director shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the director finds there are not any identified coal resources in that area, he shall return the petition to the petitioner with a statement of the findings.

(3) The director may reject petitions for designations or terminations of designations which are frivolous. Once the requirements of 19.8.4.400 NMAC are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the director pursuant to the procedures of this part.

(4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the director shall determine if the new petition presents new allegations of facts. If the petition does not contain new allegations of facts, the director shall not consider the petition and shall return the petition to the petitioner, with a statement of his findings and a reference to the record of the previous designation proceedings where the facts were considered.

(5) If the director determines that the petition is incomplete or frivolous, he

shall return the petition to the petitioner, with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

(6) The director shall notify the person who submits a petition of any application for a permit received which proposes to include any area covered by the petition.

(7) Any petitions received after the close of the public comment period on a permit application relating to the same mine plan area shall not prevent the director from issuing a decision on that permit application. The director may return any petition received thereafter to the petitioner with a statement why the director cannot consider the petition. For the purposes of this section, close of the public comment period shall mean at the close of any informal conference held under 19.8.11.1103 NMAC, or, if no conference is requested, at the close of the period for filing written comments and objections under 19.8.11.1101 and 1102 NMAC.

B. Public notice.

(1) Promptly after a petition is received, the director shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in a newspaper of general circulation in the county or counties in the area covered by the petition.

(2) Within three weeks after the determination that a petition is complete, the director shall circulate copies of the petition to, and request submissions of relevant information from other interested governmental agencies, the petitioner, intervenors, persons with an ownership interest of record in the property, other persons known to the director to have an interest in the property, and shall notify the general public, through the publication of a notice in the New Mexico state register, of the receipt of a petition to designate lands unsuitable for mining.

(3) Within three weeks after the determination that a petition is complete, the director shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in a newspaper of general circulation in the county or counties in the area covered by the petition.

C. Until three days before the director holds a hearing under 19.8.4.402 NMAC, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

D. Beginning immediately

after a complete petition is filed, the director shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the director. The director shall make the record available for public inspection free of charge, and copying at reasonable cost, during all normal business hours.

[11-29-97; 19.8.4.401 NMAC - Rn, 19 NMAC 8.2.4.401, 9-29-2000; A, 12-31-2007]

19.8.4.402 PROCEDURES: HEARING REQUIREMENTS:

A. Within 10 months after receipt of a complete petition, the director shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The director shall make a verbatim transcript of the hearing.

B. Notification requirements.

(1) The director shall give notice of the date, time, and location of the hearing to:

(a) local, state, and federal agencies which may have an interest in the decision on the petition;

(b) the petitioner and the intervenors; and

(c) any person with an ownership or other interest known to the director in the area covered by the petition.

(2) Notice of the hearing shall be sent by certified mail and postmarked not less than 30 days before the scheduled date of the hearing.

C. The director shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement in the newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations once a week for 2 consecutive weeks and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement must begin not more than 60 nor less than 30 days before the scheduled date of the public hearing.

D. The director may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

E. Prior to designating any land areas as unsuitable for surface coal mining operations, the director shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

F. In the event that all petitioners and intervenors stipulate agree-

ment prior to the hearing, the petition may be withdrawn from consideration.

[11-29-97; 19.8.4.402 NMAC - Rn, 19 NMAC 8.2.4.402, 9-29-2000; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.5 NMAC, Section 504, effective 12-31-2007.

19.8.5.504 PERMIT APPLICATION FILING DEADLINES:

A. Not later than two (2) months following approval of the state program by the secretary of the U.S. department of interior, each person who conducts or expects to conduct surface coal mining and reclamation operations after the expiration of eight (8) months from that approval shall file an application for a permit for these operations.

B. Permit renewals and revisions.

(1) An application for renewal of a permit shall be filed with the director at least 120 days before the expiration of the permit involved.

(2) Any application for revision of a permit shall be filed with the director before the date on which the permittee expects to revise surface coal mining or reclamation operations. After filing of such application, the director shall determine the time by which that application shall be approved or disapproved, based on the time required for review of the application and public participation in the process of review.

C. Any application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a permit shall be filed with the director not later than 30 days after that succession is approved by the director.

~~**D.** Any application for a permit to conduct surface coal mining and reclamation operations that does not meet the requirements of 19.8.5.501 or 502 NMAC shall be submitted to the director. Within 30 days after receipt of the application, the director shall establish the date and place of a public hearing on the permit application. The hearing shall be conducted in accordance with Subsection E of 19.8.11.1103 NMAC of these rules and regulations.~~

[11-29-97; 19.8.5.504 NMAC - Rn 19 NMAC 8.2.5.504, 9-29-2000; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.6 NMAC, Sections 601, 603, and 606, effective 12-31-2007.

19.8.6.601 GENERAL REQUIREMENTS: EXPLORATION OF LESS THAN 250 TONS:

A. Any person who intends to conduct coal exploration during which less than 250 tons of coal will be removed in the area to be explored shall, prior to conducting the exploration, file with the director a written notice of intention to explore.

B. The notice shall include:

(1) the name, address, and telephone number of the person seeking to explore;

(2) the name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities;

(3) a precise description and map at a scale of 1:24,000 or larger, of the exploration area;

(4) a statement of the period of intended exploration;

(5) a narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities.

(6) a description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities; and

(7) if the surface is owned by a person other than the person who intends to explore, a description of the basis upon which the person who will explore claims the right to enter such area for the purpose of conducting exploration and reclamation.

C. Any person who conducts coal exploration activities pursuant to this section which substantially disturbs the natural land surface shall comply with 19.8.19 NMAC.

D. The director shall, except as otherwise provided in 19.8.6.606 NMAC, place such notices on public file and make them available for public inspection and copying.

E. If the director does not act adversely on the notice of intent within 30 days the applicant may proceed with exploration.

F. A bond sufficient to assure that completion of reclamation of the area disturbed by the exploration activity

may be required by the director in an amount determined pursuant to ~~[19.8.15.1501.A]~~ 19.8.14.1404 NMAC. [11-29-97; 19.8.6.601 NMAC - Rn, 19 NMAC 8.2.6.601, 9-29-2000; A, 12-31-2007]

19.8.6.603 APPLICATIONS: APPROVAL OR DISAPPROVAL OF EXPLORATION OF MORE THAN 250 TONS:

A. The director shall act upon a completed application for approval within 45 days.

B. The director shall approve a complete application filed in accordance with this part, if he finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application:

(1) will be conducted in accordance with the act, 19.8.19 NMAC and these rules and regulations;

(2) will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 and the Wildlife Conservation Act, Sections 17-3-17 et. seq. NMSA 1978 and the laws relating to the ~~[production]~~ protection of New Mexico native plants including Sections 76-8-1 through 76-8-4 NMSA 1978 or result in the destruction of adverse modification of critical habitat of those species and will also comply with the Habitat Protection Act, Sections 17-6-1 et. seq. NMSA 1978;

(3) will not adversely affect any districts, sites, buildings, structures, or objects listed on the national register of historic places unless the proposed exploration has been approved by both the director and the agency with jurisdiction over such matters.

(4) With respect to exploration activities on any lands protected under 19.8.2.201 NMAC, will minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the director must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of 19.8.2.201 NMAC, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 19.8.2.201 NMAC, to comment on whether the finding is appropriate.

C. Terms of approval. Each approval issued by the director shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with the act, 19.8.19 NMAC and 19.8.1 through 19.8.35 NMAC.

D. The granting of written

approval to conduct exploration shall in no way be construed to ensure the issuance of a permit to conduct surface coal mining and reclamation operations under 19.8.5 NMAC.

[11-29-97; 19.8.6.603 NMAC - Rn, 19 NMAC 8.2.6.603, 9-29-2000; A, 1-15-2001; A, 12-31-2007]

19.8.6.606 PUBLIC AVAILABILITY OF INFORMATION:

A. Except as provided in Subsection B of 19.8.6.606 NMAC, all information submitted to the director under this part shall be made available for public inspection and copying at the director's office.

B. Confidential information.

(1) The director shall not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the director determines that the information is confidential.

(2) The director shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

(3) Information requested to be held as confidential under this section shall not be made publicly available until after notice and opportunity to be heard is afforded both persons seeking and opposing disclosure of the information.

[11-29-97; 19.8.6.606 NMAC - Rn, 19 NMAC 8.2.6.606, 9-29-2000; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.7 NMAC, Sections 701, 705, and 708, effective 12-31-2007.

19.8.7.701 IDENTIFICATION OF INTERESTS: An application shall contain the following information, except that the submission of a social security number is voluntary:

A. a statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

B. the name, address, telephone number and, as applicable, social security number and employer identification number of the:

- (1) applicant;
- (2) applicant's resident agent; and
- (3) person who will pay the abandoned mine land reclamation fee;

done mine land reclamation fee;

C. for each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in Subsection O of 19.8.1.107 NMAC of these rules, as applicable:

(1) the person's name, address, social security number and employer identification number;

(2) the person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(3) the title of the person's position, date position was assumed, and when submitted under Subsection D of 19.8.11.1113 NMAC, date of departure from the position;

(4) each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application; and

(5) the application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States;

D. for any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in Subsection O of 19.8.1.107 NMAC, the operation's:

(1) name, address, identifying numbers, including employer identification number, federal or state permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(2) ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

E. the name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined;

F. the name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area and the owner of record and residents of all dwellings and structures on and within one-half mile (2640 feet) of any part of the proposed per-

mit area;

G. the mine safety and health administration (MSHA) numbers for all mine-associated structures that require MSHA approval;

H. a statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application; if requested by the applicant, any information required by this section which is not on public file pursuant to state law shall be held in confidence by the director, as provided under Subsection B of 19.8.6.606 NMAC;

I. after an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under Subsections A through D of 19.8.7.701 NMAC;

J. the applicant shall submit the information required by this section and 19.8.7.702 NMAC in any format prescribed by the director, that is approved by OSM.

[11-29-97; 19.8.7.701 NMAC - Rn, 19 NMAC 8.2.7.701, 9-29-2000; A, 12-31-2007]

19.8.7.705 PERMIT TERM INFORMATION:

A. Timing and extent of operations.

(1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface coal mining operations and the anticipated number of acres of surface land to be affected for each phase of mining and over the total life of the permit.

(2) The horizontal and vertical extent of the proposed workings for each phase of the operation for the life of the permit shall be shown for underground mining.

B. If the applicant proposes to conduct the surface coal mining operations in excess of 5 years, the application shall contain the information needed for the showing required under Subsection A of 19.8.11.1111 NMAC.

[11-29-97; 19.8.7.705 NMAC - Rn, 19 NMAC 8.2.7.705, 9-29-2000; A, 12-31-2007]

19.8.7.708 IDENTIFICATION OF LOCATION OF PUBLIC OFFICE FOR FILING OF APPLICATION:

Each application shall identify, by name and address, the public office where the applicant will simultaneously file a copy of the application for public inspection under ~~[19.8.11.1108.D]~~ Subsection E of 19.8.11.1100 NMAC.

[11-29-97; 19.8.7.708 NMAC - Rn, 19 NMAC 8.2.7.708, 9-29-2000; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.8 NMAC, Sections 801, 803, 812, and 814, effective 12-31-2007.

19.8.8.801 GENERAL ENVIRONMENTAL RESOURCES INFORMATION: Each application shall describe and identify:

A. the size, sequence, and timing of the subareas of the lands subject to surface coal mining operations over the estimated life of those operations for which it is anticipated that individual permits for mining will be sought.

B. Cultural and historical resources.

(1) the nature of cultural and historic resources listed or eligible for listing on the national register of historic places and known archeological features within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, data of state and local archeological, historical, and cultural preservation agencies.

(2) The director may require the applicant to identify and evaluate important historic and archeological resources that may be listed or eligible for listing on the national register of historic places, through:

(a) collection of additional information;

(b) conduct of field investigations; or

(c) other appropriate analyses.

[11-29-97; 19.8.8.801 NMAC - Rn, 19 NMAC 8.2.8.801, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

19.8.8.803 GEOLOGY DESCRIPTION:

A. The description shall include a general statement of the geology within the proposed permit area accompanied by appropriate maps and cross-sections down to and including the first aquifer to be affected below the lowest coal seam to be mined.

B. Sampling requirements.

(1) Test borings or core samples from the proposed permit area shall be collected and analyzed down to and including the stratum immediately below the lowest coal seam to be mined to provide the following data in the description:

(a) location of subsurface water, if encountered;

(b) logs of drill holes showing the lithologic characteristics and thickness of each stratum and each coal seam;

(c) physical properties of each stratum within the overburden including compaction, erodibility, and if this material is to be used as topdressing, potential soil texture;

(d) for surface mining activities, chemical analyses of a composite sample of each stratum within the overburden and the stratum immediately below the lowest coal seam to be mined and for underground mining activities, chemical analyses of the stratum immediately above and below the coal seams to be mined to identify at a minimum, those horizons which contain potential acid-forming, toxic-forming, or alkalinity producing materials and a composite sample from each stratum shall be analyzed for the following parameters:

Aluminum (Al)	Cyanide (CN)	
Arsenic (As)	Fluoride	Silver (Ag)
Barium (Ba)	Iron (Fe)	Sulfate (SO ₄)
Boron (B)	Lead (Pb)	Uranium (U)
Cadmium (Cd)	Manganese (Mn)	Vanadium (V)
Chromium (Cr)	Mercury (Hg)	Zinc (Zn)
Cobalt (Co)	Molybdenum (Mo)	Radioactivity
Copper (Cu)	Nickel (Ni)	Radium Ra226
		Selenium (Se)
		Radium Ra228

(e) If this material is to be considered for use as topdressing, analyses for the parameters necessary for plant growth shall be performed, in addition to those listed above, and shall include at a minimum the following:

Calcium (Ca)	Sodium (Na)
Chloride	Carbonate (CO ₃)
Magnesium (Mg)	Bicarbonate (HCO ₃)
Phosphorous (P)	Nitrate (NO ₃)
Potassium (K)	Sodium Adsorption Ratio (Adjusted) (SAR)
pH	

(f) A demonstration of the suitability of topsoil substitutes or supplements in Subsection E of 19.8.20.2005 NMAC shall be based upon analysis of the thickness of soil horizons and/or geologic strata, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. Analyses of additional parameters or additional data may be required by the director.

(g) If the applicant can demonstrate that the analyses of any particular parameter is of little or no significance in the proposed permit area, then such parameter(s) may be waived upon approval of the director;

(h) analysis of the coal seam, including, but not limited to an analysis of the sulfur, pyrite, and marcasite content.

(i) The applicant shall submit a proposed sampling plan to the director for approval.

(2) If required by the director, test borings or core samplings shall be collected and analyzed to greater depths within the proposed permit area, or for areas outside the proposed permit area to provide for evaluation of the impact of the proposed operations on the hydrologic balance.

(3) An applicant may request that the requirements for a statement of the results of the test borings or core samplings be waived by the director. The waiver may be granted only if the director makes a written determination that the statement is unnecessary because other equivalent information is accessible to him in a satisfactory form.

[11-29-97; 19.8.8.803 NMAC - Rn, 19 NMAC 8.2.8.803, 9-29-2000; A, 12-31-2007]

19.8.8.812 MAPS: GENERAL REQUIREMENTS: The permit application shall include maps showing:

A. all boundaries of land and names of present owners of record of those lands, both surface and subsurface, included in the permit area and where available the present owners of record of lands contiguous to the permit area;

B. the boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface coal mining operations;

C. the boundaries of all areas proposed to be affected over the estimated total life of the proposed surface coal mining operations, with a description of size, sequence, and timing of the mining of sub-areas for which it is anticipated that additional permits will be sought;

D. the location of all ~~buildings on and within 1,000 feet~~ buildings and structures, and names of present owners of record and residents of those dwellings and structures, on and within one-half mile (2640 feet) of the proposed permit area, with identification of the current use of the buildings;

E. the location of surface and subsurface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to major electric transmission lines, pipelines, and agricultural drainage tile fields;

F. the location, vegetative type, and size of any proposed reference areas for determining the success of revegetation;

G. the locations of water supply intakes for current users of surface water flowing into, out of, and within the permit area and those surface waters which will receive discharges from affected areas in the proposed permit area;

H. each public road located in or within 100 feet of the proposed permit area;

I. the boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the national register of historic places and known archaeological sites within the permit or adjacent areas.

J. each cemetery, known grave site, or unmarked burial ground located in or within 100 feet of the proposed permit area;

K. any land within the proposed permit area and adjacent area which is within the boundaries of any units of the national system of trails of the wild scenic rivers system, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act; and

L. other relevant information required by the director. [11-29-97; 19.8.8.812 NMAC - Rn, 19 NMAC 8.2.8.812, 9-29-2000; A, 12-31-2007]

19.8.8.814 PRIME FARMLAND INVESTIGATION:

A. The applicant shall conduct a pre-application investigation of the proposed permit area to determine whether lands within the area may be prime farmland. The director in consultation with U.S. ~~soil~~ natural resources conservation service shall determine the nature and extent of the required reconnaissance investigation.

B. Land shall not be considered prime farmland where the applicant can demonstrate one of the following:

(1) the land has not been historically used as cropland;

(2) the slope of the land is 10 percent or greater;

(3) the land is not irrigated or naturally subirrigated, has no developed water supply that is dependable or of adequate quality, and the average annual precipitation is 14 inches or less;

(4) other factors exist, such as a

very rocky surface, or the land is frequently flooded during the growing season, more often than once in 2 years, and the flooding has reduced crop yields; or

(5) on the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. ~~soil~~ natural resources conservation service.

C. If the investigation establishes that the lands are not prime farmlands, the applicant shall submit with the permit application a request for a negative determination which shows that the land for which the negative determination is sought meets one of the criteria of Subsection B of 19.8.8.814 NMAC.

D. If the investigation indicates that lands within the proposed permit area may be ~~a~~ prime farmlands, the applicant shall contact the U.S. ~~soil~~ natural resources conservation service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause such a survey to be made.

(1) When a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 19.8.10.1004 NMAC for such designated land.

(2) When a soil survey for lands within the proposed permit area contains soil map units which have not been designated as prime farmland after review by the U.S. ~~soil~~ natural resources conservation service; the applicant shall submit a request for negative determination for non-designated land with the permit application establishing compliance with Subsection B of 19.8.8.814 NMAC.

[11-29-97; 19.8.8.814 NMAC - Rn, 19 NMAC 8.2.8.814, 9-29-2000; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.9 NMAC, Sections 901, 903, 906, 907, 909, 913, 916 and 917, effective 12-31-2007.

19.8.9.901 OPERATION PLAN: EXISTING STRUCTURES:

A. Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(1) location;

(2) plans of the structure which describe its current condition;

(3) approximate dates on which construction of the existing structure was begun and completed; and

(4) a showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 19.8.19 through 19.8.28 NMAC.

B. Each application shall contain a compliance plan for each existing structure which does not meet the performance standards of 19.8.19 through 19.8.28 NMAC and which is proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(1) design specifications for the modification or reconstruction of the structure to meet the design and performance standards of ~~[Parts 19 through 28]~~ 19.8.19 through 19.8.28 NMAC;

(2) a construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(3) provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of ~~[Parts 19 through 28]~~ 19.8.19 through 19.8.28 NMAC are met; and

(4) a showing that the risk of harm to the environment or to public health or safety is not significant during the period of reconstruction or modification.

[11-29-97; 19.8.9.901 NMAC - Rn, 19 NMAC 8.2.9.901, 9-29-2000; A, 12-31-2007]

19.8.9.903 OPERATION PLAN: MAPS AND PLANS: Each application shall contain maps and plans of the proposed permit area and adjacent areas as follows:

A. the maps and plans shall show the underground mining activities to be conducted, if any, the lands proposed to be affected throughout the surface coal mining operations and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under 19.8.8.812 and 813 NMAC;

B. the following shall be shown for the proposed permit area unless specifically required for the adjacent area by the director:

(1) buildings, utility corridors and facilities to be used;

(2) the area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

(3) each area of land for which a performance bond or other equivalent guar-

anteed will be posted under ~~[Parts 14 and 15 of Title 19 Chapter 8]~~ 19.8.14 NMAC;

(4) each coal storage, cleaning and loading area;

(5) each topdressing, spoil, coal waste, and non-coal waste storage area;

(6) each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;

(7) each air pollution collection and control facility, if any;

(8) each source of waste and each waste disposal facility relating to coal processing or pollution control;

(9) each facility to be used to protect and enhance fish and wildlife and related environmental values;

(10) each explosive storage and handling facility;

(11) location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with 19.8.9.909 NMAC, and fill area for the disposal of excess spoil in accordance with 19.8.9.914 NMAC;

(12) each profile, at cross-sections specified by the director of the anticipated final surface configuration to be achieved for the affected areas;

(13) location of each water monitoring point;

(14) location of each facility that will remain on the proposed permit area as a permanent feature after the completion of surface coal mining operations; and

(15) in addition to the above, underground mines shall indicate the location of each subsidence monitoring point.

C. Maps, plans, and cross-sections required under Paragraphs (4), (5), (6), (10) and (11) of Subsection B of 19.8.9.903 NMAC shall be prepared by, or under the direction of and certified by a qualified professional geologist or registered professional engineer, with assistance from experts in related fields such as land surveying, reclamation or mined land rehabilitation, except that:

(1) maps, plans and cross-sections for sedimentation ponds may only be prepared by a qualified registered professional engineer; and

(2) spoil disposal facilities, maps, plans, and cross-sections may only be prepared by a qualified registered professional engineer.

[11-29-97; 19.8.9.903 NMAC - Rn, 19 NMAC 8.2.9.903, 9-29-2000; A, 12-31-2007]

19.8.9.906 RECLAMATION PLAN: GENERAL REQUIREMENTS:

A. Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with

Sections 69-25A-19 and 69-25A-20 NMSA 1978 of the act and 19.8.1 through 19.8.35 NMAC. The plan shall include, at a minimum, all information required under 19.8.9.906 through 918 NMAC.

B. Each plan shall contain the following information for the proposed permit area:

(1) a detailed timetable for the completion of each major step in the reclamation plan;

(2) a detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 19.8.14 ~~[and 19.8.15]~~ NMAC;

(3) a plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 19.8.20.2054 through 2059 NMAC;

(4) a plan for removal, storage, protection and redistribution of topsoil, subsoil, and other material suitable for topsoil to meet the requirements of 19.8.20.2004 through 2008 NMAC;

(5) a plan for revegetation as required in 19.8.20.2060 through 2066 NMAC, including, but not limited to, descriptions of the:

(a) schedule of revegetation;

(b) species and amounts per acre of seeds and seedlings to be used;

(c) methods to be used in planting and seeding;

(d) mulching techniques;

(e) irrigation, if appropriate, and pest and disease control measures, if any;

(f) measures proposed to be used to determine the success of revegetation, as required in 19.8.20.2065 NMAC, and

(g) a soil testing plan for evaluation of the results of topdressing handling and reclamation procedures related to revegetation.

(6) a description of measures to be used to maximize the use and conservation of the coal resource as required in 19.8.20.2027 NMAC;

(7) a description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 19.8.20.2046 and 2056 NMAC, and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(8) a description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 19.8.20.2001 through 2003 NMAC; and

(9) a description of steps to be

taken to comply with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and all applicable air and water quality laws and regulations and health and safety standards.

[11-29-97; 19.8.9.906 NMAC - Rn, 19 NMAC 8.2.9.906, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

19.8.9.907 RECLAMATION PLAN: PROTECTION OF HYDROLOGIC BALANCE:

A. Each plan shall contain a detailed description, with appropriate maps and cross section drawings, of the measures to be taken during and after the proposed surface coal mining operations, in accordance with 19.8.20 NMAC, to ensure the protection of:

(1) the quality of surface and ground water systems, both within the proposed permit and adjacent areas, from the adverse effects of the proposed surface coal mining operations;

(2) the rights of present users of surface and ground water;

(3) the quantity of surface and ground water both within the proposed permit area and adjacent area from adverse effects of the proposed surface coal mining operations, or to provide alternative sources of water in accordance with 19.8.8.806 and 19.8.20.2022 NMAC, where the protection of quantity cannot be ensured; and

(4) water quality by locating openings for underground mines in accordance with 19.8.20.2026 NMAC.

B. The description shall include:

(1) a plan for the control, in accordance with ~~[Part 20]~~ 19.8.20 NMAC, of surface and ground water drainage into, through and out of the proposed permit area;

(2) a plan for the treatment, where required under 19.8.19 through 19.8.28 NMAC and 19.8 NMAC, of surface and ground water drainage from the area to be disturbed by the proposed operations, and proposed quantitative limits on pollutants in discharges subject to 19.8.20.2010 NMAC according to the more stringent of the following:

(a) 19.8.19 through 19.8.28 NMAC and 19.8 NMAC;

(b) other applicable state and federal laws;

(3) for surface mining activities, a plan for the restoration of the approximate recharge capacity of the permit and adjacent areas in accordance with 19.8.20.2019 NMAC; and

(4) a plan for the collection, recording, and reporting of ground and surface water quality and quantity data, according to 19.8.20.2020 NMAC and

based on the determination required under Subsection C of 19.8.9.907 NMAC and the analysis of all baseline hydrologic, geologic and other information in the permit application; the plan shall provide for the monitoring of parameters that relate to the suitability of surface and ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in Subsection A of 19.8.9.907 NMAC; it shall identify the quantity and quality parameters to be monitored, sampling frequency, and site locations; it shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance;

(a) ground-water monitoring plan; at a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, total manganese, and water levels shall be monitored and data submitted to the director every 3 months for each monitoring location; the director may require additional monitoring when necessary;

(b) surface water monitoring plan; at all monitoring locations in the surface-water bodies such as streams, lakes, and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations the total dissolved solids or specific conductance corrected to 25 degrees C, total suspended solids, pH, total iron, total manganese, and flow shall be monitored; the monitoring reports shall be submitted to the director every 3 months; the director may require additional monitoring when necessary.

C. The description shall include a determination of the probable hydrologic consequences of the proposed surface coal mining operations on the cumulative impact area and shall address all proposed mining activities associated with the permit area for which a permit is sought, not just those expected to occur during the term of the permit. This determination shall include findings on:

(1) whether adverse impacts may occur to the hydrologic balance;

(2) whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or ground-water supplies;

(3) whether the proposed operation may proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purpose, and;

(4) what impact the proposed operation will have on:

(a) sediment yield from the disturbed area;

(b) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(c) flooding or streamflow alteration;

(d) ground-water and surface-water availability; and

(e) other characteristics as required by the director;

(5) a plan that specifically addresses any potential adverse hydrologic consequences identified under Subsection C of 19.8.9.907 NMAC and shall include preventive and remedial measures to be taken during mining and reclamation operations through bond release to minimize disturbance to the hydrologic balance within the cumulative impact area.

D. All water-quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the 15th edition of "standard methods for the examination of water and wastewater," which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of this section shall be conducted according to either methodology listed above when feasible.

E. Each plan for underground mining shall contain a detailed description, with appropriate drawings, of permanent entry seals and down-slope barriers designed to ensure stability under anticipated hydraulic heads developed while promoting mine inundation after mine closure for the proposed permit areas. [11-29-97; 19.8.9.907 NMAC - Rn, 19 NMAC 8.2.9.907, 9-29-2000; A, 12-31-2007]

19.8.9.909 RECLAMATION PLAN: PONDS, IMPOUNDMENTS, BANKS, DAMS, AND EMBANKMENTS:

A. General. Each application shall include a general plan for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall:

(a) be prepared by, or under the direction of, and certified by a registered professional engineer, with assistance from experts in related fields such as land surveying, reclamation or mined land rehabilitation;

(b) contain a description, map, and cross section of the structure and its location;

(c) contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

(d) contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

(e) contain a certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the director; the director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Each detailed design plan for a structure that meets the U.S. ~~soil~~ natural resources conservation service class B or C criteria for dams in [SCS] NRCS technical release No. 60 (210-VI-TR60, Oct. 1985), "earth dams and reservoirs", or meets or exceeds the size or other criteria of the mine safety and health administration, 30 CFR 77.216(a) shall:

(a) be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, reclamation or mined land rehabilitation;

(b) include any geotechnical investigation, design, and construction requirements for the structure;

(c) describe the operation and maintenance requirements for each structure; and

(d) describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for a structure that does not equal or exceed the size or other criteria in Paragraph (2) of Subsection A of 19.8.9.909 NMAC shall:

(a) be prepared by, or under the direction of, and certified by a qualified registered professional engineer or registered land surveyor except that all coal processing waste dams and embankments covered by 19.8.20.2047 through 2049 NMAC shall be certified by qualified registered professional engineer;

(b) include any design and construction requirements for the structure, including any required geotechnical information;

(c) describe the operation and maintenance requirements for each structure; and

(d) describe the timetable and plans to remove each structure, if appropriate.

B. Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 19.8.20.2014 NMAC. Any sedimentation pond or earthen structure which will remain on the pro-

posed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 19.8.20.2017 NMAC. Each plan shall, at a minimum, comply with the requirements of the mine safety and health administration, 30 CFR 77.216-1 and 77.216-2, and the state engineer and shall be submitted to the director as part of the permit application.

C. For impoundments not included in Paragraph (2) of Subsection A of 19.8.9.909 NMAC, the director may establish through the state program approval process, engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in Paragraph (3) of Subsection E of 19.8.20.2017 NMAC.

D. Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 19.8.20.2039 through 2042 NMAC.

E. Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 19.8.20.2047 through 2049 NMAC. Each plan shall be submitted to the director as a part of the permit application, and shall comply with the requirements of the mine safety and health administration, 30 CFR 77.216-1 and 77.216-2 and the state engineer and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) the number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions;

(2) the character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered;

(3) all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan;

(4) consideration shall be given to the possibility of mudflows, rock debris falls, or other landslides into the dam, embankment, or impounded material;

(5) if the structure meets the class

B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR Sec. 77.216(a), each plan under Subsections B, C and E of 19.8.9.909 NMAC shall include a stability analysis of the structure; the stability analysis shall be performed by a registered professional engineer and shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions; the plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

[11-29-97; A, 12-15-99; 19.8.9.909 NMAC - Rn, 19 NMAC 8.2.9.909, 9-29-2000; A, 12-31-2007]

19.8.9.913 RELOCATION OR USE OF PUBLIC ROADS:

Each application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under ~~[19.8.2.202-C]~~ Subsection D of 19.8.2.202 NMAC, the applicant seeks to have the director approve:

A. conducting the proposed surface coal mining operations within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

B. relocating a public road.

[11-29-97; 19.8.9.913 NMAC - Rn, 19 NMAC 8.2.9.913, 9-29-2000; A, 12-31-2007]

19.8.9.916 TRANSPORTATION FACILITIES: ~~[(780.37 and 784.24)]~~

Each application for a permit to conduct surface coal mining and reclamation operations shall contain plans and drawings for each road, conveyor, or rail system to be constructed, used or maintained within the proposed permit area. Plans and drawings shall include a map, appropriate cross sections, and the following:

A. specifications for road widths, road gradients, road surfaces, road cuts, fill embankments, culverts, bridges, drainage ditches, drainage structures and low-water crossings;

B. a description of measures to be taken to obtain approval of the director for alteration or relocation of a natural drainage way under Paragraph (1) of Subsection E of 19.8.20.2076 or Paragraph (5) of Subsection C of 19.8.20.2077 NMAC;

C. drawings and specifications for roads proposed to be located in channels of intermittent or perennial streams; this includes each ford or low water crossing of intermittent and perennial streams;

D. plans and schedules for the removal and reclamation of each road not proposed for retention as part of the post-mining land use;

E. plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a registered professional engineer or a qualified registered professional land surveyor, experienced in the design and construction of roads, as meeting all program requirements and current, prudent engineering practices.

[11-29-97; A, 12-15-99; 19.8.9.916 NMAC - Rn, 19 NMAC 8.2.9.916, 8/31/2000; A, 12-31-2007]

19.8.9.917 RETURN OF COAL PROCESSING WASTE TO ABANDONED UNDERGROUND WORKINGS: ~~[(784.25)]~~

A. Each plan shall describe the design, operation and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the director and the mine safety and health administration under 19.8.20.2045 NMAC.

B. Each plan shall describe the source and quality of waste to be stored, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

C. The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retention of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

D. The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

E. The requirements of Subsections A, B, C and D of 19.8.9.917 NMAC shall also apply to pneumatic backfilling operations, except where the operations are exempted by the director from requirements specifying hydrologic monitoring.

[11-29-97; 19.8.9.917 NMAC - Rn, 19 NMAC 8.2.9.917, 9-29-2000; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.10 NMAC, Sections 1000, 1001, 1002, 1003, 1004, 1005, and 1006, effective 12-31-2007.

19.8.10.1000 EXPERIMENTAL PRACTICES MINING:

A. Each person who desires to conduct an experimental practice shall submit a permit application for the approval of the director and the director of the office of surface mining. The permit application shall contain appropriate descriptions, maps, plans and data which show:

(1) the nature of the experimental practice;

(2) how use of the experimental practice:

(a) encourages advances in mining and reclamation technology, or

(b) allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities), on an experimental basis, when the results are not otherwise attainable under the act and 19.8 NMAC;

(3) that the mining and reclamation operations proposed for using an experimental practice are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice;

(4) that the experimental practice:

(a) is potentially more or at least as environmentally protective, during and after the proposed mining and reclamation operations, as those required under 19.8.19 through 19.8.28 NMAC and 19.8 NMAC; and

(b) will not reduce the protection afforded public health and safety below that provided by the requirements of 19.8.19 through 19.8.28 NMAC and 19.8 NMAC;

(5) that the applicant will conduct special monitoring with respect to the experimental practice during and after the operations involved; the monitoring program shall:

(a) insure the collection and analysis of sufficient and reliable data to enable the director and the regional director of the office of surface mining to make adequate comparisons with other surface coal mining and reclamation operations employing similar experimental practices; and

(b) include requirements designed to identify, as soon as possible, potential risks to the environment and public health and safety from the use of the experimental practice.

B. Each application shall

set forth the environmental protection performance standards of 19.8.19 through 19.8.28 NMAC which will be implemented in the event the objective of the experimental practice is a failure.

C. All experimental practices for which variances are sought shall comply with the public notice requirements of 19.8.11.1100 NMAC.

D. No permit authorizing an experimental practice shall be issued, unless the director first finds, in writing, upon the basis of both a complete application filed in accordance with the requirements of this section and the comments of the director of the office of surface mining that:

(1) the experimental practice meets all of the requirements of Paragraphs (1) through (5) of Subsection A of 19.8.10.1000 NMAC;

(2) the experimental practice is based on a clearly defined set of objectives which can reasonably be expected to be achieved; and

(3) the experimental practice has been specifically approved, in writing by the director of the office of surface mining;

(4) the permit contains conditions which specifically:

(a) limit the experimental practice authorized to that granted by the director and the director of the office of surface mining;

(b) impose enforceable alternative environmental protection requirements; and

(c) require the person to conduct the periodic monitoring, recording and reporting program set forth in the application, with such additional requirements as the director or the director of the office of surface mining may require.

E. Experimental practices granting variances from the special environmental protection performance standards of Section 69-25A-19 and 69-25A-20 NMSA 1978 of the act applicable to prime farmlands shall be approved only after consultation with U.S. department of agriculture ~~and~~ natural resources conservation service.

F. Each permit which authorizes the use of an experimental practice shall be reviewed in its entirety by the director at a frequency set forth in the approved permit, but no less frequently than every 2 1/2 years. After review, the director shall, with consent of the director of the office of surface mining, require by order, supported by written findings, any reasonable revision or modification of the permit provisions necessary to ensure that the operations involved are conducted to protect fully the environment and public health and safety. Copies of the decision of the direc-

tor shall be sent to the permittee and shall be subject to the provisions for administrative and judicial review of 19.8.12 NMAC.

G. Revisions or modifications to an experimental practice shall be processed in accordance with the requirements of 19.8.13.1301 NMAC and approved by the director. Any revisions which propose significant departures in the experimental practice shall, at a minimum, be subject to the requirements of 19.8.11 and 19.8.12 NMAC and to the concurrence by the director of the office of surface mining. Revisions that do not propose significant departures in the experimental practice shall not require concurrence by the director of the office of surface mining.

[11-29-97; 19.8.10.1000 NMAC - Rn, 19 NMAC 8.2.10.1000, 9-29-2000; A, 12-31-2007]

19.8.10.1001 MOUNTAINTOP REMOVAL MINING:

A. Mountaintop removal mining means surface mining activities, where the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill except as provided for in ~~[19.8.25.2500.A(6)]~~ Subsection F of 19.8.25.2500 NMAC, by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of this section.

B. The director may issue a permit for mountaintop removal mining, without regard to the requirements of 19.8.20.2054 through 2058 NMAC, to restore the lands disturbed by such mining to their approximate original contour, if he first finds, in writing, on the basis of a complete application, that the following requirements are met:

(1) the proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use and, if:

(a) after consultation with the appropriate land-use planning agencies, if any, the proposed land use is deemed by the director to constitute an equal or better economic or public use of the affected land compared with the pre-mining use;

(b) the applicant demonstrates compliance with the requirements for acceptable alternative postmining land uses of 19.8.20.~~[2073]~~ 2075 NMAC;

(c) the proposed use would be compatible with adjacent land uses and existing state and local land use plans and programs; and

(d) the director has provided, in

writing, an opportunity of not more than 60 days to review and comment on such proposed use to the governing body of general purpose government in whose jurisdiction the land is located and any state or federal agency which the director, in his discretion, determines to have an interest in the proposed use;

(2) the applicant has demonstrated that, in place of restoration of the land to be affected to the approximate original contour under 19.8.20.2054 through 2058 NMAC, the operation will be conducted in compliance with the requirements of 19.8.25 NMAC;

(3) the requirements of 19.8.25 NMAC are made a specific condition of the permit;

(4) all other requirements of the act and 19.8 NMAC are met by the proposed operations.

C. Permit reviews.

(1) Any permits incorporating a variance issued under this section shall be reviewed by the director to evaluate the progress and development of mining activities to establish that the operator is proceeding in accordance with the terms of the variance:

(a) within the sixth month preceding the third year from the date of its issuance;

(b) before each permit renewal; and

(c) not later than the middle of each permit term.

(2) Any review required under Paragraph (1) of Subsection C of 19.8.10.1001 NMAC need not be held if the permittee has demonstrated and the director finds, in writing, within three months before the scheduled review, that all operations under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of the act and 19.8 NMAC.

(3) The terms and conditions of a permit for mountaintop removal mining may be modified at any time by the director, if he determines that more stringent measures are necessary to insure that the operation involved is conducted in compliance with the requirements of the act and 19.8 NMAC.

[11-29-97; 19.8.10.1001 NMAC - Rn, 19 NMAC 8.2.10.1001, 9-29-2000; A, 12-31-2007]

19.8.10.1002 STEEP SLOPE MINING:

A. This section applies to any person who conducts or intends to conduct steep slope surface coal mining and reclamation operations, except:

(1) where an operator proposes to conduct surface coal mining and reclamation operations on flat or gently rolling ter-

rain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds;

(2) where a person obtains a permit under the provisions of 19.8.10.1001 NMAC; or

(3) to the extent that a person obtains a permit incorporating a variance under 19.8.10.1003 NMAC.

B. Any application for a permit for surface coal mining and reclamation operations covered by this section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of ~~[19.8.20.2601]~~ 19.8.26.2601 NMAC.

C. No permit shall be issued for any operations covered by this section, unless the director finds, in writing, that in addition to meeting all other requirements of 19.8.5 through 19.8.13 NMAC, the operation will be conducted in accordance with the requirements of ~~[19.8.20.2601]~~ 19.8.26.2601 NMAC. [11-29-97; 19.8.10.1002 NMAC - Rn, 19 NMAC 8.2.10.1002, 9-29-2000; A, 12-31-2007]

19.8.10.1003 PERMIT INCORPORATING VARIANCES FROM APPROXIMATE ORIGINAL CONTOUR RESTORATION REQUIREMENTS FOR STEEP SLOPE MINING:

A. The director may issue a permit for surface mining activities incorporating a variance from the requirement for restoration of the affected lands to their approximate original contour only if he first finds, in writing, on the basis of a complete application, that all of the following requirements are met:

(1) the applicant has demonstrated that the purpose of the variance is to make the lands to be affected within the permit area suitable for an industrial, commercial, residential, or public use postmining land use;

(2) the proposed use, after consultation with the appropriate land-use planning agencies, if any, constitutes an equal or better economic or public use;

(3) the applicant has demonstrated compliance with the requirements for acceptable alternative postmining land uses of ~~[19.8.20.2073]~~ Subsection C of 19.8.20.2075 NMAC;

(4) the applicant has demonstrated that the watershed of lands within the proposed permit area and adjacent areas will be improved by the operations; the watershed will only be deemed improved if:

(a) there will be a reduction in the amount of total suspended solids or other

pollutants discharged to ground or surface waters from the permit area as compared to such discharges prior to mining, so as to improve public or private uses of the ecology or such waters; or, there will be reduced flood hazards within the watershed containing the permit area by reduction of the peak flow discharges from precipitation events or thaws;

(b) the total volume of flows from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water; and

(c) the ~~[environmental improvement division]~~ environment department approves the plan.

(5) the applicant has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted; the request shall be made separately from any surface owner consent given for the operations under 19.8.7.703 NMAC and shall show an understanding that the variance could not be granted without the surface owner's request.

(6) the applicant has demonstrated that the proposed operations will be conducted in compliance with the requirements of 19.8.26.2602 NMAC;

(7) all other requirements of the act and 19.8 NMAC will be met by the proposed operations.

B. If a variance is granted under this section:

(1) the requirements of 19.8.26.2602 NMAC shall be made a specific condition of the permit;

(2) the permit shall be specifically marked as containing a variance from approximate original contour.

C. Any permits incorporating a variance issued under this section shall be reviewed by the director to evaluate the progress and development of the mining activities, to establish that the operator is proceeding in accordance with the terms of the variance:

(1) within the six month period preceding the third year from the date of its issuance;

(2) before each permit renewal; and

(3) not later than the middle of each subsequent permit term.

D. If the permittee demonstrates to the director at any of the times specified in Subsection C of 19.8.10.1003 NMAC that the operations involved have been and continue to be conducted in compliance with the terms and conditions of the permit, the requirements of the act and 19.8 NMAC, the review required at that time need not be held.

E. The terms and conditions of a permit incorporating a variance under this section may be modified at any time by the director, if he determines that more stringent measures are necessary to insure that the operations involved are conducted in compliance with the requirements of the act and 19.8 NMAC.

F. The director may only grant variances in accordance with this section if it has promulgated specific regulations to govern the granting of variances in accordance with the provisions of this section and additional and more stringent requirements as he deems to be necessary. [11-29-97; 19.8.10.1003 NMAC - Rn, 19 NMAC 8.2.10.1003, 9-29-2000; A, 12-31-2007]

19.8.10.1004 PRIME FARMLANDS:

A. Application contents for prime farmlands. If land within the proposed permit area is identified as prime farmland under 19.8.8.814 NMAC, the applicant shall submit a plan for the mining and restoration of the land. Each plan shall contain, at a minimum:

(1) a soil survey of at least order 2 of the permit area according to the standards of the national cooperative soil survey and in accordance with the procedures set forth in U.S. department of agriculture handbooks 436 (soil taxonomy, 1975) and 18 (soil survey manual, 1951); the soil survey shall include a description of soil mapping units and a representative soil profile as determined by the U.S. ~~soil~~ natural resources conservation service, including, but not limited to, soil-horizon depths, pH, and the range of soil densities for each prime farmland soil unit within the permit area; other representative soil profile descriptions from the locality, prepared according to the standards of the national cooperative soil survey, may be used if their use is approved by the state conservationist, U.S. ~~soil~~ natural resources conservation service; the director may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil-reconstruction standards of 19.8.24 NMAC;

(2) the location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution;

(3) if applicable, documentation, such as agricultural school studies or other scientific data from comparable areas, that supports the use of other suitable material, instead of the A, B, or C soil horizon, to obtain on the restored area equivalent or

higher levels of yield as non-mined prime farmlands in the surrounding area under equivalent levels of management;

(4) plans for seeding or cropping the final graded disturbed land and the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime, during the period from completion of regrading until release of the performance bond or equivalent guarantee under 19.8.14 ~~and 19.8.15~~ NMAC; proper adjustments for seasons must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions;

(5) available agricultural school studies or other scientific data for areas with comparable soils, climate, and management (including water management) that demonstrate that the proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining;

(6) current estimated yields under a proper level of management for each soil map unit from the USDA for each crop to be used in determining success of revegetation (~~19.8.20.2404~~ 19.8.24.2404 NMAC);

(7) in all cases, soil productivity for prime farmlands shall be returned to equivalent levels of yield as non-mined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Paragraph (1) of Subsection A of 19.8.10.1004 NMAC.

B. Consultation with secretary of agriculture. Before any permit is issued for areas that include prime farmlands, the director shall consult with the U.S. secretary of agriculture. The U.S. secretary of agriculture shall provide for review and comment of the proposed method of soil reconstruction in the plan submitted under Subsection A of 19.8.10.1004 NMAC. If the U.S. secretary of agriculture considers those methods to be inadequate, he or she shall suggest revisions resulting in more complete and adequate reconstruction. The U.S. secretary of agriculture has assigned his responsibilities under this section to the administrator of the U. S. ~~soil~~ natural resources conservation service. The ~~soil~~ natural resources conservation service shall carry out consultation and review through the state conservationist located in each state.

C. Issuance of permit. A permit for the mining and reclamation of prime farmland may be granted by the director, if he first finds, in writing, upon the basis of a complete application, that:

(1) the approved proposed post-mining land use of these prime farmlands

will be cropland;

(2) the permit incorporates as specific conditions the contents of the plan submitted under Subsection A of 19.8.10.1004 NMAC, after consideration of any revisions to that plan suggested by the U.S. secretary of agriculture under Subsection B of 19.8.10.1004 NMAC;

(3) the applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management; and

(4) the proposed operations will be conducted in compliance with the requirements of 19.8.24 NMAC and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the act and 19.8 NMAC.

[11-29-97; 19.8.10.1004 NMAC - Rn, 19 NMAC 8.2.10.1004, 9-29-2000; A, 12-31-2007]

19.8.10.1005 VARIANCES FOR DELAY IN CONTEMPORANEOUS RECLAMATION REQUIRED IN COMBINED SURFACE AND UNDERGROUND MINING OPERATIONS:

A. Application contents for variances. Any person who desires to obtain a variance under this section shall file with the director complete applications for both the surface mining activities and underground mining activities which are to be combined. The mining and reclamation operation plans for these permits shall contain appropriate narratives, maps and plans, which:

(1) show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of coal;

(2) show how multiple future disturbances of surface lands or waters will be avoided;

(3) identify the specific surface areas for which a variance is sought and the particular sections of the act and 19.8 NMAC from which a variance is being sought;

(4) show how the activities will comply with 19.8.21 NMAC and other applicable requirements of the act and 19.8 NMAC;

(5) show why the variance sought is necessary for the implementation of the proposed underground mining activities;

(6) provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and

(7) show how off-site storage of spoil will be conducted to comply with

19.8.20.2034 through 2037 NMAC, the requirements of the act and 19.8 NMAC.

B. Issuance of permit. A permit incorporating a variance under this section may be issued by the director, if he first finds, in writing, upon the basis of a complete application filed in accordance with this section, that:

(1) the applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining activities;

(2) the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;

(3) the applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of the act and 19.8 NMAC and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;

(4) the surface area of surface mining activities proposed for the variance have been shown by the applicant to be necessary for implementing the proposed underground mining activities;

(5) no substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation otherwise required by Paragraph (16) of Subsection B of Section 69-25A-19 NMSA 1978 of the act, 19.8.20 NMAC and 19.8 NMAC;

(6) the operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of 19.8.21 NMAC and 19.8 NMAC;

(7) provisions for off-site storage of spoil will comply with the requirements of Paragraph (22) of Subsection B of Section 69-25A-19 NMSA 1978 of the act, 19.8.20.2034 through 2037 NMAC and 19.8 NMAC;

(8) liability under the performance bond required to be filed by the applicant with the director pursuant to 19.8.14 ~~and 19.8.15~~ NMAC, the act and 19.8 NMAC shall be for the duration of the underground mining activities and until all requirements of 19.8.14 ~~and 19.8.15~~ NMAC and the act and 19.8 NMAC have been complied with; and

(9) the permit for the surface mining activities contains specific conditions:

(a) delineating the particular surface areas for which a variance is authorized;

(b) identifying the particular requirements of 19.8.21 NMAC, the act and 19.8 NMAC which are to be complied with, in lieu of the otherwise applicable provisions of Subsection B of Section 69-25A-19

NMSA 1978 of the act, 19.8.20 NMAC and 19.8 NMAC; and

(c) providing a detailed schedule for compliance with the particular requirements of 19.8.21 NMAC, the act and 19.8 NMAC identified under Subparagraph (b) of Paragraph (9) of Subsection B of 19.8.10.1005 NMAC.

C. Review of permits containing variances. Variances granted under permits issued under this section shall be reviewed by the director no later than 3 years from the dates of issuance of the permit and any permit renewals.

[11-29-97; 19.8.10.1005 NMAC - Rn, 19 NMAC 8.2.10.1005, 9-29-2000; A, 12-31-2007]

19.8.10.1006 SURFACE COAL MINING AND RECLAMATION OPERATIONS ON AREAS OR ADJACENT TO AREAS INCLUDING ALLUVIAL VALLEY FLOORS:

A. Alluvial valley floor determination.

(1) Before applying for a permit to conduct, or before conducting surface coal mining and reclamation operations within a valley holding a stream or in a location where the adjacent area includes any stream, the applicant shall either affirmatively demonstrate, based on available data, the presence of an alluvial valley floor, or submit to the director the results of a field investigation of the proposed permit area and adjacent area. The field investigations shall include sufficiently detailed geologic, hydrologic, land use, soils and vegetation studies on areas required to be investigated by the director, after consultation with the applicant, to enable the director to make an evaluation regarding the existence of the probable alluvial valley floor in the proposed permit area or adjacent area and to determine which areas, if any, require more detailed study in order to allow the director to make a final determination regarding the existence of an alluvial valley floor. Studies performed during the investigation by the applicant or subsequent studies as required of the applicant by the director shall include an appropriate combination, adapted to site-specific conditions, of:

(a) mapping of unconsolidated stream-laid deposits holding streams including, but not limited to, geologic maps of unconsolidated deposits, and stream-laid deposits, maps of streams, delineation of surface watersheds and directions of shallow ground water flows through and into the unconsolidated deposits, topography showing local and regional terrace levels, and topography of terraces, flood plains and channels showing surface drainage patterns;

(b) mapping of all lands included in the area in accordance with this paragraph and subject to agricultural activities,

showing the area in which different types of agricultural lands, such as flood irrigated lands, pasture lands and undeveloped rangelands exist, and accompanied by measurements of vegetation in terms of productivity and type;

(c) mapping of all lands that are currently or were historically flood irrigated, showing the location of each diversion structure, ditch, dam and related reservoir, irrigated land, and topography of those lands;

(d) documentation that areas identified in this paragraph are, or are not, subirrigated, based on ground water monitoring data, representative water quality, soil moisture measurements, and measurements of rooting depth, soil mottling, and water requirements of vegetation;

(e) documentation, based on representative sampling, that areas identified under this paragraph are, or are not, flood irrigable by a prudent person for sustained agricultural activities, based on stream-flow, water quality, water yield, soils measurements, and topographic characteristics;

(f) analysis of a series of aerial photographs, including color infrared imagery flown at a time of year to show any late summer and fall differences between upland and valley floor vegetative growth and of a scale adequate for reconnaissance identification of areas that may be alluvial valley floors.

(2) Based on the investigations conducted under Paragraph (1) of Subsection A of 19.8.10.1006 NMAC, the director shall make a determination of the extent of any alluvial valley floors within the study area and whether any stream in the study area may be excluded from further consideration as lying within an alluvial valley floor. The director shall determine that an alluvial valley floor exists if he finds that:

(a) unconsolidated stream-laid deposits holding streams are present; and

(b) there is sufficient water to support agricultural activities as evidenced by the existence of flood irrigation in the area in question or its recent historical use; the capability of an area to be flood irrigated by a prudent person for sustained agricultural activities, based on stream-water yield, soils, water quality, and topography; or sub-irrigation of the lands in question, derived from the ground water system of the valley floor.

(3) The requirements of this paragraph shall not apply to applicants who affirmatively establish, to the satisfaction of the director, that the proposed operation shall not affect any area suggested to be an alluvial valley floor which is located outside the permit area or that the proposed operation will not be adjacent to any area suggested to be an alluvial valley floor. For the

purposes of this paragraph, the director may rely on information submitted by the applicant which pertains only to the permit area if it establishes the existence of an effective buffer zone between the operation and the area in question so as to establish that such area will not be affected, notwithstanding its possible characterization as an alluvial valley floor.

B. Application contents for operations affecting designated alluvial valley floors.

(1) If land within the proposed permit area or adjacent area is identified as an alluvial valley floor and the proposed mining operation may affect an alluvial valley floor or waters that supply alluvial valley floors, the applicant shall submit a complete application for the proposed mining and reclamation operations, to be used by the director together with other relevant information, including the information required by Subsection A of 19.8.10.1006 NMAC, as a basis for approval or denial of the permit. The complete application shall include detailed surveys and baseline data required by the director for a determination of:

(a) the characteristics of the alluvial valley floor which are necessary to preserve the essential hydrologic functions during and after mining;

(b) the significance of the area to be affected to agricultural activities;

(c) whether the operation will cause, or presents an unacceptable risk of causing, material damage to the quantity or quality of surface or ground waters that supply the alluvial valley floor;

(d) the effectiveness of proposed reclamation with respect to requirements of the act and 19.8 NMAC; and

(e) specific environmental monitoring required to measure compliance with 19.8.23 NMAC during and after mining and reclamation operations.

(2) Information required under this paragraph shall include, but not be limited to:

(a) geologic data, including geologic structure, and surficial geologic maps, and geologic cross-sections;

(b) soils and vegetation data, including a detailed soil survey and chemical and physical analyses of soils, a vegetation map and narrative descriptions of quantitative and qualitative surveys, and land use data, including an evaluation of crop yields;

(c) surveys and data required under this paragraph for areas designated as alluvial valley floors because of their flood irrigation characteristics shall also include, at a minimum, surface hydrologic data, or extrapolation of such data, including streamflow, runoff, sediment yield, and water quality analyses describing seasonal

variations field geomorphic surveys and other geomorphic studies;

(d) surveys and data required under this paragraph for areas designated as alluvial valley floors because of their sub-irrigation characteristics, shall also include, at a minimum, geohydrologic data, or extrapolation of such data, including observation well establishment for purposes of water level measurements, ground water contour maps, testing to determine aquifer characteristics that affect waters supplying the alluvial valley floors, well and spring inventories, and water quality analyses describing seasonal variations and physical and chemical analysis of overburden to determine the effect of the proposed mining and reclamation operations on water quality and quantity;

(e) plans showing how the operation will avoid, during mining and reclamation, interruption, discontinuance or preclusion of farming on the alluvial valley floors unless the pre-mining land use has been undeveloped rangeland which is not significant to farming and will not materially damage the quantity or quality of water in surface and ground water systems that supply alluvial valley floors;

(f) maps showing farms that could be affected by the mining and, if any farm includes an alluvial valley floor, statements of the type and quantity of agricultural activity performed on the alluvial valley floor and its relationship to the farm's total agricultural activity including an economic analysis; and

(g) such other data as the director may require.

(3) The surveys required by this paragraph should identify those geologic, hydrologic, and biologic characteristics of the alluvial valley floor necessary to support the essential hydrologic functions of an alluvial valley floor. Characteristics which support the essential hydrologic functions and which must be evaluated in a complete application include, but are not limited to:

(a) characteristics supporting the function of collecting water which include, but are not limited to:

(i) the amount and rate of runoff and a water balance analysis, with respect to rainfall, evapotranspiration, infiltration and ground water recharge;

(ii) the relief, slope, and density of the network of drainage channels;

(iii) the infiltration, permeability, porosity and transmissivity of unconsolidated deposits of the valley floor that either constitute the aquifer associated with the stream or lie between the aquifer and the stream; and

(iv) other factors that affect the interchange of water between surface streams and ground water systems,

including the depth to ground water, the direction of ground water flow, the extent to which the stream and associated alluvial ground water aquifers provide recharge to, or are recharged by bedrock aquifers;

(b) characteristics supporting the function of storing water which include, but are not limited to:

(i) surface roughness, slope, and vegetation of the channel, flood plain, and low terraces that retard the flow of surface waters;

(ii) porosity, permeability, water-holding capacity, saturated thickness and volume of aquifers associated with streams, including alluvial aquifers, perched aquifers, and other water bearing zones found beneath valley floors; and

(iii) moisture held in soils or the plant growth medium within the alluvial valley floor, and the physical and chemical properties of the subsoil that provide for sustained vegetation growth or cover during extended periods of low precipitation;

(c) characteristics supporting the function of regulating the flow of water which include; but are not limited to:

(i) the geometry and physical character of the valley, expressed in terms of the longitudinal profile and slope of the valley and the channel, the sinuosity of the channel, the cross-section, slopes and proportions of the channels, flood plains and low terraces, the nature and stability of the stream banks and the vegetation established in the channels and along the stream banks and flood plains;

(ii) the nature of surface flows as shown by the frequency and duration of flows of representative magnitude including low flows and floods; and

(iii) the nature of interchange of water between streams, their associated alluvial aquifers and any bedrock aquifers as shown by the rate and amount of water supplied by the stream to associated alluvial and bedrock aquifers (i.e., recharge) and by the rates and amounts of water supplied by aquifers to the stream (i.e., base-flow);

(d) characteristics which make water available and which include, but are not limited to, the presence of land forms including flood plains and terraces suitable for agricultural activities.

C. Alluvial valley floor impact assessment and written findings.

(1) No permit or permit revision application for surface coal mining and reclamation operations shall be approved by the director, unless the application demonstrates and the director finds in writing, on the basis of information set forth in the application that:

(a) the proposed operations

would not interrupt, discontinue or preclude farming on an alluvial valley floor, unless the premining land use has been undeveloped rangeland which is not significant to farming on the alluvial valley floor, or unless the area of an affected alluvial valley floor is small and provides, or may provide, negligible support for production of one or more farms; provided, however, this paragraph does not apply to those lands which were identified in a reclamation plan approved by the New Mexico coal surface mining commission prior to August 3, 1977, for any surface coal and reclamation operation that, in the year preceding August 3, 1977:

(i) produced coal in commercial quantities and was located within or adjacent to alluvial valley floors; or

(ii) obtained specific permit approval by the New Mexico coal surface mining commission to conduct surface coal mining and reclamation operations within an alluvial valley floor;

(b) the proposed operations would not materially damage the quantity and quality of water in surface and underground water systems that supply those alluvial valley floors or portions of alluvial valley floors which are:

(i) included in Subparagraph (a) of Paragraph (1) of Subsection C of 19.8.10.1006 NMAC; or

(ii) outside the permit area of an existing or proposed surface coal mining operation;

(c) the proposed operations would be conducted in accordance with 19.8.23 NMAC and all other applicable requirements of the act and 19.8 NMAC; and

(d) any change in the land use of the lands covered by the proposed permit area from its premining use in or adjacent to alluvial valley floors will not interfere with or preclude the reestablishment of the essential hydrologic functions of the alluvial valley floor.

(2) The significance of the impact of the proposed operations on farming will be based on the relative importance of the vegetation and water of the developed grazed or hayed alluvial valley floor area to the farm's production, or any more stringent criteria established by the director as suitable for site-specific protection of agricultural activities in alluvial valley floors.

(3) Criteria for determining whether a surface coal mining operation will materially damage the quantity or quality of waters, include, but are not limited to:

(a) potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor, as measured by using current standard methods. Such concentrations shall not exceed threshold values at which crop yields

decrease according to documentation in current scientific publications, unless the applicant demonstrates compliance with Subparagraph (b) of Paragraph (3) of Subsection C of 19.8.10.1006 NMAC;

(b) potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor in excess of those incorporated by reference in Subparagraph (a) of Paragraph (3) of Subsection C of 19.8.10.1006 NMAC shall not be allowed unless the applicant demonstrates, through testing related to the production of crops grown in the locality, that the proposed operations will not cause increases that will result in crop yield decreases;

(c) for types of vegetation not listed in scientific publications, consideration of observed correlation between total dissolved solid concentrations in water and crop yield declines shall be taken into account along with the accuracy of the correlations;

(d) potential increases in the average depth to water saturated zones (during the growing season) located within the root zone of the alluvial valley floor that would reduce the amount of subirrigation land compared to premining conditions;

(e) potential decreases in surface flows that would reduce the amount of irrigable land compared to premining conditions; and

(f) potential changes in the surface or ground water systems that reduce the area available to agriculture as a result of flooding or increased saturation of the root zone.

(4) For the purposes of this paragraph, a farm is one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage and boundaries in existence prior to August 3, 1977, or, if established after August 3, 1977, with those boundaries based on enhancement of the farm's agricultural productivity and not related to surface coal mining operations.

[11-29-97; 19.8.10.1006 NMAC - Rn, 19 NMAC 8.2.10.1006, 9-29-2000; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.11 NMAC, Sections 1100, 1101, 1102, 1103, 1105, 1106, 1108, 1109, 1111 and 1112, effective 12-31-2007.

19.8.11.1100 PUBLIC NOTICES OF FILING OF PERMIT APPLICATIONS:

A. An applicant applying for a permit shall place an advertisement in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations, at least once a week for four consecutive weeks. The applicant shall place the advertisement in the newspaper at the same time the complete permit application is filed with the director. The advertisement shall contain, at a minimum, the following information:

(1) the name and business address of the applicant; and

(2) a map or description which shall:

(a) clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

(b) clearly show or describe the exact location and boundaries of the proposed permit area;

(c) state the name of the U.S. geological survey 7.5-minute quadrangle map(s) which contains the area shown or described; and

(d) if a map is used, indicate the north point;

(3) the location where a copy of the application is available for public inspection under Subsection [E] E of 19.8.11.1100 NMAC and a description of the information requested by the applicant to be held in confidence by the director;

(4) the name and address of the director to which written comments, objections or requests for informal conferences on the application may be submitted under 19.8.11.1101 through 1103 NMAC; and

(5) if an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate a public road, a concise statement describing the public road, the particular part to be relocated, where the relocation is to occur, and the duration of the relocation.

B. In addition to the requirements of Subsection A of 19.8.11.1100 NMAC, an applicant for a new permit or for a permit revision under 19.8.13.1301 NMAC shall submit, at the time of filing the application, a plan approved by the director to provide notice using at least three of the methods listed below. If the director determines that significant non-English speaking populations live within the general area of the proposed mine, the applicant shall include at least one method that seeks to reach these populations. The notice shall summarize the information listed in, and shall be given prior to the last publication of the notice in, Subsection A of 19.8.11.1100 NMAC. The methods may include:

(1) mailing a notice to the owners of record, as shown by the most recent property tax schedule, of all properties adjacent to the proposed permit area and to the owners of all properties containing a residence located within one-half mile (2640 feet) of the proposed permit area as identified in Subsection F of 19.8.7.701 NMAC;

(2) posting a notice in at least four publicly accessible and conspicuous places, including the entrance to the proposed operation if that entrance is publicly accessible and conspicuous;

(3) publishing a notice in a display ad at least three inches by four inches at a place in the newspaper calculated to give the general public the most effective notice; or

(4) broadcasting public service announcements on radio stations that serve the general permit area.

~~[B-]~~ **C.** Upon receipt of a complete application for a permit, the director shall issue written notification of:

(1) the applicant's intention to mine a particularly described tract of land;

(2) the application number;

(3) where a copy of the application may be inspected; and

(4) where comments on the application may be submitted under 19.8.11.1101 NMAC.

~~[C-]~~ **D.** The written notifications shall be sent to:

(1) federal, state, tribal and local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, general governmental entities and fish and wildlife and historic preservation agencies;

(2) governmental planning agencies with jurisdiction to act with regard to land use, air, or water quality planning in the area of the proposed operations;

(3) sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and

(4) the federal or state governmental agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application~~[-]~~; and

(5) all persons on a list maintained by the director of individuals and organizations who have requested notice of applications under the act and who have provided a surface or electronic mail address to the director.

~~[D-]~~ **E.** Public inspection of the application.

(1) The applicant shall make a full copy of his complete application for a per-

mit available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the director with the county clerk of the county where the mining is proposed to occur, or if approved by the director, at another equivalent public office, if it is determined that office will be more accessible to local residents than the county courthouse.

(2) The applicant shall file the copy of the complete application under Paragraph (1) of Subsection ~~[D]~~E of 19.8.11.1100 NMAC by the first date of newspaper advertisement of the application. The applicant shall file any subsequent revision of the application with the public office at the same time the revision is submitted to the director.

(3) The written notification shall be posted on a website maintained by the director after receipt of a complete application.

E. Public meeting. Within 60 days of receipt of a complete application for a new permit or a permit revision, the director shall hold a public meeting at a location near the proposed mining operation.

(1) The public meeting will serve as an opportunity for the director and applicant to inform the public of the proposed action and to provide an opportunity for the public to identify issues and concerns associated with the application.

(2) The director shall give notice at least fifteen days prior to the meeting date in a newspaper of general circulation and on radio stations serving the mine area.

(3) The director or his representative shall keep a record summarizing issues and concerns raised at the meeting.

(4) Any person attending the meeting may submit written comments to the director up to thirty days after the meeting.

[11-29-97; 19.8.11.1100 NMAC - Rn, 19 NMAC 8.2.11.1100, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1101 OPPORTUNITY FOR SUBMISSION OF WRITTEN COMMENTS ON PERMIT APPLICATIONS:

A. Written comments on permit applications may be submitted to the director by the public entities to whom notification is provided under Subsections ~~[B and C]~~ C and D of 19.8.11.1100 NMAC, with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

B. These comments shall be submitted to the director within 30 days following the last publication of the above notice.

C. The director shall

immediately transmit a copy of all such comments for filing and public inspection at the public office where the applicant filed a copy of the application for permit under Subsection ~~[D]~~ E of 19.8.11.1100 NMAC.

D. A copy shall also be transmitted to the applicant.

[11-29-97; 19.8.11.1101 NMAC - Rn, 19 NMAC 8.2.11.1101, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1102 RIGHT TO FILE WRITTEN OBJECTIONS:

A. Any person whose interests are or may be adversely affected or an officer or head of any federal, state, tribal or local governmental agency or authority shall have the right to file written objections to an initial or revised application for a permit with the director within 30 days after the last publication of the newspaper notice required by Subsection A of 19.8.11.1100 NMAC.

B. The director shall immediately upon receipt of any written objections:

(1) transmit a copy of them to the applicant; and

(2) file a copy for public inspection at the public office where the applicant filed a copy of the application for permit under Subsection ~~[D]~~ E of 19.8.11.1100 NMAC.

[11-29-97; 19.8.11.1102 NMAC - Rn, 19 NMAC 8.2.11.1102, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1103 HEARINGS AND CONFERENCES:

A. Procedure for requests. Any person, whose interests are or may be adversely affected by the issuance, revision or renewal of the permit, or the officer or head of any federal, state, tribal or local government agency or authority may, in writing, request that the director hold an informal conference on any application for a permit. The request shall:

(1) briefly summarize the issues to be raised by the requestor at the conference;

(2) state whether the requestor desires to have the conference conducted in the locality of the proposed mining operations; and

(3) be filed with the director not later than 30 days after the last publication of the newspaper advertisement placed by the applicant under Subsection A of 19.8.11.1100 NMAC.

B. Except as provided in Subsection C of 19.8.11.1103 NMAC, if an informal conference is requested in accordance with Subsection A of 19.8.11.1103 NMAC, or upon the director's own motion, the director shall hold an informal confer-

ence within a reasonable time following the receipt of the request. The informal conference shall be conducted according to the following:

(1) if requested under Paragraph (2) of Subsection A of 19.8.11.1103 NMAC, it shall be held in the locality of the proposed mining;

(2) the date, time, and location of the informal conference shall be advertised by the director in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations at least two weeks prior to the scheduled conference;

(3) if requested, in writing, by a conference requestor in a reasonable time prior to the conference, the director may arrange with the applicant to grant parties to the conference access to the permit area for the purpose of gathering information relevant to the conference;

(4) the conference shall be conducted by a representative of the director, who may accept oral or written statements and any other relevant information from any party to the conference; an electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties; the record shall be maintained and shall be accessible to parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 19.8.14 [and 15] NMAC.

C. If all parties requesting the informal conference stipulate agreement before the requested informal conference and withdraw their request, the informal conference need not be held.

D. Informal conferences held in accordance with 19.8.11.1103 NMAC may be used by the director as the public hearing required under Subsection D of 19.8.2.202 NMAC on proposed uses or relocation of public roads.

~~E. Public hearing.~~

~~(1) A notice of the hearing required in Subsection D of 19.8.5.504 NMAC shall be given at least 30 days prior to the public hearing.~~

~~(2) The date, time and location of the hearing shall be advertised by the director in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations.~~

~~(3) The hearing shall be held in the county in which the mining is to be conducted.~~

~~(4) Reasonable effort shall be made by the director to give notice to all persons who have made a written request annually for advance notice of such hearings.~~

~~(5) Any person desiring to present evidence or give testimony at the hearing on the proposed mining plan shall:~~

~~(a) file a request to do so with the director at least ten days prior to the hearing;~~

~~(b) contain the name and address of the person desiring to participate; and~~

~~(c) contain a concise statement of the nature of the person's interests.~~

~~(6) The director will transmit a copy of the request to the operator at least five days prior to the hearing.~~

~~(7) Any person who has filed a timely request to participate in the hearing shall be given reasonable time at the hearing to submit relevant evidence, data and views, and shall be allowed to call and examine witnesses, introduce exhibits, cross examine witnesses and submit rebuttal evidence.~~

~~(8) The director or his authorized representative shall act as the hearing officer and taking evidence at the hearing. The hearing officer will preside and shall have the authority to direct the hearing, to examine witnesses and to make such rulings on evidence as may be necessary. The hearing officer shall maintain a verbatim record of said hearing and such record shall be a part of the administrative record for the permit.~~

~~F. If a public hearing is to be held under Subsection E of 19.8.11.1103 NMAC an informal conference will not be available.~~

[11-29-97; 19.8.11.1103 NMAC - Rn, 19 NMAC 8.2.11.1103, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1105 REVIEW OF PERMIT APPLICATIONS:

A. Review and consultation.

(1) The director shall review the complete application and written comments, written objections submitted, and records of any informal conference held under 19.8.11.1101 through 1103 NMAC.

(2) The director shall determine the adequacy of the fish and wildlife plan submitted pursuant to 19.8.9.905 NMAC, in consultation with state and federal fish and wildlife management and conservation agencies having responsibilities for the management and protection of fish and wildlife or their habitats which may be affected or impacted by the proposed surface coal mining and reclamation operations.

B. If the director decides to approve the application, he shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of 19.8.14 [and 19.8.15] NMAC.

C. The director shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant, or by any person who owns or controls the applicant,

is currently in violation of any provision of the act, SMCRA or any federal or state law, rule or regulation pertaining to air or water environmental protection. The director will make this determination based on a review of reasonably available information concerning violation notices and ownership or control links involving the applicant, including information pursuant to 19.8.7.701 and 702 NMAC and 19.8.11.1102 and 1116 NMAC. In the absence of a failure-to-abate cessation order, the director may presume that a notice of violation issued pursuant to 19.8.30.3001 NMAC or under a federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, where the abatement period for such notice of violation has not yet expired and where as part of the violation information provided pursuant to 19.8.7.702 NMAC, the applicant has provided certification that such violation is in the process of being so corrected. Such presumption shall not apply where evidence to the contrary is set forth in the permit application, or when the notice of violation is issued for a nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists the director shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either:

(1) submit to the director, proof which is satisfactory to the director, department or agency which has jurisdiction over such violation that the violation:

(a) has been corrected; or

(b) is in the process of being corrected; or

(2) establish to the director that the applicant or any person owned or controlled by either this applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation; if the administrative or judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then the applicant shall within 30 days of the judicial action submit proof required under Subparagraph (a) of Paragraph (1) of Subsection C of 19.8.11.1105 NMAC.

D. Any permit that is issued on the basis of proof submitted under Subparagraph (b) of Paragraph (1) or Paragraph (2) of Subsection C of 19.8.1105 NMAC that a violation is in the process of being corrected, or pending the outcome of an appeal described in Paragraph (2) of Subsection C of 19.8.11.1105 NMAC, shall be conditionally issued.

E. Before any final determination by the director that the applicant, or the operator specified in the application, controls or has controlled mining operations

with a demonstrated pattern of willful violation of the act of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of the act, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 19.8.12.1201 NMAC.

F. Final compliance review. After an application is approved, but before the permit is issued, the director shall reconsider its decision to approve the application, based on the compliance review required by Subsection C of 19.8.11.1105 NMAC in light of any new information submitted under Subsection I of 19.8.7.701 NMAC, or Subsection D of 19.8.7.702 NMAC.

[11-29-97; 19.8.11.1105 NMAC - Rn, 19 NMAC 8.2.11.1105, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1106 CRITERIA FOR PERMIT APPROVAL OR DENIAL:

No permit or revision application shall be approved, unless the application affirmatively demonstrates and the director finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that:

A. the permit application is accurate and complete and that all requirements of the act and 19.8 NMAC have been complied with;

B. the applicant has demonstrated that surface coal mining and reclamation operations, as required by the act and 19.8 NMAC, can be feasibly accomplished under the mining and reclamation operations plan contained in the application;

C. the assessment of the probable cumulative hydrological impacts (CHIA) of all anticipated coal mining in the cumulative impact area on the hydrologic balance, as described in Subsection C of 19.8.9.907 NMAC has been made by the director, and the operations proposed under the application have been designed to prevent damage to the hydrologic balance outside the proposed permit area;

D. the proposed permit area is:

(1) not included within an area designated unsuitable for surface coal mining operations under 19.8.3 and 4 NMAC; or

(2) not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 19.8.4 NMAC, unless the applicant demonstrates that, before January 4, 1977, he has made sub-

stantial legal and financial commitments in relation to the operation for which he is applying for a permit; or

(3) not within an area subject to the prohibitions of 19.8.2.201 NMAC.

E. the proposed operations will not adversely affect any publicly-owned parks or places included in the national register of historic places, except as provided for in Subsection A of 19.8.2.201 NMAC;

F. for operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the director the documentation required under Subsection B of 19.8.7.703 NMAC;

G. the applicant has either:

(1) submitted the proof required by Paragraph (1) of Subsection C of 19.8.11.1105 NMAC; or

(2) made the demonstration required by Paragraph (2) of Subsection C of 19.8.11.1105 NMAC;

H. the applicant has submitted proof that all reclamation fees required for abandoned mine land reclamation under Section 402 of Public Law 95-87 have been paid;

I. the applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of the act of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the act;

J. surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area;

K. the applicant will submit the performance bond or other equivalent guarantee required under 19.8.14 ~~and 19.8.15~~ NMAC of these rules and regulations, prior to the issuance of the permit;

L. the applicant has, with respect to both prime farmland and alluvial valley floors, obtained either a negative determination or satisfied the requirements of 19.8.10.1004 and 1006 NMAC;

M. the proposed postmining land use of the permit area has been approved by the director in accordance with the requirements of 19.8.20.2073 NMAC;

N. the director has made all specific approvals required under 19.8.19 through 19.8.28 NMAC;

O. the director has found that the activities would not affect the continued existence of endangered or threatened species, indigenous to the state, or any

other species protected under the Endangered Species Act of 1973, or result in the destruction or adverse modification of their critical habitats contrary to state or federal law;

P. the director has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the national register of historic places; this finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources or a documented decision that the director has determined that no additional protection measures are necessary.

[11-29-97; 19.8.11.1106 NMAC - Rn, 19 NMAC 8.2.11.1106, 9-29-2000; A, 1-15-2002; A, 4-28-2006; A, 12-31-2007]

19.8.11.1108 CRITERIA FOR PERMIT APPROVAL OR DENIAL: EXISTING STRUCTURES:

A. No application for a permit or revision which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the director finds, in writing, on the basis of information set forth in the complete application that the structure meets the performance standards of the act and 19.8.19 through 28 NMAC.

B. If the director finds that the structure does not meet the requirements of Subsection A of 19.8.11.1108 NMAC, the director shall require the applicant to submit a compliance plan for modification or reconstruction of the structure and shall find prior to the issuance of the permit that:

(1) the modification or reconstruction of the structure will bring the structure into compliance with the design and performance standards of 19.8.19 through 19.8.28 NMAC as soon as possible, but not later than six months after issuance of the permit;

(2) the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

(3) the applicant will monitor the structure to determine compliance with the performance standards of 19.8.19 through 19.8.28 NMAC.

C. Should the director find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety consistent with 19.8.20.2079 NMAC, the applicant will be required to abandon the existing structure. The structure shall not be used for or to facilitate surface coal mining operations after the effective date of issuance of the permanent regulatory pro-

gram permit. Abandonment of the structure shall proceed on a schedule approved by the director ~~[in compliance with 19.8.20.2072 NMAC]~~.

[11-29-97; 19.8.11.1108 NMAC - Rn, 19 NMAC 8.2.11.1108, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1109 PERMIT APPROVAL OR DENIAL ACTIONS:

A. The director shall approve, require modification of, or deny all applications for permits under the act and 19.8. NMAC on the basis of:

(1) complete applications for permits and revisions or renewals thereof;

(2) public participation as provided for in 19.8.5 through 19.8.13 NMAC;

(3) compliance with any applicable provisions of 19.8.10 NMAC; and

(4) processing and review of applications as required by 19.8.11 NMAC.

B. The director shall take action as required under Subsection A of 19.8.11.1109 NMAC, within the following times.

(1) Initiation of regulatory programs. Except as provided for in Paragraph (3) of Subsection B of 19.8.11.1109 NMAC and 19.8.5.501 NMAC, a complete application submitted to the director within the time required by Subsection A of 19.8.5.504 NMAC shall be processed by the director so that an application is approved or denied:

(a) within eight months after the date of approval of the state program; and

(b) if an informal conference ~~[or public hearing]~~ has been held pursuant to 19.8.11.1103 NMAC within 60 days from the close of the conference ~~[or hearing]~~.

(2) Subsequent permanent program applications. Except as provided for in Paragraph (3) of Subsection B of 19.8.11.1109 NMAC, a complete application submitted to the director after the time required in Subsection A of 19.8.5.504 NMAC and in accordance with NMAC shall be processed by the director, so that an application is approved or denied within the following times:

(a) if an informal conference ~~[or public hearing]~~ has been held under 19.8.11.1103 NMAC within 60 days of the close of the conference ~~[or hearing]~~; or

(b) if no informal conference has been held under Subsections A through D of 19.8.11.1103 NMAC then within a reasonable time after the receipt by the director of the complete application, the director will process the application; in establishing what is reasonable time in which to approve or deny the application, the director shall take into account the time needed for proper investigation of the proposed permit and adjacent areas; the complexity of the application; and whether written objections to or comments on the complete application have

been filed with the director.

(3) Notwithstanding any of the foregoing provisions of 19.8.11.1109 NMAC, no time limit under the act or 19.8.11.1109 NMAC requiring the director to act shall be considered expired from the time the director initiates a proceeding under Subsection E of 19.8.11.1105 NMAC until the final decision of the director.

C. If an informal conference ~~[or a public hearing]~~ is held under 19.8.11.1103 NMAC, the director shall give his written findings to the permit applicant and to each person who is party to the conference ~~[or hearing]~~, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefore in the decision.

D. If no such informal conference, pursuant to Subsections A through D of 19.8.11.1103 NMAC, has been held, the director shall give his written findings to the permit applicant, approving, modifying or denying the application in whole, or in part, and stating the specific reasons in the decision.

E. Simultaneously, the director shall:

(1) give a copy of his decision to:

(a) each person and government official who filed a written objection or comment with respect to the application; and

(b) the regional director of the office of surface mining together with a copy of any permit issued by the director; and

(2) publish a summary of his decision in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations.

F. Within 10 days after the granting of a permit, including the filing of the performance bond or other equivalent guarantee which complies with 19.8.9.14 ~~[and 19.8.15]~~ NMAC, the director shall notify the county clerk of the county where the land to be mined is located that a permit has been issued. The notice shall describe the location of the permit area.

[11-29-97; 19.8.11.1109 NMAC - Rn, 19 NMAC 8.2.11.1109, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1111 PERMIT TERMS:

A. Each permit shall be issued for a fixed term not to exceed 5 years. A longer fixed permit term may be granted, if:

(1) the application is full and complete for the specified longer term; and

(2) the applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing of equipment and the opening of the operation, and this need is confirmed, in writing, by the applicant's proposed source

for the financing.

B. Due diligence.

(1) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within 3 years of the issuance of the permit.

(2) The director may grant reasonable extensions of time for commencement of these operations, upon receipt of a written statement showing that such extensions of time are necessary, if:

(a) litigation precludes the commencement or threatens substantial economic loss to the permittee, or

(b) there are conditions beyond the control and without the fault or negligence of the permittee.

(3) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(4) Extensions of time granted by the director under ~~[this paragraph]~~ Paragraph (2) of Subsection B of 19.8.11.1111 NMAC shall be specifically set forth in the permit and notice of the extension shall be made to the public.

C. Permits may be suspended, revoked, or modified by the director in accordance with 19.8.10.1000, 1002, 1003 and 1005 NMAC, 19.8.13.1300 NMAC and 19.8.29 through 19.8.31 NMAC.

[11-29-97; 19.8.11.1111 NMAC - Rn, 19 NMAC 8.2.11.1111, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1112 CONDITIONS OF PERMITS: GENERAL AND RIGHT OF ENTRY: Each permit issued by the director shall ensure that:

A. except to the extent that the director otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the complete application; and

B. the permittee shall allow the authorized representatives of the secretary of the U.S. department of interior, including, but not limited to, inspectors and fee compliance officers and the director to have the rights of entry provided for in 19.8.29.2900 NMAC; and be accompanied by private persons for the purpose of conducting an inspection in accordance with 19.8.29 NMAC, when the inspection is in response to an alleged violation reported to the director by the private person;

C. the permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated on the maps submitted under

19.8.8 and 19.8.9 NMAC and approved for the term of the permit and which are subject to the performance bond or other equivalent guarantee in effect pursuant to 19.8.14 ~~and 19.8.15~~ NMAC;

D. at least 10 days prior to initial surface disturbance, the permittee shall notify the director, in writing, of his intentions to begin operations;

E. the operator shall pay all reclamation fees required for abandoned mine land reclamation under Section 402 of Public Law 95-87 for coal produced under the permit for sale, transfer or use in the manner required by that section.

[11-29-97; 19.8.11.1112 NMAC - Rn, 19 NMAC 8.2.11.1112, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.13 NMAC, Sections 1301, 1303, 1305 and 1307, effective 12-31-2007.

19.8.13.1301 PERMIT REVISIONS:

A. A revision to a permit shall be obtained:

(1) for changes in the surface coal mining or reclamation operations described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conducting mining or reclamation operations contemplated by the original permit; significant departures as used herein include, but are not limited to:

(a) significant changes in the permit area boundary;

(b) changes in the method of extracting coal from the earth (e.g. change from surface to underground mine);

(c) experimental practices as that term is used in 19.8.10 NMAC and Section 69-25A-33 NMSA 1978 of the act;

(d) changes which would require a variance under 19.8.10.1003 NMAC;

(e) changes which may have an adverse effect on the environment of a nature not originally covered by the approved permit; or

(f) changes which may have an effect on performance bond requirements.

(2) when required by an order issued under 19.8.13.1300 NMAC;

(3) in order to continue operation after the cancellation or material reduction of the liability insurance policy, capability or self-insurance performance bond, or other equivalent guarantee upon which the original permit was issued; or

(4) as otherwise required by the

act and 19.8 NMAC.

B. A permit modification shall be obtained for all other changes to a permit that are not classified as a permit revision.

C. The operator may not implement any permit revision or permit modification before obtaining the director's written approval.

D. The application for revision shall be filed in accordance with the following:

(1) the permittee shall submit the application to the director within the time provided for in Paragraph (2) of Subsection B of 19.8.5.504 NMAC;

(2) applications for all types of revisions of a permit shall contain:

(a) an identification of the permit by permit number or other appropriate reference which is the subject of the revision;

(b) a specific description of the requested change in the terms of the permit;

(c) a specific description of any changes in the mining and reclamation operation which may have an effect on performance bond requirements; and

(d) such other information as may be deemed necessary to the director to determine if the proposed revision will comply with the act and 19.8 NMAC.

E. Hearing and notice requirements.

(1) Permit revision. Any application for a revision ~~[that proposes significant alterations in the operations described in the materials submitted in the application for the original permit under 19.8.7 NMAC, 19.8.8 NMAC, 19.8.9 NMAC, or 19.8.10 NMAC, or in the conditions of the original permit.]~~ shall, at a minimum, be subject to the requirements of 19.8.11 NMAC and 19.8.12 NMAC.

(2) Permit modification.

(a) Within 10 days after the filing of a complete application for a permit modification, the director shall issue a decision approving or denying the application in whole or in part. A written copy of the decision shall be promptly provided to the permittee and to ~~[interested parties]~~ all persons on a list maintained by the director who have requested notice of applications under the act for the specific permit being modified.

(b) Within 30 days after the decision notification required by Subparagraph (a) of Paragraph (2) of Subsection E of 19.8.1301 NMAC, the permittee or any person with an interest which is or may be adversely affected may request a formal hearing in regard to the director's decision, in accordance with 19.8.12.1200 NMAC.

F. An application for a permit revision shall be reviewed by the director to determine whether a new or

updated determination of the probable hydrologic consequences as described in Subsection C of 19.8.9.907 NMAC or a new or updated assessment of the probable cumulative impacts as described in Subsection C of 19.8.11.1106 NMAC shall be required.

G. Any revisions which propose significant departures in the experimental practice shall ~~[at a minimum, be subject to the requirements of 19.8.11 NMAC and 19.8.12 NMAC and]~~ require concurrence by the director of the office of surface mining. Revisions that do not propose significant departures in the experimental practice shall not require concurrence by the director of the office of surface mining.

H. The director shall approve or disapprove the complete application for revision, in accordance with the requirements of 19.8.11 NMAC and Subsection B of 19.8.5.504 NMAC.

I. Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new permit and shall not be approved under this part.

[11-29-97; 19.8.13.1301 NMAC - Rn, 19 NMAC 8.2.13.1301, 9-29-2000; A, 7-30-2004; A, 12-31-2007]

19.8.13.1303 PERMIT RENEWALS: COMPLETE APPLICATIONS:

A. Contents. Complete applications for renewals of a permit shall be made at least 120 days before the expiration of the permit involved. Renewal applications shall include at a minimum:

(1) a statement of the name and address of the permittee, the term of the renewal requested, the permit number, and a description of any changes to the matters set forth in the original application for a permit or prior permit renewal;

(2) a copy of the newspaper notice and proof of publication of same under Subsection A of 19.8.11.1100 NMAC; and

(3) evidence that liability insurance policy or adequate self-insurance under ~~[19.8.14.1407]~~ 19.8.14.1414 NMAC will be provided by the applicant for the proposed period of renewal.

B. Processing and review.

(1) Complete applications for renewal shall be subject to the requirements of public notification and participation contained in 19.8.11.1100 through 1103 NMAC.

(2) If a complete application for renewal of a permit includes a proposal to extend the mining and reclamation operation beyond the boundaries authorized in the existing permit, the portion of the com-

plete application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new permit applications under the act, 19.8.5 NMAC, 19.8.7 NMAC, 19.8.8 NMAC, 19.8.9 NMAC, 19.8.10 NMAC, 19.8.11 NMAC, 19.8.12 NMAC, 19.8.13 NMAC, 19.8.14 NMAC [~~and 19.8.15 NMAC~~].

(3) If the surface coal mining reclamation operations authorized under the original permit were not subject to the standards contained in Subparagraphs (a) and (b) of Paragraph (5) of Subsection B of Section 69-25A-14 NMSA 1978 of the act and 19.8.10.1006 NMAC, because the permittee complied with the exceptions to Paragraph (5) of Subsection B of Section 69-25A-14 NMSA 1978 of the act, the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan submitted pursuant to 19.8.9 NMAC for the original permit shall not be subject to the standards contained in Subparagraphs (a) and (b) of Paragraph (5) of Subsection B of Section 69-25A-14 NMSA 1978 of the act and 19.8.10.1006 NMAC.

(4) Before finally acting to grant the permit renewal, the director shall require any additional performance bond needed by the permittee to comply with the requirements of Paragraph (4) of Subsection A of 19.8.13.1305 NMAC to be filed with the director.
[11-29-97; 19.8.13.1303 NMAC - Rn, 19 NMAC 8.2.13.1303, 9-29-2000; A, 12-31-2007]

19.8.13.1305 PERMIT RENEWALS: APPROVAL OR DENIAL:

A. The director shall, upon the basis of a complete application for renewal and completion of all procedures required under 19.8.13.1303 and 1304 NMAC, issue a renewal of a permit, unless it is established and written findings by the director are made that:

(1) the terms and conditions of the existing permit are not being satisfactorily met;

(2) the present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under the act and 19.8.19 NMAC through 19.8.28 NMAC;

(3) the requested renewal substantially jeopardizes the operator's continuing responsibility to comply with the act and 19.8 NMAC on existing permit areas;

(4) the operator has not provided evidence that any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the director might require

pursuant to 19.8.14 NMAC [~~and 19.8.15 NMAC~~]; or

(5) any additional revised or updated information required by the director has not been provided by the applicant.

B. In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

C. The director shall send copies of his decision to the applicant, any persons who filed objections or comments to the renewal, and to any persons who were parties to any informal conference held on the permit renewal.

D. Any person having an interest which is or may be adversely affected by the decision of the director shall have the right to administrative and judicial review set forth in 19.8.12 NMAC.

[11-29-97; 19.8.13.1305 NMAC - Rn, 19 NMAC 8.2.13.1305, 9-29-2000; A, 12-31-2007]

19.8.13.1307 TRANSFER, ASSIGNMENT OR SALE OF PERMIT RIGHTS: OBTAINING APPROVAL:

A. Any person seeking to succeed by transfer, assignment, or sale to the rights granted by a permit issued shall, pursuant to the act and 19.8 NMAC, prior to the date of such transfer, assignment or sale:

(1) obtain the performance bond coverage of the original permittee by:

(a) obtaining transfer of the original bond;

(b) obtaining a written agreement with the original permittee and all subsequent successors in interest (if any) that the bond posted by the original permittee and all successors shall continue in force on all areas affected by the original permittee and all successors, and supplementing such previous bonding with such additional bond as may be required by the director. If such an agreement is reached, the director may authorize for each previous successor and the original permittee the release of any remaining amount of bond in excess of that required by the agreement;

(c) providing sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations; or

(d) such other methods as would provide that reclamation of all areas affected by the original permittee is assured in an amount required by 19.8.14 NMAC.

(2) provide the director with an application for approval of such proposed transfer, assignment, or sale, including:

(a) the name and address of the existing permittee;

(b) the name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and address of that person's resident agent;

(c) for surface mining activities,

the same information as is required by 19.8.7.701, 702, 703, 704.C, 706 and 707 NMAC for applications for new permits for those activities; or

(d) for underground mining activities, the same information as is required by Subparagraph (c) of Paragraph (2) of Subsection A of 19.8.13.1307 NMAC [~~of this paragraph~~] for applications for new permits for those activities.

(3) obtain the written approval of the director for transfer, assignment or sale of rights according to Subsection C of 19.8.13.1307 NMAC.

B. Public notice and comment period.

(1) The person applying for approval of such transfer, assignment or sale of rights granted by a permit shall advertise the filing of the application in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations, indicating the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address to which written comments may be sent under this paragraph.

(2) Any person whose interests are or may be adversely affected, including, but not limited to, the head of any local, state, tribal or federal government agency may submit written comments on the application for approval to the director within 30 days.

C. The director may, upon the basis of the applicant's compliance with the requirements of Subsections A and B of 19.8.13.1307 NMAC, grant written approval for the transfer, sale, or assignment of rights under a permit, if he first finds, in writing, that:

(1) the person seeking approval will conduct the operations covered by the permit in accordance with the criteria specified in the act, 19.8.10 NMAC and 19.8.11.1106 through 1108 NMAC.

(2) the applicant has, in accordance with Paragraph (1) of Subsection A of 19.8.13.1307 NMAC, submitted a performance bond or other guarantee as required by 19.8.14 NMAC [~~and 19.8.15 NMAC~~] and at least equivalent to the bond or other guarantee of the original permittee; and

(3) the applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless and until he has obtained a new permit or a revised permit in accordance with the act and 19.8 NMAC.

(4) the applicant is eligible to receive a permit in accordance with Subsection C of 19.8.11.1105 NMAC.

D. The director shall notify the permittee, the successor in interest, commenters and the director of the office of surface mining of his findings.

E. The successor in interest shall immediately provide notice to the director of the consummation of the transfer, assignment or sale of permit rights. [11-29-97; 19.8.13.1307 NMAC - Rn, 19 NMAC 8.2.13.1307, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.14 NMAC, Sections 1401, 1403, 1406, 1407, 1409, 1410, 1411, 1412, 1413, and 1414, effective 12-31-2007.

19.8.14.1401 REQUIREMENT TO FILE A BOND:

A. After a permit application under 19.8.5 NMAC through 19.8.13 NMAC has been approved, but before a permit is issued, the applicant shall file with the director, on a form prescribed and furnished by the director, a bond or bonds for performance made payable to the state of New Mexico and conditioned upon the faithful performance of all the requirements of the act, the regulatory program, the permit, and the reclamation plan.

B. Bond coverage requirements.

(1) The bond or bonds shall cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations during the initial term of the permit.

(2) Before surface coal mining and reclamation operations on succeeding increments are initiated and conducted within the permit area, the permittee shall file with the director an additional bond or bonds to cover such increments in accordance with this section.

(3) The operator shall identify the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application (under 19.8.5 NMAC through 19.8.13 NMAC), and shall specify the bond amount to be provided for each area or increment.

(4) Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the director become necessary pursuant to 19.8.14.1414 NMAC.

C. An operator shall not disturb any surface areas, succeeding increments, or extend any underground shafts, tunnels or operations prior to acceptance by the director of the required performance bond.

D. The applicant shall file,

with the approval of the director, a bond or bonds under one of the following schemes to cover the bond amounts for the permit area as determined in accordance with ~~[19.8.14.1405]~~ 19.8.14.1404 NMAC:

(1) a performance bond or bonds for the entire permit area;

(2) a cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or

(3) an incremental bond schedule and the performance bond required for the first increment in the schedule.

[11-29-97; 19.8.14.1401 NMAC - Rn, 19 NMAC 8.2.14.1401, 9-29-2000; A, 12-31-2007]

19.8.14.1403 PERIOD OF LIABILITY:

A. Duration and phased bonding option.

(1) Performance bond liability shall be for the duration of the surface coal mining and reclamation operation and for a period which is coincident with the operator's period of extended responsibility for successful revegetation provided in 19.8.20.2065 NMAC or until achievement of the reclamation requirements of the act, regulatory programs, and permit, whichever is later.

(2) With the approval of the director, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under 19.8.14.1405 and 1406 NMAC. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail.

B. Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the director. Such areas shall be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the director.

C. If the director approves a long-term, intensive agricultural post-mining land use, in accordance with ~~[19.8.20.2073]~~ Subparagraph (c) of Paragraph (5) of Subsection B of 19.8.20.2065 NMAC, the applicable 5 or 10 year period of liability shall commence at the date of initial planting for such long-term agricultural use.

D. Bond liability limitations.

(1) The bond liability of the permittee shall include only those actions which the permittee is obligated to take

under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under ~~[19.8.20.2073]~~ 19.8.20.2075 NMAC.

(2) Implementation of an alternative postmining land use approved under ~~[19.8.20.2073]~~ 19.8.20.2075 NMAC which is beyond the control of the permittee, need not be covered by the bond. Bond liability for prime farmland shall be as specified in ~~[19.8.14.1413-C(2)]~~ Paragraph (2) of Subsection C of 19.8.14.1412 NMAC.

[11-29-97; 19.8.14.1403 NMAC - Rn, 19 NMAC 8.2.14.1403, 9-29-2000; A, 12-31-2007]

19.8.14.1406 GENERAL TERMS AND CONDITIONS OF BOND:

A. The performance bond shall be in an amount determined by the director as provided in 19.8.14.1405 NMAC.

B. The performance bond shall be payable to the state of New Mexico.

C. The performance bond shall be conditioned upon faithful performance of all the requirements of the act, 19.8.14 NMAC ~~[and 19.8.15 NMAC]~~, the regulatory program, and the approved permit, including completion of the reclamation plan.

D. The duration of the bond shall be for the time period provided in ~~[19.8.14.1404]~~ 19.8.14.1403 NMAC.

E. Insolvency or bankruptcy.

(1) The bond shall provide a mechanism for a bank or surety company to give prompt notice to the director and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

(2) Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee shall be deemed to be without bond coverage and shall promptly notify the director. The director, upon notification received through procedures of Paragraph (1) of Subsection E of 19.8.14.1406 NMAC or from the permittee, shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal extraction and shall comply with the provisions of ~~[19.8.20.2072]~~ 19.8.20.2074 NMAC and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining opera-

tions shall not resume until the director has determined that an acceptable bond has been posted.

[11-29-97; 19.8.14.1406 NMAC - Rn, 19 NMAC 8.2.14.1406, 9-29-2000; A, 12-31-2007]

19.8.14.1407 BONDING REQUIREMENTS FOR UNDERGROUND COAL MINES AND LONG-TERM COAL-RELATED SURFACE FACILITIES AND STRUCTURES:

A. Responsibilities. The director shall require bond coverage, in an amount determined under ~~[19.8.14.1405]~~ 19.8.14.1404 NMAC, for long-term surface facilities and structures, and for areas disturbed by surface impacts incident to underground mines, for which a permit is required. Specific reclamation techniques required for underground mines and long-term facilities shall be considered in determining the amount of bond to complete the reclamation.

B. Long-term period of liability.

(1) The period of liability for every bond covering long-term surface disturbances shall commence with the issuance of a permit, except that to the extent that such disturbances will occur on a succeeding increment to be bonded, such liability will commence upon the posting of the bond for that increment before the initial surface disturbance of that increment. The liability period shall extend until all reclamation, restoration, and abatement work under the permit has been completed and the bond is released under the provisions of ~~[19.8.14.1413]~~ 19.8.14.1412 NMAC, or until the bond has been replaced or extended in accordance with ~~[19.8.14.1408.B(3)]~~ Paragraph (3) of Subsection B of 19.8.14.1407 NMAC.

(2) Long-term surface disturbances shall include long-term coal-related surface facilities and structures, and surface impacts incident to underground coal mining, which disturb an area for a period that exceeds 5 years. Long-term surface disturbances include, but are not limited to: surface features of shafts and slope facilities, coal refuse areas, powerlines, bore-holes, ventilation shafts, preparation plants, machine shops, roads, and loading and treatment facilities.

(3) To achieve continuous bond coverage for long-term surface disturbances, the bond shall be conditioned upon extension, replacement, or payment in full, 30 days prior to the expiration of the bond term.

(4) Continuous bond coverage shall apply throughout the period of extended responsibility for successful revegetation and until the provisions of ~~[19.8.14.1413]~~ 19.8.14.1412 NMAC have been met.

C. Bond forfeiture. The director shall take action to forfeit a bond pursuant to this section, if 30 days prior to bond expiration, the operator has not filed:

(1) a performance bond for a new term as required for continuous coverage, or

(2) a performance bond providing coverage for the period of liability, including the period of extended responsibility for successful revegetation.

[11-29-97; 19.8.14.1407 NMAC - Rn, 19 NMAC 8.2.14.1407, 9-29-2000; A, 12-31-2007]

19.8.14.1409 COLLATERAL BONDS:

A. Collateral bonds, except for letters of credit, cash accounts, and real property, shall be subject to the following conditions:

(1) the director shall keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in 19.8.14 NMAC ~~[and 19.8.15 NMAC]~~;

(2) the director shall value collateral at its current market value, not at face value;

(3) the director shall require that certificates of deposit be made payable to or assigned to the state of New Mexico, both in writing and upon the records of the bank issuing the certificates; if assigned, the director shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates;

(4) the director shall not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the federal deposit insurance corporation or the federal savings and loan insurance corporation.

B. Letters of credit shall be subject to the following conditions:

(1) the letter may be issued only by a bank organized or authorized to do business in the United States;

(2) letters of credit shall be irrevocable during their terms; a letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the state of New Mexico if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(3) the letter of credit shall be payable to the state of New Mexico upon demand, in part or in full, upon receipt from the director of a notice of forfeiture issued in accordance with ~~[19.8.14.1414]~~ 19.8.14.1413 NMAC.

C. Real property posted as a collateral bond shall meet the following conditions:

(1) The applicant shall grant the state of New Mexico a first mortgage, first

deed of trust, or perfected first-lien security interest in real property with a right to sell in accordance with state law or otherwise dispose of the property in the event of forfeiture under 19.8.14.1414 NMAC.

(2) In order for the director to evaluate the adequacy of the real property offered to satisfy collateral requirements, the applicant shall submit a schedule of the real property which shall be mortgaged or pledged to secure the obligations under the indemnity agreement. The list shall include:

(a) a description of the property;

(b) the fair market value as determined by an independent appraisal conducted by a qualified appraiser, previously approved by the director; and

(c) proof of possession and title to the real property.

(3) The property may include land which is part of the permit area; however, land pledged as collateral for a bond under this section shall not be disturbed under any permit while it is serving as security under this section.

D. Cash accounts shall be subject to the following conditions:

(1) the director may authorize the operator to supplement the bond through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the state of New Mexico; the total bond including the cash account shall not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with ~~[19.8.14.1413]~~ 19.8.14.1412 NMAC;

(2) any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the director has approved the payment of interest to the operator;

(3) certificates of deposit may be substituted for a cash account with the approval of the director;

(4) the director shall not accept an individual cash account in an amount in excess of \$100,000 or the maximum insurable amount as determined by the federal deposit insurance corporation or the federal savings and loan insurance corporation.

E. Fluctuating collateral value.

(1) If the nature of the collateral proposed to be given as security for a bond is subject to fluctuations in value over time, the director shall require that such collateral have a fair market value at the time of permit approval in excess of the bond amount by a reasonable margin. The amount of such margin shall reflect changes in value anticipated as probable of occurrence over a period of five years, including depreciation, appreciation, marketability

and market fluctuation. In any event, the director shall require a margin for legal fees and costs of disposition of the collateral.

(2) The annual report shall report percentage changes in the fair market value of any collateral accepted by the director pursuant to this subsection[s] since the time of the last report.

(3) The bond value of collateral may be evaluated at any time but it shall be evaluated as part of permit renewal and, if necessary, the performance bond amount increased or decreased. In no case shall the bond value of collateral exceed the market value.

F. Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the director at the time collateral is offered.

[11-29-97; 19.8.14.1409 NMAC - Rn, 19 NMAC 8.2.14.1409, 9-29-2000; A, 12-31-2007]

19.8.14.1410 SELF-BONDING:

A. The director may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant, or its parent corporation guarantor:

(1) the applicant designates a suitable agent to receive service of process in the state.

(2) the applicant has been in continuous operation as a business entity for a period of not less than 5 years. Continuous operation shall mean that business was conducted over a period of 5 years immediately preceding the time of application.

(a) The director may allow a joint venture or syndicate with less than 5 years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least 5 years immediately preceding the time of application.

(b) When calculating the period of continuous operation, the director may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations.

(3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

(a) the applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's investor service or Standard and Poor's corporation;

(b) the applicant has a tangible

net worth of at least \$10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or

(c) the applicant's fixed assets in the United States total at least \$20 million, and the applicant has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.

(4) The applicant submits:

(a) financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;

(b) unaudited financial statements for completed quarters in the current fiscal year; and

(c) additional unaudited information as requested by the director.

B. The director may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of Paragraphs (1) through (4) of Subsection A of 19.8.14.1410 NMAC as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:

(1) if the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the state of New Mexico sufficient to complete the reclamation plan, but not to exceed the bond amount;

(2) the corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the director at least 90 days in advance of the cancellation date, and the director accepts the cancellation;

(3) the cancellation may be accepted by the director if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed.

C. For the director to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the director to accept a corporate guarantee, the total amount of the corporate guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net

worth in the United States.

D. If the director accepts an applicant's self-bond, an indemnity agreement shall be submitted subject to the following requirements:

(1) the indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the corporate guarantor, and shall bind each jointly and severally;

(2) corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations; a copy of such authorization shall be provided to the director along with an affidavit certifying that such an agreement is valid under all applicable federal and state laws; in addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement;

(3) if the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant;

(4) pursuant to ~~[19.8.14.1414]~~ 19.8.14.1413 NMAC, the applicant or corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the state of New Mexico an amount necessary to complete the approved reclamation plan, not to exceed the bond amount.

E. The director may require self-bonded applicants and corporate guarantors to submit an update of the information required under Paragraphs (3) and (4) of Subsection A of 19.8.14.1410 NMAC within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.

F. If at any time during the period when a self-bond is posted, the financial conditions of the applicant or the corporate guarantor change so that the criteria of Paragraph (3) of Subsection A of 19.8.14.1410 NMAC and Subsection C of 19.8.14.1410 NMAC are not satisfied, the permittee shall notify the director immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of Subsection E of 19.8.14.1406 NMAC shall apply.

[11-29-97; 19.8.14.1410 NMAC - Rn, 19 NMAC 8.2.14.1410, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

19.8.14.1411 REPLACEMENT OF BONDS:

A. The director may allow

a permittee to replace existing bonds with other bonds that provide equivalent coverage.

B. The director shall not release existing performance bonds until the permittee has submitted, and the director has approved, acceptable replacement performance bonds. Replacement of a performance bond pursuant to this section shall not constitute a release of bond under ~~[19.8.14.1413]~~ 19.8.14.1412 NMAC.

[11-29-97; 19.8.14.1411 NMAC - Rn, 19 NMAC 8.2.14.1411, 9-29-2000; A, 12-31-2007]

19.8.14.1412 REQUIREMENT TO RELEASE PERFORMANCE BONDS:

A. Bond release application.

(1) The permittee may file an application with the director for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the director in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be established in the mining and reclamation plan approved by the director.

(2) An application for a bond release shall at a minimum contain the following information:

(a) the permittee's name, address and the appropriate permit number;

(b) an accurate legal description of the land sought for bond release (either metes and bounds or precise section, township and range designations);

(c) the location of the area proposed for bond release shown on a USGS 7.5' map, which should also show the permit boundaries;

(d) a brief narrative summarizing the past history of the mine, the type, amount and date of the current bonding instrument, the number of acres included in the bond release application and the portion it represents of the total permit area, a description of the type and dates of the reclamation performed with a summary of the results achieved as they relate to the approved reclamation plan, and any other pertinent information that the applicant or the director may consider appropriate;

(e) a table listing the names, addresses and number of acres held by each of the surface and mineral owners of record in the area proposed for bond release;

(f) copies of letters sent to adjoining landowners, local governmental bodies, tribal governments, planning agencies, sewage and water treatment authorities, and water companies in the locality of the reclamation operation, notifying them of the permittee's intention to seek bond release; and

(g) other maps or other informa-

tion as may be appropriate or required by the director to locate or characterize the areas proposed for bond release, revegetation, hydrological or other reclamation issues;

(h) the permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of SMCRA, the act, the regulatory program, and the approved reclamation plan; a certification shall be submitted for each application or phase of bond release.

(3) Within 30 days after an application for bond release has been filed with the director, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan, and the name and address of the director, to whom written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to ~~[19.8.14.1413.F and 1413.H]~~ Subsections F and H of 19.8.14.1412 NMAC.

B. Inspection by director.

(1) Upon receipt of the bond release application, the director shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the director in making the bond release inspection. The director may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

(2) Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to Subsection F of 19.8.14.1412 NMAC, or, within 30 days after a public hearing has been held pursuant to Subsection F of 19.8.14.1412

NMAC, the director shall notify in writing the permittee, the surety or other persons with an interest in bond collateral who have requested notification under ~~[19.8.14.1410.F]~~ Subsection F of 19.8.14.1409 NMAC, and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

C. The director may release all or part of the bond for the entire permit area or incremental area if the director is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of phases I, II, and III.

(1) At the completion of phase I, after the operator completes the backfilling, regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60 percent of the bond or collateral for the applicable area.

(2) At the completion of phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the director shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in Section 69-25A-19 NMSA 1978 of the act for reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by Paragraph (10) of Subsection B of Section 69-25A-19 NMSA 1978 of the act and by 19.8.19 NMAC through 19.8.28 NMAC or until soil productivity for prime farmlands has returned to the equivalent levels of yield as non-mined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to ~~[Section 69-25A-10(b)(6)]~~ Paragraph (16) of Subsection B of Section 69-25A-10 NMSA 1978 of the act and 19.8.24 NMAC. Where a silt dam is to be retained as a permanent impoundment pursuant to 19.8.19 NMAC through 19.8.28 NMAC, the phase II portion of the bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have

been made with the director.

(3) At the completion of phase III, after the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in 19.8.20.2065 NMAC. However, no bond shall be fully released under provisions of this section until reclamation requirements of the act and the permit are fully met.

D. If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in ~~[19.8.14.1410.A(4)]~~ Subsection F of 19.8.14.1409 NMAC, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

E. When any application for total or partial bond release is filed with the director, the director shall notify the municipality in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

F. Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, tribal or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the director within 30 days after the last publication of the notice required by ~~[19.8.14.1413.A(2)]~~ Paragraph (3) of Subsection A of 19.8.14.1412 NMAC. If written objections are filed and a hearing is requested, the director shall inform all the interested parties of the time and place of the hearing, and shall hold a public hearing within 30 days after receipt of the request for the hearing. The date, time, and location of the public hearing shall be advertised by the director in a newspaper of general circulation in the locality for two consecutive weeks. The public hearing shall be held in the locality of the surface coal mining operation from which bond release is sought, or at the location of the director's office, at the option of the objector.

G. For the purpose of the hearing under Subsection F of 19.8.14.1412 NMAC, the director shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the

attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion for any party or by order of the director.

H. Without prejudice to the right of an objector or the applicant, the director may hold an informal conference as provided in Subsection B of Section 69-25A-17 NMSA 1978 of the act to resolve such written objections. The director shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The director shall also furnish all parties of the informal conference with a written finding of the director based on the informal conference, and the reasons for said finding.

[11-29-97; 19.8.14.1412 NMAC - Rn, 19 NMAC 8.2.14.1412, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

19.8.14.1413 FORFEITURE OF BONDS:

A. If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which the bond was accepted, the director shall take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

(1) send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond, including the reasons for the forfeiture and the amount to be forfeited; the amount shall be based on the estimated total cost of achieving the reclamation plan requirements;

(2) advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided; such conditions may include, but are not limited to:

(a) agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan, and the regulatory program and a demonstration that such party has the ability to satisfy the conditions; or

(b) the director may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan; except where the director may approve partial release

authorized under ~~[19.8.14.1413]~~ 19.8.14.1412 NMAC, no surety liability shall be released until successful completion of all reclamation under the terms of the permit, including applicable liability periods of ~~[19.8.14.1404]~~ 19.8.14.1403 NMAC.

B. In the event forfeiture of the bond is required by this section, the director shall:

(1) proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the director, or if such appeal, if taken, is unsuccessful;

(2) use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.

C. Upon default on the conditions under which the bond was accepted, the director may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Unless specifically limited, as provided in ~~[19.8.14.1402.D(3)]~~ Subsection B of 19.8.14.1401 NMAC, bond liability shall extend to the entire permit area under conditions of forfeiture.

D. Discrepancies between bond amounts and actual costs of reclamation.

(1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The director may complete, or authorize completion of, reclamation of the bonded area in accordance with the permit terms and may recover from the operator all reasonably incurred costs of reclamation in excess of the amount forfeited.

(2) In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the director to the party from whom they were collected.

[11-29-97; 19.8.14.1413 NMAC - Rn, 19 NMAC 8.2.14.1413, 9-29-2000; A, 12-31-2007]

19.8.14.1414 TERMS AND CONDITIONS FOR LIABILITY INSURANCE:

A. The director shall require the applicant to submit as part of its permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which the

permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the surface coal mining and reclamation operations, including the use of explosives, and who are entitled to compensation under the applicable provisions of state law. Minimum insurance coverage for bodily injury and property damage shall be \$300,000 for each occurrence and \$500,000 aggregate.

B. The policy shall be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary to complete all reclamation operations under 19.8.14 NMAC ~~and 19.8.15 NMAC~~.

C. The policy shall include a rider requiring that the insurer notify the director whenever substantive changes are made in the policy including any termination or failure to renew.

D. The director may accept from the applicant, in lieu of a certificate for a public liability insurance policy, a commitment to self-insure for bodily injury and property damage, if the director has approved a self-bond for the applicant in accordance with ~~[19.8.14.1411]~~ 19.8.14.1410 NMAC.

[11-29-97; 19.8.14.1414 NMAC - Rn, 19 NMAC 8.2.14.1414, 9-29-2000; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.19 NMAC, Section 1902, effective 12-31-2007.

19.8.19.1902 PERFORMANCE STANDARDS FOR COAL EXPLORATION: The performance standards in this section are applicable to coal exploration, which substantially disturbs land surface.

A. Habitats of unique value for fish, wildlife, and other related environmental values and areas identified in Subsection B of 19.8.9.905 NMAC shall not be disturbed during coal exploration.

B. The person who conducts coal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area and to provide supportive information for any permit application that person may submit under 19.8.5 NMAC through 19.8.13 NMAC.

C. Roads and off-road

travel.

(1) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(2) Any new road or other transportation facility shall comply with the provisions of Subsections B through F of 19.8.20.2076 and 19.8.20.2077 and 19.8.20.2078 NMAC.

(3) Existing roads or other transportation facilities may be used for exploration in accordance with the following:

(a) all applicable federal, state, and local requirements shall be met;

(b) if the road is significantly altered for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then Subsection G of 19.8.19.1902 NMAC shall apply to all areas of the road which are altered or which result in such additional contributions;

(c) if the road or other transportation facility is significantly altered for exploration activities, the person conducting exploration shall ensure that the requirements of ~~[19.8.20.2076.B through 2076.F, and 19.8.20.2076 and 2077]~~ Subsections B through F of 19.8.20.2076 NMAC and 19.8.20.2077 and 19.8.20.2078 NMAC are met for the design, construction, alteration, and maintenance of the road.

(4) Any road or transportation facility that will be retained after exploration activities are complete shall comply with the applicable provisions of 19.8.20.2076, 2077, 2078 or 2079 NMAC, as applicable. Any road that will not be retained will be promptly reclaimed.

D. If excavations, artificial flat areas, or embankments are created during exploration, those areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

E. Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the director.

F. Revegetation of areas disturbed by coal exploration shall be performed by the person who conducts the exploration, or his agent. If more than 250 tons of coal are removed from the exploration area, all revegetation shall be in compliance with the plan approved by the director and carried out in a manner that encourages prompt vegetative cover and recovery

of productivity levels compatible with approved post-exploration land use and in accordance with the following:

(1) all disturbed lands shall be seeded or planted with species of the same aspection native to the disturbed area. If both the pre-exploration and post-exploration land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph;

(2) the vegetative cover shall be capable of stabilizing the soil surface in regards to erosion.

G. With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent or perennial stream shall be diverted during coal exploration activities. Overland flow of water shall be diverted in a manner that:

(1) prevents erosion;

(2) to the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff outside the exploration area in accordance with 19.8.20.2009 through 2026 NMAC and the pertinent state water quality control commission regulations standards; and

(3) complies with all other applicable state or federal requirements.

H. Each exploration hole, borehole, well, or other exposed underground opening created during exploration must meet the requirements of 19.8.20.2001 through 2003 NMAC.

I. All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that the director determines may remain to:

(1) provide additional environmental quality data;

(2) reduce or control the on and off-site effects of the exploration activities; or

(3) facilitate future surface mining and reclamation operations by the person conducting the exploration under an approved permit.

J. Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures such as provided in 19.8.20.2013 NMAC of these rules and regulations and the pertinent state water quality control commission standards or sedimentation ponds which comply with 19.8.20.2014 NMAC. The director may specify additional measures which shall be adopted by the person engaged in coal exploration.

K. Toxic or acid-forming materials shall be handled and disposed of in accordance with 19.8.20.2016 and 2056

NMAC. If specified by the director, additional measures shall be adopted by the person engaged in coal exploration. [11-29-97; 19.8.19.1902 NMAC - Rn, 19 NMAC 8.2.19.1902, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.20 NMAC, Sections 2010, 2017, 2019, 2026, 2037, 2047, 2049, 2050, 2056, 2065, 2066, and 2068, effective 12-31-2007.

19.8.20.2010 HYDROLOGIC BALANCE: WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS:

A. Treatment of disturbed area surface flow.

(1) With the exception of surface flow leaving the disturbed area with respect to which area the operator has complied with the requirements of 19.8.20.2009 NMAC, all surface flow that leaves the disturbed area shall be passed through a sedimentation pond or series of sedimentation ponds or other treatment facilities before leaving the permit area. Any discharge of water from underground workings to surface waters which does not meet the effluent limitations of 19.8.20 NMAC shall also be passed through a sedimentation pond, a series of sedimentation ponds, or a treatment facility before leaving the permit area.

(2) Sedimentation ponds and other treatment facilities shall be maintained until the disturbed area has been regraded and erosion on the regraded area has been controlled:

(a) to prevent gully erosion from occurring; and

(b) to insure that the quality of the untreated drainage from the disturbed area meets the applicable state and federal water quality standard requirements for the receiving stream, except during precipitation events which are equal to or greater than the 2 year recurrence interval.

(3) Sedimentation ponds and treatment facilities for discharges from underground workings shall be maintained until either the discharge continuously meets the effluent limitations of 19.8.20 NMAC without treatment or until the discharge has permanently ceased.

(4) The director may grant exemptions from these requirements only when:

(a) the disturbed drainage area within the total disturbed area is small; and

(b) the person who conducts the surface coal mining operations demonstrates that sedimentation ponds and treat-

ment facilities are not necessary for drainage from the disturbed drainage areas to meet the effluent limitations in Paragraph (8) of Subsection A of 19.8.20.2010 NMAC and the applicable state and federal water quality standards for downstream and receiving waters.

(5) For the purposes of 19.8.20 NMAC only, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with 19.8.20 NMAC and the upstream area is not otherwise disturbed by the person who conducts the surface coal mining operations.

(6) Sedimentation ponds required by 19.8.20 NMAC shall be constructed in accordance with 19.8.20.2014 NMAC in appropriate locations before beginning any surface coal mining operations in the drainage area to be affected.

(7) Where the sedimentation pond or series of sedimentation ponds is used so as to result in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current surface coal mining and reclamation operations, the permittee shall achieve the effluent limitations set forth below for all of the mixed drainage when it leaves the pond discharge point.

(8) Discharges of water from areas disturbed by surface mining activities and underground mining activities shall be made in compliance with all applicable state and federal water-quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. environmental protection agency set forth in 40 CFR Part 434.

B. A discharge from the disturbed areas is not subject to the effluent limitations of 19.8.20 NMAC, if:

(1) the discharge is demonstrated by the discharger to have resulted from a precipitation event equal to or larger than a 10-year 24-hour precipitation event; and

(2) the discharge is from facilities designed, constructed, and maintained in accordance with the requirements of 19.8.20 NMAC.

C. Adequate facilities shall be installed, operated, and maintained to treat any water discharged from the disturbed area so that it complies with all federal and state laws and regulations and the limitations of 19.8.20 NMAC. If the pH of water to be discharged from the disturbed area is less than 6.0, an automatic lime feeder or other automatic neutralization process approved by the director shall be installed, operated, and maintained. The director may authorize the use of a manual system, if he finds that:

(1) flow is infrequent and presents small and infrequent treatment requirements to meet applicable standards which

do not require use of an automatic neutralization process; and

(2) timely and consistent treatment is ensured.

[11-29-97; 19.8.20.2010 NMAC - Rn, 19 NMAC 8.2.20.2010, 9-29-2000; A, 12-31-2007]

19.8.20.2017 HYDROLOGIC BALANCE: PERMANENT AND TEMPORARY IMPOUNDMENTS:

A. Permanent impoundments are prohibited unless authorized by the director, upon the basis of the following demonstrations:

(1) the size and configuration of such impoundment will be adequate for its intended purposes;

(2) the quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards;

(3) the water level will be sufficiently stable and be capable of supporting the intended use;

(4) final grading will provide for adequate safety and access for proposed water users;

(5) the impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses; and

(6) the impoundment will be suitable for the approved postmining land use.

B. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of 19.8.20 NMAC using current, prudent engineering practices, and any design criteria established by the director. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

C. An impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and 19.8.20 NMAC.

D. All impoundments that meet the class B or C criteria for dams in TR-60 or exceed the size or other criteria of 30 CFR 77.216(a) shall be certified to the director by a qualified registered professional engineer, as having been constructed to comply with the requirements of 19.8.20 NMAC. All dams and embankments that do not meet the class B or C criteria for dams in TR-60 or other size criteria of 30

CFR 77.216(a) shall be certified by either a qualified registered professional engineer or a qualified registered professional land surveyor, except that all coal processing waste dams and embankments covered by 19.8.20.2047 through 2049 NMAC shall be certified by a qualified registered professional engineer. All impoundments shall be certified after construction and prior to the intended use.

E. The following is a list of general requirements that apply to all temporary or permanent impoundments.

(1) Impoundments meeting the class B or C criteria for dams in the U.S. department of agriculture, ~~soil~~ natural resources conservation service technical release no. 60 (210-VI-TR60, Oct. 1985), "earth dams and reservoirs", shall comply with the, "minimum emergency spillway hydrologic criteria", table in TR-60 and the requirements of 19.8.20 NMAC.

(2) An impoundment meeting the Class B or C criteria for dams in [SCS] NRCS technical release no. 60 (210-VI-TR60, Oct. 1985), "earth dams and reservoirs", or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(3) Impoundments not included in Paragraph (2) of Subsection E of 19.8.20.2017 NMAC, except for a coal mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of Subsection C of 19.8.9.909 NMAC.

(4) Impoundments meeting the class B or C criteria for dams in [SCS] NRCS technical release no. 60 (210-VI-TR60, Oct. 1985), "earth dams and reservoirs", shall comply with the freeboard hydrograph criteria in the "minimum emergency spillway hydrologic criteria" table in TR-60.

(5) Impoundments not included in Paragraph (2) of Subsection E of 19.8.20.2017 NMAC shall have adequate freeboard to resist overtopping by waves and by a sudden increase in stored volume.

(6) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation, and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the class B or C criteria for dams in [SCS] NRCS technical release no. 60 (210-VI-TR60, Oct. 1985), "earth dams and reservoirs", or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

dation stability.

(7) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(8) Slope protection shall be provided to protect against surface erosion where surface runoff enters the impoundment area and protect against sudden draw-down.

(9) Faces of embankments and surrounding areas shall be vegetated, or otherwise stabilized in accordance with accepted design and operational practices.

(10) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extend of highwall to provide adequate safety and access for the proposed water users.

(11) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

F. An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in Paragraph (1) of Subsection F of 19.8.20.2017 NMAC, designed and constructed to safely pass the applicable design precipitation runoff event specified in Paragraph (2) of Subsection F of 19.8.20.2017 NMAC, except as set forth in Paragraph (3) of Subsection F of 19.8.20.2017 NMAC.

(1) The director may approve a single open-channel spillway that is:

(a) of nonerodible construction and designed to carry sustained flows; or

(b) earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(2) Except as specified in Paragraph (3) of Subsection F of 19.8.20.2017 NMAC, the required design precipitation event for spillways for impoundments is:

(a) for an impoundment meeting the class B or C criteria for dams in TR-60 or other size criteria of 30 CFR 77.216(a), a 100-year 6-hour event, or greater event as specified by the director.

(b) for a temporary impoundment not meeting the class B or C criteria for dams in TR-60 or other size criteria of 30 CFR 77.216(a), a 25-year 6-hour event, or greater event as specified by the director.

(c) for a permanent impoundment not meeting the class B or C criteria for dams in TR-60 or other size criteria of 30 CFR 77.216(a), a 50-year, 6-hour event, or greater event as specified by the director.

(3) In lieu of meeting the requirements in Paragraph (1) of Subsection F of 19.8.20.2017 NMAC, the director may approve a temporary impoundment that

relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor that the impoundment will safely control the design precipitation event and associated runoff, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage. The following design criteria shall apply:

(a) in the case of an impoundment meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the runoff of the probable maximum precipitation of a 6-hour event, or greater event as specified by the director, or

(b) in the case of an impoundment not meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the runoff of a 100-year 6-hour event, or greater event as specified by the director.

G. Except as provided in Paragraph (4) of Subsection G of 19.8.20.2017 NMAC, a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in Paragraph (1) of Subsection G of 19.8.20.2017 NMAC. The professional engineer or specialist shall be experienced in the construction of impoundments.

(1) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(2) The qualified registered professional engineer, or qualified registered professional land surveyor as specified in Paragraph (4) of Subsection G of 19.8.20.2017 NMAC, shall promptly after each inspection required in Paragraph (1) of Subsection G of 19.8.20.2017 provide to the director a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and 19.8.20 NMAC. The report shall include discussion of any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

(3) A copy of the report shall be retained at or near the mine site.

(4) A qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the class B or C criteria for

dams in TR-60 or other size criteria of 30 CFR 77.216(a) and certify and submit the report required by Paragraph (2) of Subsection G of 19.8.20.2017 NMAC, except that all coal mine waste impounding structures covered by 19.8.20.2047 through 2049 NMAC shall be certified by a qualified registered professional engineer. The professional land surveyor shall be experienced in the construction of impoundments.

(5) Impoundments meeting the class B or C criteria for dams in TR-60 [of] or subject to 30 CFR 77.216(a) must be examined in accordance with 30 CFR 77.216-3. Other impoundments shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions.

(6) If an impoundment is constructed without an embankment, the director may waive the quarterly examination requirement. Therefore, excavated ponds, haulroad sumps and any impoundment that is built without embankments may be exempt from the requirements of Paragraph (5) of Subsection G of 19.8.20.2017 NMAC with the approval of the director. Any waiver granted under this paragraph shall not relieve the operator of the requirement to maintain impoundments in accordance with the approved plan and 19.8.20 NMAC.

(7) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the director of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures can not be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

[11-29-97; A, 12-15-99; 19.8.20.2017 NMAC - Rn, 19 NMAC 8.2.20.2017, 9-29-2000; A, 12-31-2007]

19.8.20.2019 HYDROLOGIC BALANCE: PROTECTION OF GROUND WATER RECHARGE CAPACITY:

[~~A~~] Surface mining activities shall be conducted in a manner that facilitates reclamation which will restore approximate premining recharge capacity, through restoration of the capability of the reclaimed areas as a whole, excluding coal processing waste and underground development waste disposal areas and fills, to transmit water to the ground water system. The recharge capacity shall be restored to a condition which:

(4) ~~A~~. supports the approved postmining land use;

(2) ~~B~~. minimizes disturbances to the prevailing hydrologic balance in the permit area and in adjacent areas; and

(3) ~~C~~. provides a rate of recharge that approximates the premining recharge rate.

[11-29-97; 19.8.20.2019 NMAC - Rn, 19 NMAC 8.2.20.2019, 9-29-2000; A, 12-31-2007]

19.8.20.2026 HYDROLOGIC BALANCE: UNDERGROUND MINE ENTRY AND ACCESS DISCHARGES:

A. Surface entries and accesses to underground workings, including adits and slopes, shall be located, designed, constructed, and utilized to prevent or control gravity discharge of water from the mine.

B. Gravity discharge of water from an underground mine, other than a [draft] drift mine subject to Subsection C of 19.8.20.2026 NMAC, may be allowed by the director, if it is demonstrated that:

(1) in the case of an untreated discharge:

(a) the discharge, without treatment, satisfies the water effluent limitations of 19.8.20.2010 NMAC and all applicable state and federal water quality standards; and

(b) that discharge will result in changes in the prevailing hydrologic balance that are minimal and approved postmining land uses will not be adversely affected; or

(2) in the case of a treated discharge:

(a) the discharge is conveyed to a treatment facility in the permit area in accordance with Subsection A of 19.8.20.2010 NMAC;

(b) all water from the underground mine discharged from the treatment facility meets the effluent limitations of 19.8.20.2010 NMAC and all other applicable state and federal statutes and regulations; and

(c) consistent maintenance of the treatment facility will occur throughout the anticipated period of gravity discharge.

C. Notwithstanding anything to the contrary in Subsections A and B of 19.8.20.2026 NMAC, for a drift mine first used after the implementation of the permanent state program and located in acid-producing or iron-producing coal seams, surface entries and accesses shall be located in such a manner as to prevent any gravity discharge from the mine.

[11-29-97; 19.8.20.2026 NMAC - Rn, 19 NMAC 8.2.20.2026, 9-29-2000; A, 12-31-2007]

19.8.20.2037 DISPOSAL OF EXCESS SPOIL: DURABLE ROCK FILLS:

In lieu of the requirements of 19.8.20.2035 and 2036 NMAC, the director may approve alternate methods of disposal of hard rock spoil, including fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of 19.8.20 NMAC and 19.8.20.2034 NMAC are met. For 19.8.20 NMAC, hard rock spoil shall be defined as rockfill consisting of at least 80 percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock spoil to slaking shall be determined by using a slake index and slake durability tests approved by the director.

A. Spoil is to be transported and placed in a specified and controlled manner, which will ensure stability of the fill.

(1) The method of spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of 19.8.20 NMAC.

(2) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such materials shall comprise no more than 20 percent of the fill volume as determined by tests performed by a registered professional engineer and approved by the director.

B. Stability analyses.

(1) Stability analyses shall be made by the registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including borings and laboratory tests.

(2) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the following factors of safety.

Case	Design Condition	Minimum Factor of Safety
I	End of construction	1.5
II	Earthquake	1.1

C. The design of a head-of-hollow fill shall include an internal drainage system to the extent necessary to ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(1) Anticipated discharge from springs and seeps and due to precipitation shall be

based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(2) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravel, sandstone, limestone of other durable rock which will not slake in water.

(3) The internal drain shall be protected by a properly designed filter system.

D. Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to pass safely the runoff from a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of Subsection F of 19.8.20.2011 NMAC.

E. The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (5 percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

F. Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will pass safely a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of Subsection F of 19.8.20.2011 NMAC.

G. Terraces or other suitable controls, such as berms, contour furrows, or micro-depressions, shall be constructed on the outslope if required for control of erosion, or terraces for construction of roads included in the approved postmining land use plan. Terraces shall meet the following requirements:

(1) the slope of the outslope between terrace benches shall not exceed 1v:2h (50 percent);

(2) to control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (5 percent) toward the embankment; runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope;

(3) terrace ditches shall have a 5 percent slope toward the channels specified in Subsection F of 19.8.20.2037 NMAC, unless steeper slopes are necessary in conjunction with approved roads.

[11-29-97; 19.8.20.2037 NMAC - Rn, 19 NMAC 8.2.20.2037, 9-29-2000; A, 12-31-2007]

19.8.20.2047 COAL PROCESSING WASTE: DAMS AND EMBANK-

MENTS: GENERAL REQUIREMENTS: [(816.84 and 817.84)]

A. 19.8.20.2047 through 2049 NMAC apply to dams and embankments, constructed of coal processing waste, or intended to impound coal processing waste, whether they were completed before adoption of 19.8 NMAC or are intended to be completed thereafter.

B. Waste shall not be used in the construction of dams and embankments unless it has been demonstrated to the director that the stability of such a structure conforms with the requirements of Subsection A of 19.8.20.2049 NMAC. It shall also be demonstrated that the use of waste material shall not have a detrimental affect on downstream water quality or the environment due to acid seepage through the dam or embankment. All demonstrations shall be submitted to and approved by the director.

C. Dams and embankments constructed of coal processing waste or intended to impound coal processing waste shall not be retained permanently as part of approved postmining land use.

[11-29-97; 19.8.20.2047 NMAC - Rn, 19 NMAC 8.2.20.2047, 9-29-2000; A, 12-31-2007]

19.8.20.2049 COAL PROCESSING WASTE: DAMS AND EMBANKMENT: DESIGN AND CONSTRUCTION:

A. The design of each dam and embankment constructed of coal processing waste or intended to impound such waste shall comply with the requirements of Subsections B through G of 19.8.20.2017 NMAC modified as follows:

(1) the maximum water elevation shall be that determined by the freeboard hydrograph criteria contained in the U.S. [soil] natural resources conservation service criteria referenced in 19.8.20.2017 NMAC;

(2) the dam and embankment shall have a minimum safety factor of 1.5 for the partial pool with steady seepage saturation conditions, and the seismic safety factor shall be at least 1.2;

(3) the dam or embankment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment; sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or embankment for all loading conditions appearing in Paragraph (2) of Subsection A of 19.8.20.2049 NMAC or the publications referred to in 19.8.20.2017 NMAC and for all increments of construction.

B. Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

C. Dams or embankments constructed of, or impounding, coal processing waste shall be designed, constructed and maintained so that at least 90 percent of the water stored during the design precipitation event shall be removed within a 10 day period.

D. Each impounding structure constructed of coal processing waste or intended to impound coal processing waste that meets the criteria of 30 CFR 77.216(a) shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the director.

E. No impounding structure constructed of coal processing waste or intended to impound coal processing waste shall be retained as a permanent impoundment as part of the approved postmining land use.

[11-29-97; 19.8.20.2049 NMAC - Rn, 19 NMAC 8.2.20.2049, 9-29-2000; A, 12-31-2007]

19.8.20.2050 AIR RESOURCES PROTECTION: [(816.95 and 817.95)]

A. Fugitive dust. Each person who conducts surface coal mining operations shall plan and employ fugitive dust control measures as an integral part of site preparation, coal mining, and reclamation operations. The director shall approve the control measures appropriate for use in planning, according to applicable federal and state air quality standards, climate, existing air quality in the area affected by mining, and the available control technology.

B. Control measures. The fugitive dust control measures to be used, depending on applicable federal and state air quality standards, climate, existing air quality, size of the operation, and type of operation, shall include, as necessary, but not be limited, to:

(1) periodic watering of unpaved roads, with the minimum frequency of watering approved by the director;

(2) chemical stabilization of unpaved roads with proper application of nontoxic soil cement or dust palliatives;

(3) paving of roads;

(4) prompt removal of coal, rock, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface;

(5) restricting the speed of vehicles to reduce fugitive dust caused by travel;

(6) revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are sources of fugitive

dust;

(7) restricting the travel of unauthorized vehicles on other than established roads;

(8) enclosing, covering, watering, or otherwise treating loaded haul trucks and railroad cars, to reduce loss of material to wind and spillage;

(9) substituting of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subjected to wind erosion;

(10) minimizing the area of disturbed land;

(11) prompt revegetation of regraded lands;

(12) use of alternatives for coal-hauling methods, restriction of dumping procedures, wetting of disturbed materials during handling, and compaction of disturbed areas;

(13) planting of special wind-break vegetation at critical points in the permit area;

(14) control of dust from drilling, using water sprays, hoods, dust collectors, or other controls;

(15) restricting the areas to be blasted at any one time to reduce fugitive dust;

(16) restricting activities causing fugitive dust during periods or air stagnation;

(17) extinguishing any areas of burning or smoldering coal and periodically inspecting for burning areas whenever the potential for spontaneous combustion is high;

(18) reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization; and

(19) restricting fugitive dust at spoil and coal transfer and loading points with water sprays, negative pressure systems and baghouse filters, chemicals, or other practices.

C. Additional measures. Where the director determines that application of fugitive dust control measures listed in Subsection B of 19.8.20.2050 NMAC is inadequate, the director may require additional measures and practices as necessary.

D. Monitoring. Air monitoring equipment shall be installed and monitoring shall be conducted in accordance with the air monitoring plan required under 19.8.9.904 NMAC and approved by the director.

[11-29-97; 19.8.20.2050 NMAC - Rn, 19 NMAC 8.2.20.2050, 9-29-2000; A, 12-31-2007]

19.8.20.2056 BACKFILLING AND GRADING: COVERING COAL AND ACID- AND TOXIC-FORMING MATE-

RIAL:

A. ~~Cover~~ Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during surface coal mining and reclamation operations shall be adequately covered with non-toxic and non-combustible materials, or treated, to control the impact on surface and ground water in accordance with 19.8.20.2009 NMAC to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

~~(2)~~ **B.** Where necessary to protect against adverse effects on plant growth and the approved post-mining land use from upward migration of salts, exposure by erosion, formation of acid or toxic seeps, to provide an adequate depth for plant growth, or otherwise to meet local conditions, the director shall specify thicker amounts of cover using non-toxic material, or special compaction and isolation from ground water contact.

~~(3)~~ **C.** Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

[11-29-97; 19.8.20.2056 NMAC - Rn, 19 NMAC 8.2.20.2056, 9-29-2000; A, 12-31-2007]

19.8.20.2065 REVEGETATION: STANDARDS FOR SUCCESS: ~~(816.116 and 817.116)~~

A. Success of revegetation shall be measured by techniques identified in the director's "coal mine reclamation program vegetation standards", as approved by the director ~~of MMD and OSM~~ after consultation with appropriate state and federal agencies. Comparison of ground cover and productivity shall be made on the basis of reference areas or technical standards developed using an historic record of premining conditions.

B. Liability period, ground cover and productivity standards, and normal husbandry practices.

(1) Ground cover and productivity of living plants on the revegetated area within the permit area shall be equal to the ground cover and productivity of living plants on the approved reference area or to technical standards developed in accordance with the "coal mine reclamation program vegetation standards", as approved by the director ~~of MMD and OSM~~. The period of extended responsibility under the performance bond requirements of 19.8.14 NMAC begins after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the director in accordance with Paragraph (6) of Subsection B of

19.8.20.2065 NMAC.

(2) In areas of more than 26.0 inches average annual precipitation, the period of liability under the performance bond requirements of 19.8.14 NMAC shall continue for not less than five full years. Ground cover and productivity shall equal or exceed the approved standard for two of the last four years of the responsibility period.

(3) In areas of less than or equal to 26.0 inches average annual precipitation, the period of liability under the performance bond requirements of 19.8.14 NMAC shall continue for not less than 10 full years. Ground cover and productivity shall equal the approved standard for at least two of the last four years, starting no sooner than year eight of the responsibility period.

(4) For purposes of Paragraphs (1), (2) and (3) of Subsection B of 19.8.20.2065 NMAC, the average annual precipitation can be determined either:

(a) by interpolation, using standard techniques, from mean annual precipitation map, page 97, "the national atlas of the United States", U.S. department of the interior, geological survey, 1970; or from "climatic atlas of the United States", U.S. department of commerce, national oceanic and atmospheric administration, 1974; or from long-term precipitation averages from climatological data, U.S. department of commerce, national oceanic and atmospheric administration; or from other official records; or

(b) based on at least 10 years of continuous and reliable precipitation records from stations located in or adjacent to the permit area.

(5) The ground cover and productivity of the revegetated area shall be considered equal if they are at least 90 percent of the ground cover and productivity of the reference area with 90 percent statistical confidence, or ground cover, productivity, or shrubland stocking are at least 90 percent of the standards developed under Subsection A of 19.8.20.2065 NMAC for an historic record. Exceptions may be authorized by the director under the following standards:

(a) for previously mined areas that were not reclaimed to the requirements of 19.8.20 NMAC, as a minimum the ground cover of living plants shall not be less than can be supported by the best available topdressing in the reaffected area, shall not be less than the ground cover existing before redisturbance, and shall be adequate to control erosion;

(b) for areas to be developed for industrial or residential use less than 2 years after regrading is completed, the ground cover of living plants shall not be less than required to control erosion; and

(c) for areas to be used for cropland, success in revegetation of cropland shall be determined on the basis of crop production from the mined area as compared to approved reference areas or other technical guidance procedures; crop production from the mined area shall be equal to or greater than that of the approved standard for two of the last four growing seasons of the 5 or 10 year liability period established in Paragraphs (1), (2) and (3) of Subsection B of 19.8.20.2065 NMAC, starting no sooner than year eight of the 10-year liability period; the applicable 5 or 10 year period of responsibility for revegetation shall commence at the date of initial planting of the crop being grown;

(d) on areas to be developed for fish and wildlife management, recreation, shelterbelts or forestland, success of vegetation shall be determined on the basis of tree, shrub, or half-shrub stocking and ground cover; the tree, shrub, or half-shrub stocking shall meet the standards described in 19.8.20.2066 NMAC; vegetative ground cover shall not be less than that required by the director under Subsections A and B of 19.8.20.2065 NMAC to meet the post mining land use; 19.8.20.2065 NMAC shall determine the responsibility period and the frequency of ground cover measurement.

(6) The director has the discretion to approve selective husbandry practices without extending the period of responsibility for revegetation success or bond liability. Husbandry practices are those activities that can be expected to continue as part of the post mining land use, and are employed within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, to control disease, pest and vermin and appropriate pruning, reseeding, and transplanting activities. Practices may also be allowed that will not reduce the probability of permanent revegetative success if they are discontinued after the liability period expires. Any practice the director determines to be augmented seeding, fertilization or irrigation shall not be considered a husbandry practice.

C. The person who conducts surface coal mining operations shall:

(1) maintain any necessary fences and proper management practices; and

(2) conduct periodic measurements of vegetation, soils, and water prescribed or approved by the director, to identify conditions during the applicable period of liability specified in Subsection B of 19.8.20.2065 NMAC.

[11-29-97; A, 12-15-99; 19.8.20.2065 NMAC - Rn, 19 NMAC 8.2.20.2065 & A, 9-29-2000; A, 12-31-2007]

**19.8.20.2066 REVEGETATION:
TREE AND SHRUB STOCKING:**

~~[(816.117 and 817.117)]~~ 19.8.20.2066 NMAC sets forth forest resource conservation standards for reforestation operations to ensure that a cover of commercial tree species, noncommercial tree species, shrubs, or half-shrubs is established for the development of fish and wildlife habitat, recreation, shelterbelts or forestry after surface coal mining operations. Trees and shrubs used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use.

A. At a minimum, at the time of final bond release, at least 80 percent of all trees and shrubs used to determine revegetation success has been in place for at least 60 percent of the applicable minimum period of responsibility.

B. Stocking, i.e., the number of stems per unit area, will be determined using the following criteria:

(1) root crown or root sprouts more than 1 foot in height shall count as one toward meeting the stocking requirements; where multiple stems occur only the tallest stem will be counted;

(2) a countable tree or shrub means a tree that can be used in calculating the degree of stocking under the following criteria:

(a) the tree or shrub shall be in place at least 2 growing seasons;

(b) the tree or shrub shall be alive and healthy; and

(c) the tree or shrub shall have at least one-third of its length in live crown;

(3) rock areas, which replace similar natural features, permanent road and surface water drainage ways on the revegetated area shall not require stocking.

C. The following are the minimum performance standards for areas where commercial forest land is the approved postmining land use:

(1) the area shall have a minimum stocking of trees or shrubs as determined by the state forester on a permit specific basis;

(2) a minimum of 75 percent of countable trees or shrubs shall be commercial tree species;

(3) the number of trees or shrubs and the ground cover shall be determined using procedures described in Subparagraph (d) of Paragraph (5) of Subsection B of 19.8.20.2065 NMAC and Subsection B of 19.8.20.2066 NMAC and the sampling methods approved by the director;

(4) upon expiration of the 5 or 10 year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that the stocking of trees and shrubs and the groundcover on the revegetated area satisfies 19.8.20.2065 and 2066 NMAC.

D. The following are the

minimum performance standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(1) an inventory of trees, half-shrubs and shrubs shall be conducted to comply with 19.8.8.808 NMAC and 19.8.20.2060 NMAC according to methods approved by the director after consultation with and approval by the state forester and the department of game and fish; this inventory shall contain, but not be limited to:

(a) site quality;

(b) stand size;

(c) stand condition;

(d) site and species relations; and

(e) appropriate forest land utilization considerations.

(2) the stocking of trees, half-shrubs, shrubs, and the ground cover established on the revegetated area shall approximate the inventory pursuant to Subparagraph (d) of Paragraph (5) of Subsection B of 19.8.20.2065 NMAC and Paragraph (1) of Subsection D of 19.8.20.2066 NMAC and shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement and shall be approved the director in consultation with and approval of the appropriate state agency responsible for the administration of forestry and wildlife programs, on a permit specific basis;

(3) upon expiration of the 5 or 10 year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that:

(a) the woody plants established on the revegetated site are equal to or greater than 90 percent of the stocking of live woody plants of the same life form ascertained pursuant to Subsection B of 19.8.20.2066 NMAC with 90 percent statistical confidence, using an appropriate (parametric or nonparametric) one-tail test with a 10 percent alpha error; and

(b) the groundcover on the revegetated area satisfies Subparagraph (d) of Paragraph (5) of Subsection B of 19.8.20.2065 NMAC; species diversity, aspect and regenerative capacity of the vegetation of the revegetated area shall be evaluated on the basis of the results which could reasonably be expected using the revegetation methods described in the mining and reclamation plan.

[11-29-97; 19.8.20.2066 NMAC - Rn, 19 NMAC 8.2.20.2066, 9-29-2000; A, 12-31-2007]

19.8.20.2068 SUBSIDENCE CONTROL: PUBLIC NOTICE: The mining schedule shall be distributed by mail to all owners of property and residents residing within the permit area above the under-

ground workings and adjacent areas. Each such person shall be notified by mail at least six months prior to mining beneath his property or residence. The notification shall contain, ~~as~~ at a minimum:

A. identification of specific areas in which mining will take place;

B. dates that specific areas will be undermined; and

C. the location or locations where the operator's subsidence control plan may be examined.

[11-29-97; 19.8.20.2068 NMAC - Rn, 19 NMAC 8.2.20.2068, 9-29-2000; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.24 NMAC, Sections 2404, effective 12-31-2007.

19.8.24.2404 PRIME FARMLAND: REVEGETATION: Each person who conducts surface coal mining and reclamation operations on prime farmland shall meet the following revegetation requirements during reclamation:

A. following soil replacement, that person shall establish a vegetative cover capable of stabilizing the soil surface with respect to erosion; all vegetation shall be in compliance with the plan approved by the director under 19.8.10.1004 NMAC and carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity; the timing and mulching provisions of 19.8.20.2062 and 2063 NMAC shall be met;

B. within a time period specified in the permit, but not to exceed 10 years after completion of backfilling and rough grading, any portion of the permit area which is prime farmland must be used for crops commonly grown, such as corn, alfalfa, permanent pasture grain, sorghum, wheat, oats, barley, or other crops on surrounding prime farmland; the crops may be grown in rotation with any or pasture crops as defined for cropland; the director may approve a crop use of perennial plants for hay, where this is a common long-term use of prime farmland soils in the surrounding area; the level of management shall be equivalent to that on which the target yields are based;

C. measurement of success in prime farmland revegetation will be determined based upon the techniques approved in the permit by the director under 19.8.10.1004 NMAC; as a minimum, the following standards shall be met:

(1) average annual crop produc-

tion shall be determined based upon a minimum of 3 years data; crop production shall be measured for the three years immediately prior to release of bond according to 19.8.14 NMAC;

(2) revegetation on prime farmland shall be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for non-mined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices;

(3) the reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland; where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth shall be chosen as one of the reference crops;

(4) reference crop yields for a given crop season are to be determined from:

(a) the current yield records of representative local farms in the surrounding area, with concurrence by the U.S. natural resources conservation service; or

(b) the average county yields recognized by the U.S. department of agriculture, which have been adjusted by the U.S. ~~Soil~~ natural resources conservation service for local yield variation within the county that is associated with differences between non-mined prime farmland soil and all other soils that produce the reference crop;

(5) under either procedure in Paragraph (4) of Subsection C of 19.8.24.2404 NMAC, the average reference crop yield may be adjusted, with the concurrence of the U.S. ~~Soil~~ natural resources conservation service for:

(a) disease, pest, and weather-induced seasonal variations; or

(b) differences in specific management practices where the overall management practices of the crops being compared are equivalent;

(6) a statistically valid sampling technique at a 90-percent or greater statistical confidence level shall be used as approved by the director in consultation with U.S. ~~Soil~~ natural resources conservation service.

[11-29-97; 19.8.24.2404 NMAC- Rn, 19 NMAC 8.2.24.2404, 9-29-2000; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.26 NMAC, Section 19.8.26.2601, effective 12-31-2007.

19.8.26.2601 STEEP SLOPES: PERFORMANCE STANDARDS:

Surface coal mining and reclamation operations subject to this part shall comply with requirements of 19.8.5 NMAC and the following, except to the extent a variance is approved under 19.8.26.2602 NMAC.

A. Materials not allowed on downslopes.

(1) The person engaged in surface coal mining and reclamation operations shall prevent the following materials from being placed or allowed to remain on the downslope:

(a) spoil;

(b) waste materials, including waste mineral matter;

(c) debris, including that from clearing the grubbing of haul road construction; and

(d) abandoned or disabled equipment.

(2) Nothing in this subsection shall prohibit the placement of material in road embankments located on the downslope, so long as the materials used and embankment design comply with the requirements of ~~[19.8.20.2074 through 2076]~~ 19.8.20.2076 through 2078 NMAC and the material is moved and placed in a controlled manner.

B. The highwall shall be completely covered with compacted spoil and the disturbed area graded to comply with the provisions of 19.8.20.2054 through 2059 NMAC including, but not limited to, the return of the site, to the approximate original contour. The person who conducts the surface coal mining and reclamation operations must demonstrate to the director, using standard geotechnical analysis, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least 1.3.

C. Land above the highwall shall not be disturbed, unless the director finds that the disturbance facilitates compliance with environmental protection standards of this part and the disturbance is limited to that necessary to facilitate compliance.

D. Material in excess of that required by the grading and backfilling provisions of ~~[19.8.26.2610.B]~~ Subsection B of 19.8.26.2601 NMAC shall be disposed of in accordance with the requirements of 19.8.20.2034 through 2037 NMAC.

E. Woody materials shall

not be buried in the backfilled area unless the director determines that the proposed method for placing woody material beneath the highwall will not deteriorate the stable condition of the backfilled area as required in Subsection B of 19.8.26.2601 NMAC. Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the director.

F. Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the director as stable and not subject to erosion.

[11-29-97; 19.8.26.2601 NMAC - Rn, 19 NMAC 8.2.26.2601, 9-29-2000; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.27 NMAC, Section 19.8.27.2701, effective 12-31-2007.

19.8.27.2701 COAL PROCESSING PLANTS: PERFORMANCE STANDARDS: Construction, operation, maintenance, modification, reclamation, and removal activities at operations covered by this part shall comply with the following:

A. signs and markers for the coal processing plant, coal processing waste disposal area, and water treatment facilities shall comply with 19.8.20.2000 NMAC;

B. roads, transport, and associated structures shall be constructed, maintained, and reclaimed in accordance with ~~[19.8.20.2074 through 2077]~~ 19.8.20.2076 through 2078 NMAC;

C. any stream or channel realignment shall comply with 19.8.20.2012 NMAC;

D. if required by the director, any disturbed area related to the coal processing plant or associated facilities shall have sediment control structures, in compliance with 19.8.20.2013 and 2014 NMAC, and all discharges from these areas shall meet the requirements of 19.8.20.2010 NMAC and any other applicable state or federal law;

E. permanent impoundments associated with coal processing plants shall meet the requirements of 19.8.20.2017 and 2024 NMAC; dams constructed of or impounding coal processing waste shall comply with 19.8.20.2047 through 2049 NMAC;

F. use of water wells shall comply with 19.8.20.2021 NMAC and water rights shall be protected in accordance with 19.8.20.2022 NMAC;

G. disposal of coal pro-

cessing waste, solid waste, and any excavated materials shall comply with 19.8.20.2034 through 2037 and 2039 through 2046 NMAC;

H. discharge structures for diversions and sediment control structures shall comply with 19.8.20.2015 NMAC;

I. air pollution control measures associated with fugitive dust emissions shall comply with 19.8.20.2050 NMAC;

J. fish, wildlife and related environmental values shall be protected in accordance with 19.8.20.2051 NMAC;

K. slide areas and other surface areas shall comply with 19.8.20.2052 NMAC;

L. adverse effects upon or resulting from nearby underground coal mining activities shall be minimized by appropriate measures including, but not limited to, compliance with 19.8.20.2023 and 2038 NMAC;

M. reclamation shall include proper topdressing handling procedures, revegetation, and abandonment, in accordance with 19.8.20.2024, 2053 through 2059, 2060 through 2066, and 2071 through 2073 NMAC;

N. conveyors, buildings, storage bins or stockpiles, water treatment facilities, water storage facilities, and any structure or system related to the coal processing plant shall comply with 19.8.20 NMAC;

O. any coal processing plant or associated structures located on prime farmland shall meet the requirements of 19.8.24 NMAC.

[11-29-97; 19.8.27.2701 NMAC - Rn, 19 NMAC 8.2.27.2701, 9-29-2000; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment to 19.8.29 NMAC, Section 2900, effective 12-31-2007.

19.8.29.2900 INSPECTIONS:

A. The director through his duly authorized representative shall conduct an average of at least one partial inspection per month and one complete inspection per calendar quarter of each active surface coal mining and reclamation operation. A partial inspection is an on-site or aerial review of an operator's compliance with some of the permit conditions and requirements under the act and 19.8 NMAC, and includes collection of evidence of any violations observed. Aerial inspections shall be conducted in a manner which reasonably ensures the identification and

documentation of conditions at each surface coal mining and reclamation site inspected. Any potential violation observed during an aerial inspection shall be investigated on site within three calendar days: Provided that any indication of a condition, practice or violation constituting cause for issuance of a cessation order under 19.8.30.3000 NMAC shall be investigated on site immediately. And provided further, that an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of this part. A complete inspection is an on-site review of an operator's compliance with all permit conditions and requirements within the entire area disturbed or affected by the operations, and includes collection of evidence with respect to every violation.

B. The director, through his duly authorized representative shall conduct periodic inspections of all inactive surface coal mining operations and exploration sites required to comply, in whole or in part, with the act and 19.8 NMAC, including collection of evidence with respect to every violation of any condition of the exploration approval or surface coal mining and reclamation operation permit, or any requirement of this act or 19.8 NMAC. At least one complete inspection per calendar quarter shall be conducted on inactive surface coal mining operations. For purposes of this part, an inactive surface coal mining operation is one for which the director has received the written notice provided for under ~~[19.8.20.2074]~~ 19.8.20.2073 NMAC, or reclamation of phase II as defined in ~~[19.8.14.1413.C(2)]~~ Paragraph (2) of Subsection C of 19.8.14.1412 NMAC has been completed.

C. Permits issued under 19.8.11 NMAC shall be inspected quarterly until notice required by Subsection D of 19.8.11.1112 NMAC has been received by the director. Upon receipt of notice, or as determined necessary by the director, inspections will be conducted as required under Subsection A of 19.8.29.2900 NMAC.

D. The inspections shall be carried out on an irregular basis so as to monitor compliance at all operations, shall occur without prior notice except for necessary on-site meetings and include the prompt filing of inspection reports adequate to enforce the requirements and carry out the terms and conditions of the act and 19.8 NMAC.

E. The authorized representatives of the director without advance notice and upon presentation of appropriate credentials:

(1) shall have the right of entry to, upon or through any coal exploration site, surface coal mining and reclamation opera-

tions or any premises in which any records required to be maintained under the act or 19.8 NMAC are located; and

(2) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under the act.

F. The inspections shall be in accordance with Subsection D of 69-25A-21 and Subsection E of 69-25A-25 NMSA 1978 of the act, except that a search warrant is required to enter a building to inspect if the permittee or operator does not consent to entry.

G. "Abandoned site" means a surface coal mining and reclamation operation for which the regulatory authority has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) The regulatory authority or OSM has issued at least one notice of violation or the initial program equivalent, and either:

(a) is unable to serve the notice despite diligent efforts to do so; or

(b) the notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

(3) The regulatory authority:

(a) is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(b) is taking action pursuant to Section 518(e), 518(f), 521(a)(4) or 521(c) of SMCRA or counterparts included in the act to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site is, or was, permitted and bonded:

(a) the permit has either expired or been revoked; and

(b) the regulatory authority has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

H. In lieu of the inspection frequency established in Subparagraphs (a) and (b) of Paragraph (1) of Subsection H of 19.8.29.2900 NMAC, the regulatory authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one

complete inspection per quarter.

(1) In selecting an alternate inspection frequency authorized under ~~the paragraph above~~ Subsection H of 19.8.29.2900 NMAC, the regulatory authority shall first conduct a complete inspection of the abandoned site and provide public notice under Paragraph (2) of Subsection H of 19.8.29.2900 NMAC. Following the inspection and public notice, the regulatory authority shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(a) how the site meets each of the criteria under the definition of an abandoned site under Subsection G of 19.8.29.2900 NMAC and thereby qualifies for a reduction in inspection frequency;

(b) whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to become, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

(c) the extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(d) the degree to which erosion and sediment control is present and functioning;

(e) the extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(f) the extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

(g) based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under Paragraph (1) of Subsection H of 19.8.29.2900 NMAC shall be provided as follows:

(a) the regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written

comments;

(b) the public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

[11-29-97; 19.8.29.2900 NMAC - Rn, 19 NMAC 8.2.29.2900, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.30 NMAC, Sections 3000, 3001, and 3002, effective 12-31-2007.

19.8.30.3000 C E S S A T I O N ORDERS:

A. The director, or his duly authorized representative shall immediately order a cessation of coal exploration operations or surface coal mining and reclamation operations or relevant portions thereof, if he determines, on the basis of an inspection, any conditions or practices exist or that any permittee is in violation of any requirements of the act, 19.8 NMAC or any permit condition, which condition, practice or violation creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

B. Surface coal mining operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.

C. If the cessation order will not completely abate the imminent danger or harm in the most expeditious manner possible, the inspector shall impose affirmative obligations to abate the condition, practice or violation, specifying the time by which the abatement shall be accomplished. If affirmative obligations to abate are imposed, the inspector may consider suggestions by the operator concerning the economic and technological feasibility, in determining the most expeditious means of

abatement and the period for correction of the condition, practice or violation causing an imminent danger to the health or safety of the public or significant environmental harm to land, air or water resources.

D. The director, or his duly authorized representative, shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations or relevant portions thereof, if he finds that a violation has not been abated within the period specified in a notice of violation issued under 19.8.30.3001 NMAC. The cessation order shall specify measures deemed necessary by the inspector to abate the violations in the most expeditious manner possible.

E. A cessation order shall be effective upon prompt delivery to the permittee or his agent. The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by the director or his duly authorized representative. A cessation order shall be in writing, signed by the director or his duly authorized representative, and shall [be] set forth with reasonable specificity: [~~The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by the director or his duly authorized representative.~~]

(1) the nature of the violation, including a citation to the requirement allegedly violated and the imminent danger or harm allegedly involved;

(2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

(3) the time established for abatement, if appropriate, including the time for meeting any interim steps; and

(4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

F. Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

G. The director, or his duly authorized representative may modify, terminate or vacate a cessation order for a good cause, provided that no cessation order may be vacated because of inability to comply. The director may extend the time for abatement if he determines that good cause exists and that the failure to abate within the time previously set forth was not caused by lack of diligence on the part of the person to whom the cessation order was issued.

H. The director or his duly authorized representative shall terminate a

cessation order by written notice to the person to whom the order was issued, when he determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right to assess civil penalties for violations included in the order.

I. A modification of an order shall result in the commencement of a new period within which to abate. However, before any extension in the total abatement time is granted, the requirements of Subsection F of 19.8.30.3000 NMAC must be complied with.

J. A cessation order which requires cessation of mining, expressly or by implication, shall expire within thirty (30) days after it has been served unless a hearing has been held within that time, or unless the cessation order has been previously terminated, modified, or vacated in writing. The hearing shall be held on site or within such reasonable proximity as will permit viewing of the site during the course of the hearing. A cessation order shall not expire as provided above if the condition, practice, or violation in question has been abated or if the hearing has been waived or postponed at the request of the permittee. Expiration of the cessation order for failure to hold a hearing within thirty (30) days from notice of issuance does not affect the right of the director to assess any civil penalty for violations giving rise to such cessation order.

K. The hearing shall be conducted in accordance with the notice and hearing requirements of 19.8.30.3003 NMAC and 19.8.30.3004 NMAC governing informal hearings.

L. Within sixty days after issuing a cessation order, the director shall notify in writing any person who has been identified under Subsection D of 19.8.11.1113 NMAC, Subsection C of 19.8.7.701 NMAC and Subsection D of 19.8.7.701 NMAC as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

[11-29-27; 19.8.30.3000 NMAC - Rn, 19 NMAC 8.2.30.3000, 9-29-2000; A, 12-31-2007]

19.8.30.3001 NOTICES OF VIOLATION:

A. The director, through his duly authorized representative shall issue a notice of violation if, on the basis of an inspection, he determines a violation of any requirement of the act, 19.8 NMAC or any permit or exploration approval condition which does not create an imminent danger or harm for which a cessation order must be issued under 19.8.30.3000 NMAC.

B. A notice of violation shall be in writing, signed by the director or

by his duly authorized representative and shall set forth with reasonable specificity:

(1) the nature of the violation, including a citation to the requirement allegedly violated;

(2) the remedial action required which may include interim steps;

(3) a reasonable time, but not more than ninety days for abatement, which may include time for accomplishment of interim steps;

(4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies; and

(5) a notice of opportunity for review pursuant to 19.8.12.1203 NMAC.

C. The director or his authorized representative may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in Subsection D of 19.8.30.3001 NMAC. An extended abatement date pursuant to this section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

D. Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he has no other effective legal remedy;

(3) where the permittee cannot abate within 90 days due to a labor strike;

(4) where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

(5) where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

E. Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

F. If any of the conditions in Subsection D of 19.8.30.3001 NMAC exists, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he is entitled to an extension under the provisions of Subsections C and D of 19.8.30.3001 NMAC. In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his concurrence or disapproval in the file.

G. Any determination made under Subsection F of 19.8.30.3001 NMAC shall contain a notice of opportunity for review pursuant to 19.8.12.1203 NMAC.

H. No extension granted under Subsection F of 19.8.30.3001 NMAC may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of Subsection F of 19.8.30.3001 NMAC.

I. The director or his duly authorized representative shall terminate a notice of violation by written notice to the person to whom it was issued, when the director determines that all violations listed in the notice of violation have been abated.

J. Failure-to-abate cessation order.

(1) If the director or his duly authorized representative finds that a violation has not been abated within expiration of the time originally fixed or subsequently extended, he shall immediately issue an order of cessation of coal surface mining and reclamation operations, or coal exploration or the portion of operations relevant to the violation as provided in 19.8.30.3000 NMAC.

(2) If the director or his duly authorized representative finds an interim step has not been accomplished within the time originally fixed or subsequently extended he may immediately issue an order of cessation of coal surface mining and reclamation operations, or coal exploration or the portions of operations relevant to the violation as provided in 19.8.30.3000 NMAC.

K. A notice of violation which requires cessation of mining, expressly or by necessary implication, shall not be effective to cause cessation of mining following thirty (30) days after it is served unless an informal public hearing has been held within that time. The public hearing shall be on site within such reasonable proximity as will permit viewing of the site during the course of the hearing. The hearing on a notice of violation shall be conducted in accordance with the notice and hearing requirements of 19.8.30.3003 NMAC and 19.8.30.3004 NMAC governing informal hearings.

L. A notice of violation shall not be vacated simply by virtue of the fact that the condition, practice, or violation in question has been abated or if the hearing has been waived or postponed at the request of the permittee. Termination of a notice of violation by the director or expiration of a notice of violation for failure to hold a public hearing within thirty (30) days shall not affect the director's right to assess civil penalties for the violation mentioned in the notice.

[11-29-27; 19.8.30.3001 NMAC - Rn, 19 NMAC 8.2.30.3001, 9-29-2000; A, 12-31-2007]

19.8.30.3002 PERMIT SUSPENSION OR REVOCATION:

A. When on the basis of an inspection the director determines that a pattern of violations of any requirements of the act, 19.8 NMAC or any permit conditions exist or has existed and if the director also finds that such violations are caused by the unwarranted failure of the permittee to comply with such requirements or conditions or that such violations are willfully caused by the permittee, the director shall, except as otherwise provided in Subsection E of 19.8.30.3002 NMAC, issue an order to a permittee requiring him to show cause as to why the permit should not be suspended or revoked. The order shall be in writing, signed by the director and shall set forth with reasonable specificity:

(1) the nature of the violations, including a citation to the requirements or conditions allegedly violated;

(2) the conduct alleged to justify the finding that such violations are the result of the permittee's unwarranted failure or

were willful; and

(3) the opportunity for a hearing to be held pursuant to Subsection E of 69-25A-29 NMSA 1978 of the act.

B. For purposes of determining the propriety of an order to show cause why a permit should not be suspended or revoked, the following definitions shall apply:

(1) Willful violation means an act or omission which violates the requirements of the act, 19.8 NMAC or any permit condition, committed by a person who intends the result which actually occurs.

(2) Unwarranted failure to comply means the failure of the permittee to prevent the occurrence of any violation of any requirement of the act, or 19.8 NMAC or any permit condition, due to indifference, lack of diligence or lack of reasonable care or the failure to abate any violation of a permit, the act or 19.8 NMAC due to indifference, lack of diligence or lack of reasonable care. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee unless the permittee establishes by clear and convincing evidence, that the acts were not within the scope of employment or agency.

(3) The director may determine that a pattern of violations exists or has existed, based upon two (2) or more inspections of the permit area within any twelve month period, after considering:

(a) the number and seriousness of violations cited on more than one occasion of the same or related requirements of the act, 19.8 NMAC or the permit;

(b) the number and seriousness of violations cited on more than one occasion of different requirements of the act; and

(c) the extent to which the violations are isolated departures from lawful conduct.

C. The director shall determine that a pattern of violations exists, if he finds that there were violations of the same or related requirements of the act, the permit or 19.8 NMAC during three or more inspections of the permit area within any twelve month period.

D. Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the director shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this-section, and shall issue an order to show cause as appropriate pursuant ~~to~~ to this section.

E. The director may decline to issue a show cause order, or may vacate an outstanding show cause order, if he finds that, taking into account exception-

al factors present in the particular case, it would be demonstratively unjust to issue or to fail to vacate the show cause order. The basis for this finding shall be fully explained and documented in the records of the case, provided that no show cause order or order revoking or suspending a permit may be vacated because it is subsequently determined that the director or his duly authorized representative did not have information sufficient to justify an inspection for any condition, practice or violation which creates an imminent danger to the health or safety of the public or is causing or can reasonably expect it to cause a significant imminent environmental harm to land, air or water resources.

[11-29-27; 19.8.30.3002 NMAC - Rn, 19 NMAC 8.2.30.3002, 9-29-2000; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.31 NMAC, Sections 3105, 3106, 3108, and 3110, effective 12-31-2007.

19.8.31.3105 PROCEDURE FOR CIVIL PENALTY ASSESSMENT:

A. Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the director and to the inspector who issued the notice of violation or cessation order. The director or his authorized representative shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

B. The director shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, within 30 days of the issuance of the notice or order. If the mail is tendered at the address of that person set forth in the sign required under Subsection C of 19.8.20.2000 NMAC or at any address at which that person is in fact located, and he refuses to accept delivery of or to collect such mail, the requirements of this ~~paragraph~~ subsection shall be deemed to have been complied with upon such tender. Failure by the director to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed:

- (1) proves actual prejudice as a result of the delay; and
- (2) makes a timely objection to

the delay; an objection shall be timely only if made in the normal course of administrative and judicial review.

C. Unless a conference has been requested, the director or his representative shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The director shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in Subsection B of 19.8.31.3105 NMAC within 30 days after the date the violation is abated.

D. Consolidation of hearings. If the director proposes an assessment or reassessment prior to the running of the time for requesting an informal hearing pursuant to 19.8.30.3004 NMAC, any conference requested pursuant to 19.8.31.3106 NMAC may be consolidated with such informal hearing procedure upon a determination by the director that consolidation is appropriate.

[11-29-97; 19.8.31.3105 NMAC - Rn, 19 NMAC 8.2.31.3105, 9-29-2000; A, 12-31-2007]

19.8.31.3106 PROCEDURE FOR ASSESSMENT CONFERENCE:

A. The director shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 15 days from the date of the proposed assessment or reassessment is served.

B. Conference format and timing.

(1) The director shall assign a conference officer to hold the assessment conference who shall not be the inspector signing the notice or order. The conference shall be informal in nature and not be governed by the rules for adjudicatory hearings found in 19.8.12 NMAC. The assessment conference shall be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later. A failure by the director to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

(2) The director shall post notice of the time and place of the conference at his office at least five (5) days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information in the violation. Within 30 days after the conference

is held, the conference officer shall either:

(a) settle the issues, in which case a settlement agreement shall be prepared by the conference officer and signed by the director and by the person assessed; or

(b) affirm, raise, lower or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than \$500 shall not be final and binding until approved by the director.

C. The conference officer shall promptly serve the person assessed with a notice of his action in the manner provided in Subsection B of 19.8.31.3105 NMAC and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

D. Settlement agreements.

(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the director within 30 days after the date of signing, the director shall order the civil penalty fixed at an amount determined to be appropriate, in light of the criteria set forth in 19.8.31.3101 NMAC and relevant information received at any assessment conference.

E. The conference officer may terminate the conference when he determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

F. The conference officer may, if persuaded by the information presented, modify or vacate a notice of violation, with the approval of the director.

G. At formal review proceedings under 69-25A-29 NMSA 1978 of the act no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

[11-29-97; 19.8.31.3106 NMAC - Rn, 19 NMAC 8.2.31.3106, 9-29-2000; A, 12-31-2007]

19.8.31.3108 FINAL ASSESSMENT AND PAYMENT OF PENALTY:

A. If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in 19.8.31.3107 NMAC, the proposed assessment shall become a final order of the director and the penalty assessed shall become due and payable upon expiration of

the time allowed to request a hearing.

~~**B.** If any party requests Commission review of a final order of the Director, or requests judicial review of the Commission's decision, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to 19.8.31.3108.C, NMAC the escrowed funds shall be released to the Director in payment of the penalty, and the escrow shall end.~~

B. If any party requests judicial review of a final order of the director, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to Subsection C of 19.8.31.3108 NMAC, the escrowed funds shall be released to the director in payment of the penalty, and the escrow shall end.

C. If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed, the director shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the rate established by the U.S. department of treasury pursuant to Section 6621(b) of the internal revenue code, whichever is greater.

D. If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the director within 15 days after the order is mailed to such person.

[11-29-97; 19.8.31.3108 NMAC - Rn, 19 NMAC 8.2.31.3108, 9-29-2000; A, 12-31-2007]

19.8.31.3110 AMOUNT OF INDIVIDUAL CIVIL PENALTY:

A. In determining the amount of an individual civil penalty assessed under 19.8.31.3109 NMAC, the director shall consider the criteria specified in Section 69-25A-22 ~~[of this act]~~ NMSA 1978, including:

(1) the individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operations;

(2) the seriousness of the violation, failure or refusal (as indicated by the extent the environment and any hazard to the health or safety of the public; and

(3) the demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

B. The penalty shall not exceed \$5,000 for each violation. Each day of a continuing violation may be deemed a separate violation and the director may

assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the director ~~[or the commission]~~ until abatement or compliance is achieved.

[11-29-97; 19.8.31.3110 NMAC - Rn, 19 NMAC 8.2.31.3110, 9-29-2000; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.34 NMAC, Sections 3400, 3401, 3402, 3403, 3404, 3405, 3406, 3407, 3408 and 3409, effective 12-31-2007.

19.8.34.3400 SCOPE: ~~(702.1)~~ This part implements the exemption contained in Paragraph (1) of Subsection P of Section 69-25A-3 NMSA 1978 concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

[11-29-97; 19.8.34.3400 NMAC - Rn, 19 NMAC 8.2.34.3400, 9-29-2000; A, 12-31-2007]

19.8.34.3401 DEFINITION: ~~(702.5)~~ As used in this part, the following terms have the meaning specified, except where otherwise indicated:

A. Cumulative measurement period means the period of time over which both cumulative production and cumulative revenue are measured.

(1) For purposes of determining the beginning of the cumulative measurement period, subject to approval by the director, the operator must select and consistently use one of the following:

(a) for mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or

(b) for mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

(2) For annual reporting purposes pursuant to 19.8.34.3409 NMAC, the end of the period for which cumulative production and revenue is calculated is either:

(a) for mining areas where coal or other minerals were extracted prior to October 1, 1995, and every October 1 there-

after; or

(b) for mining areas where extraction of coal or other minerals commenced on or after October 1, 1995, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.

B. Cumulative production means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by 19.8.34.3407 NMAC.

C. Cumulative revenue means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

D. Mining area means an individual excavation site or pit from which coal, other minerals and overburden are removed.

E. Other minerals means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

[11-29-97; 19.8.34.3401 NMAC - Rn, 19 NMAC 8.2.34.3401, 9-29-2000; A, 12-31-2007]

19.8.34.3402 APPLICATION REQUIREMENTS AND PROCEDURES: ~~(702.11)~~

A. New operations.

(1) Any person who plans to commence or continue coal extraction after October 1, 1995, in reliance on the incidental mining exemption shall file a complete application for exemption with the director for each mining area.

(2) No person may commence coal extraction based upon the exemption until the director approves such application, except as provided in Paragraph (3) of Subsection E of 19.8.34.3402 NMAC.

B. Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to October 1, 1995, may continue mining operations for 60 days after October 1, 1995. Coal extraction may not continue after such 60 day period unless that person files an administratively complete application or exemption with the director. If an administratively complete application is filed within 60 days the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the director makes an administrative decision on such application.

C. Additional information. The director shall notify the applicant if the application for exemption is incomplete and

may at any time require submittal of additional information.

D. Public comment period. Following publication of the newspaper notice required by Subsection I of 19.8.34.3403 NMAC, the director shall provide a period of no less than 30 days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

E. Exemption determination.

(1) No later than 90 days after filing of an administratively complete application, the director shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this part, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(2) The determination of exemption shall be based upon information contained in the application and any other information available to the director at that time.

(3) If the director fails to provide an applicant with the determination as specified in Paragraph (1) of Subsection E of 19.8.34.3402 NMAC, an applicant who has not begun may commence coal extraction pending a determination on the application unless the director issues an interim finding, together with reasons therefore, that the applicant may not begin coal extraction.

F. Administrative review.

(1) Any adversely affected person may request administrative review of a determination under Subsection E of 19.8.34.3402 NMAC within 30 days of the notification of such determination in accordance with procedures established under 19.8.12.1201 NMAC.

(2) A petition for administrative review filed under 19.8.12.1201 NMAC shall not suspend the effect of a determination under Subsection E of 19.8.34.3402 NMAC.

[11-29-97; 19.8.34.3402 NMAC - Rn, 19 NMAC 8.2.34.3402, 9-29-2000; A, 12-31-2007]

19.8.34.3403 CONTENTS OF APPLICATIONS FOR EXEMPTION:

~~[(702-12)]~~ An application for exemption shall include at a minimum:

A. the name and address of the applicant;

B. a list of the minerals sought to be extracted;

C. estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;

D. estimated annual revenues to be derived from bona fide sales of

coal and other minerals to be extracted within the mining area;

E. where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;

F. the basis for all annual production, revenue, and fair market value estimates;

G. a description, including county, township if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;

H. an estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;

I. evidence of publication in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the director (the public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation);

J. representative stratigraphic cross-section(s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;

K. a map of appropriate scale which clearly identifies the mining area;

L. a general description of mining and mineral processing activities for the mining area;

M. a summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;

N. if the other minerals are to be commercially used by the applicant, a description specifying the use;

O. for operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information must also be submitted:

(1) any relevant documents the operator has received from the director documenting its exemption from the requirements of 69-25A-1 through 35 NMSA 1978;

(2) the cumulative production of

the coal and other minerals from the mining area; and

(3) estimated tonnages of stockpiled coal and other minerals; and

P. any other information pertinent to the qualification of the operation as exempt.

[11-29-97; 19.8.34.3403 NMAC - Rn, 19 NMAC 8.2.34.3403, 9-29-2000; A, 12-31-2007]

19.8.34.3404 PUBLIC AVAILABILITY OF INFORMATION:

~~[(702-13)]~~ **A.** Except as provided in Subsection B of 19.8.34.3404 NMAC, all information submitted to the director under this part shall be made immediately available for public inspection and copying at the local offices of the director until at least three years after expiration of the period during which the subject mining area is active.

B. The director may keep information submitted under this part confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this part.

C. Information requested to be held as confidential under Subsection B of 19.8.34.3404 NMAC shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

[11-29-97; 19.8.34.3404 NMAC - Rn, 19 NMAC 8.2.34.3404, 9-29-2000; A, 12-31-2007]

19.8.34.3405 REQUIREMENTS FOR EXEMPTIONS:

~~[(702-14)]~~ **A.** Activities are exempt from the requirements of 69-25A-1 through 35 NMSA 1978 if all of the following are satisfied:

(1) the cumulative production of coal extracted from the mining area determined annually as described in this subsection does not exceed 16 2/3 percent of the total cumulative production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use;

(2) coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for the purposes of bona fide sale or reasonable commercial use;

(3) the cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed 50 percent of the total cumulative

revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use; if the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

B. Persons seeking or that have obtained an exemption from the requirements of the act shall comply with the following:

(1) each other mineral upon which an exemption under this part is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months from the end of the current period for which cumulative production is calculated; a legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard;

(2) if either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

[11-29-97; 19.8.34.3405 NMAC - Rn, 19 NMAC 8.2.34.3405, 9-29-2000; A, 12-31-2007]

19.8.34.3406 CONDITIONS OF EXEMPTIONS AND RIGHT OF INSPECTION AND ENTRY: [~~702-15~~]

A person conducting activities covered by this part shall:

A. maintain, on-site or at other locations available to the authorized representative of the director and the secretary of the interior, information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the director;

B. notify the director upon the completion of the mining operation or permanent cessation of all coal extraction activities; and

C. conduct operations in accordance with the approved application or when authorized to extract coal under Subsection B of 19.8.34.3402 NMAC or Paragraph (3) of Subsection E of 19.8.34.3402 NMAC prior to submittal or approval of an exemption application, in accordance with the standards of this part.

D. Authorized representatives of the director and the secretary of the interior shall have the right to conduct inspections of operations claiming exemption under this part.

E. Each authorized representative of the director and the secretary of the interior conducting an inspection under this part:

(1) shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

(2) may, at reasonable times and without delay, have access to and copy any records relevant to the exemption; and

(3) shall have a right to gather physical and photographic evidence to document conditions, practices or violations at a site.

F. No search warrant shall be required with respect to any activity under Subsections D and E of 19.8.34.3406 NMAC, except that a search warrant may be required for entry into a building. [11-29-97; 19.8.34.3406 NMAC - Rn, 19 NMAC 8.2.34.3406, 9-29-2000; A, 12-31-2007]

19.8.34.3407 STOCKPILING OF MINERALS: [~~702-16~~]

A. Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use:

(1) up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

(2) for a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

B. Other minerals.

(1) The director shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

(2) The director may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if:

(a) the stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

(b) except as provided in Paragraph (3) of Subsection B of 19.8.34.3407 NMAC, the stockpiled other minerals do not exceed a 12-month supply

of the mineral required for future sales as approved by the director on the basis of the exemption application.

(3) The director may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in Paragraph (2) of Subsection B of 19.8.34.3407 NMAC if the operator can demonstrate to the director's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

(4) The director may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by Paragraphs (2) and (3) of Subsection B of 19.8.34.3407 NMAC based on additional information available to the director.

[11-29-97; 19.8.34.3407 NMAC - Rn, 19 NMAC 8.2.34.3407, 9-29-2000; A, 12-31-2007]

19.8.34.3408 REVOCATION AND ENFORCEMENT: [~~702-17~~]

A. Responsibility of the director. The director shall conduct an annual compliance review of the mining area utilizing the annual report submitted pursuant to 19.8.34.3409 NMAC, an on-site inspection and any other information available to the director.

B. If the director has reason(s) to believe that a specific mining area was not exempt under the provisions of this part at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the director shall notify the operator that the exemption may be revoked and the reason(s) therefor. The exemption will be revoked unless the operator demonstrates to the director within 30 days that the mining area in question should continue to be exempt.

C. Director's finding and administrative review.

(1) If the director finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the director shall revoke the exemption and immediately notify the operator and intervenors. If a decision is made not to revoke an exemption, the director shall immediately notify the operator and intervenors.

(2) Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such decision in accordance with procedures established under 19.8.12.1201 NMAC.

(3) A petition for administrative review filed under 19.8.12.1201 NMAC

shall not suspend the effect of a decision whether to revoke an exemption.

D. Direct enforcement.

(1) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of these regulations which occurred prior to the revocation of the exemption.

(2) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should know such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of these regulations which occur during the period of such activities.

(3) Upon revocation of an exemption or denial of an exemption application an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of these regulations with regard to conditions, areas and activities existing at the time of revocation or denial. [11-29-97; 19.8.34.3408 NMAC - Rn, 19 NMAC 8.2.34.3408, 9-29-2000; A, 12-31-2007]

19.8.34.3409 REPORTING REQUIREMENTS: ~~(702-18)~~

A. Annual report.

(1) Following approval by the director of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the director containing the information specified in Subsection B of 19.8.34.3409 NMAC.

(2) The report shall be filed no later than 30 days after the end of the 12-month period as determined in accordance with the definition of "cumulative measurement period" in 19.8.34.3401 NMAC ~~[of this part]~~.

(3) The information in the report shall cover:

(a) annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period; and

(b) the cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

B. For each period and mining area covered by the report, the report shall specify:

(1) the number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;

(2) the number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of such coal;

(3) the number of tons of coal stockpiled;

(4) the number of tons of other

commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;

(5) the number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of such minerals; and

(6) the number of tons of other commercially valuable minerals removed and stockpiled by the operator.

[11-29-97; 19.8.34.3409 NMAC - Rn, 19 NMAC 8.2.34.3409, 9-29-2000; A, 12-31-2007]

NEW MEXICO COAL SURFACE MINING COMMISSION

This is an amendment of 19.8.35 NMAC, Sections 12 and 14, effective 12-31-2007.

19.8.35.12 HOW A DECISION ON A VER REQUEST WILL BE MADE:

A. The director must review the materials submitted under 19.8.35.8 NMAC, comments received under 19.8.35.11 NMAC, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the director must notify the requester in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the director deems necessary to remedy the inadequacy.

B. Once the record is complete and adequate, the director must determine whether the requester has demonstrated valid existing rights. The decision document must explain how the requester has satisfied or has not satisfied all applicable elements of the definition of valid existing rights in 19.8.35.7 NMAC. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.

C. Impact of property rights disagreements. This ~~[paragraph]~~ subsection applies only when a request relies upon one or more of the standards in Paragraph (2) of Subsection A of 19.8.35.7 NMAC, or Paragraphs (1) and (2) of Subsection D of 19.8.35.7 NMAC.

(1) The director must issue a determination that the requester has not demonstrated valid existing rights if the requester's property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The director will make this determination without prejudice, meaning that the requester may resubmit the request once the property rights dis-

pute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under Subsection A of 19.8.35.11 NMAC or Subsection B of 19.8.35.11 NMAC.

(2) If the record indicates disagreement as to the accuracy of the requester's property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the agency must evaluate the merits of the information in the record and determine whether the requester has demonstrated that the requisite property rights exist under Paragraph (1) of Subsection A of 19.8.35.7 NMAC, or Paragraphs (1) or (2) of Subsection D of 19.8.35.7 NMAC of the definition of valid existing rights as appropriate. The director must then proceed with the decision process under 19.8.35.12 NMAC.

D. The director must issue a determination that the requester has not demonstrated valid existing rights if the requester does not submit information that the director requests under Subsection B of 19.8.35.10 NMAC or Subsection A of 19.8.35.12 NMAC within the time specified or as subsequently extended. The director will make this determination without prejudice, meaning that the requester may file a revised request at any time.

E. After making a determination, the director must:

(1) provide a copy of the determination, together with an explanation of appeal rights and procedures, to the requester, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of 19.8.2.201 NMAC, and, when applicable, to the director with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 19.8.2.201 NMAC.

(2) The director will publish a notice of the determination in a newspaper of general circulation in the county in which the land is located. OSM will publish the determination, together with an explanation of appeal rights and procedures, in the federal register if the determination includes federal lands within an area listed in 19.8.2.201 NMAC.

[19.8.35.12 NMAC - N, 1-15-2002; A, 12-31-2007]

19.8.35.14 AVAILABILITY OF RECORDS FOR VER REQUESTS AND DETERMINATIONS: The director must make a copy of the VER request available to the public under ~~[19.8.11.1100-D]~~ Subsection E of 19.8.11.1100 NMAC. In addition, the director must make records associated with the VER request, and any

subsequent determination under [paragraph] 19.8.35.12 NMAC, available to the public in accordance with the requirements and procedures of New Mexico Inspection of Public Records Act NMSA 1978 14-2 et seq. [19.8.35.14 NMAC - N, 1-15-2002; A, 12-31-2007]

**NEW MEXICO
DEPARTMENT OF
CULTURAL AFFAIRS**

HISTORIC PRESERVATION DIVISION

Repealer:

The Department of Cultural Affairs, Historic Preservation Division, repeals its rule entitled Certified Local Government Program, 4 NMAC 10.10 (filed 11/03/1997) and replaces it with the new rule 4.10.10 NMAC, *Certified Local Government Program*, effective 1/1/08.

**NEW MEXICO
DEPARTMENT OF
CULTURAL AFFAIRS**

HISTORIC PRESERVATION DIVISION

**TITLE 4 C U L T U R A L
RESOURCES
CHAPTER 10 C U L T U R A L P R O P -
ERTIES AND HISTORIC PRESERVA-
TION
PART 10 C E R T I F I E D L O C A L
GOVERNMENT PROGRAM**

4.10.10.1 ISSUING AGENCY: Department of Cultural Affairs, State Historic Preservation Division. [4.10.10.1 NMAC - Rp, 4 NMAC 10.10.1, 1/1/08]

4.10.10.2 SCOPE: Applies to the historic preservation division, the cultural properties review committee, the United States secretary of the interior and local governments such as a city, county, village, town, municipality or any political subdivision of the state. [4.10.10.2 NMAC - Rp, 4 NMAC 10.10.2, 1/1/08]

**4.10.10.3 S T A T U T O R Y
AUTHORITY:** This regulation is created pursuant to the Cultural Properties Act, Section 18-6-8 NMSA 1978, which authorizes the state historic preservation officer to administer the Cultural Properties Act, including to serve as the administrative head of all the Cultural Properties Act's functions assigned to the historic preservation division by law and to coordinate all duties performed by and cooperate with entities, public or private, involved with

cultural properties. Pursuant to the National Historic Preservation Act, 16 U.S.C. 470a(b)-(d), the state historic preservation officer is the designated state official who shall be responsible for the administration of the state historic preservation program which includes providing a mechanism for the certification by the state historic preservation officer of local governments to carry out the purposes of the National Historic Preservation Act.

[4.10.10.3 NMAC - Rp, 4 NMAC 10.10.3, 1/1/08]

4.10.10.4 D U R A T I O N :
Permanent
[4.10.10.4 NMAC - Rp, 4 NMAC 10.10.4, 1/1/08]

4.10.10.5 EFFECTIVE DATE: January 1, 2008, unless a later date is cited at the end of a section. [4.10.10.5 NMAC - Rp, 4 NMAC 10.10.5, 1/1/08]

4.10.10.6 OBJECTIVE: Since its initial enactment in 1966 and through several amendments, the National Historic Preservation Act has provided the statutory framework for the national historic preservation partnership. Federal, state, tribal and local governments have well-defined and significant roles in the identification, evaluation, designation and protection of historic and prehistoric properties. The certified local government program is the primary way through which qualified and interested local governments participate in the national historic preservation partnership. The objective of this rule is to establish the requirements and procedures for the certified local government program and to describe how the program works in New Mexico.

[4.10.10.6 NMAC - Rp, 4 NMAC 10.10.6, 1/1/08]

4.10.10.7 DEFINITIONS:
A. **"Certified local government"** or **"CLG"** means a local government whose local historic preservation program has been certified pursuant to the National Historic Preservation Act, 16 U.S.C. 470a(c).

B. **"Cultural properties review committee"** or **"CPRC"** means the committee appointed by the governor of the state as provided for in Section 18-6-4 NMSA 1978.

C. **"Cultural property"** means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance as defined in Section 18-6-3 NMSA 1978 and includes "historic property" or "properties" as defined in the National Historic

Preservation Act, 16 U.S.C. 470 et seq.

D. **"Historic preservation division"** or **"HPD"** means the division within the department of cultural affairs created pursuant to Section 18-6-8 of the Cultural Properties Act and Section 9-4A-4 of the Cultural Affairs Department Act.

E. **"Historic preservation grants manual"** or **"grants manual"** means the secretary of interior standards for national park service historic preservation fund grants, June 2007 release, which includes standards for grants issued to certified local governments.

F. **"Historic preservation review commission"** or **"commission"** means a board, council, commission, committee or other similar collegial body established through state or local legislation and selected by the chief elected local official, pursuant to the National Historic Preservation Act, 16 U.S.C. 470a(c)(1)(B) and 16 U.S.C. 470w(13).

G. **"Historic property"** means any prehistoric or historic district, site, building, structure or object included in or eligible for inclusion in the national register, including artifacts, records and material remains related to such a property as defined in the National Historic Preservation Act at 16 U.S.C. 470w(5).

H. **"Local government"** means a city, county, village, town, municipality or any political subdivision of the state.

I. **"National Historic Preservation Act"** means the act codified at 16 U.S.C. 470 et seq.

J. **"National register"** means the national register of historic places established by the National Historic Preservation Act, 16 U.S.C. 470a(a).

K. **"Preservation"** or **"historic preservation"** means identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding cultural properties as defined in the National Historic Preservation Act at 16 U.S.C. 470w(5).

L. **"Registered cultural property"** means a cultural property that has been placed on the New Mexico register of cultural properties as defined in Section 18-6-3 NMSA 1978.

M. **"Secretary"** means the United States secretary of the interior.

N. **"State historic preservation officer"** or **"SHPO"** means the director of the historic preservation division of the department of cultural affairs, as provided for in Section 18-6-8 NMSA 1978.

[4.10.10.7 NMAC - Rp, 4 NMAC 10.10.7, 1/1/08]

4.10.10.8 DESCRIPTION AND

STATEMENT OF PURPOSE: Pursuant to 36 CFR 61, the certified local government program is designed to promote the identification, evaluation, nomination and protection of cultural properties by establishing a partnership between the local government and the HPD which seeks to encourage and expand local involvement in preservation issues. Such partnerships will help to assure that:

A. historic preservation issues are understood and addressed at the local level and are integrated into the local planning and decision-making process at the earliest possible opportunity;

B. local interests and concerns are integrated into the historic preservation process of the HPD;

C. information concerning local historic preservation issues is provided to the HPD and to the public;

D. local historic district and landmark legislation and historic preservation review commissions are established in local governments where they do not yet exist and are updated, if necessary, where they already exist;

E. existing archaeological records and historic cultural properties inventory information maintained by the HPD is made available to the local community to use in identifying and defining community and neighborhood development and historic district areas; and

F. by participating in the preservation of cultural properties within their communities, CLGs:

(1) assume a leadership role in the preservation of the community's prehistoric and historic resources;

(2) have a formal role in the national register nomination review process;

(3) participate in the establishment of regional and state historic preservation objectives;

(4) are eligible to apply for subgrants from a designated certified local government fund established annually by the HPD whenever such funds are available; and

(5) receive technical and advisory services from the HPD.

[4.10.10.8 NMAC - Rp, 4 NMAC 10.10.8, 1/1/08]

4.10.10.9 ELIGIBILITY:

A. Any general purpose political subdivision of the state such as a city, village, county or town which meets the criteria set forth in this rule is eligible to apply for certification.

B. The National Historic Preservation Act and the historic preservation fund grants manual contain five broad standards which must be met by a local gov-

ernment seeking certification. The local government must:

(1) enforce appropriate state or local legislation for the designation and protection of historic properties;

(2) establish an adequate and qualified historic preservation review commission by state or local legislation;

(3) maintain a system for the survey and inventory of historic properties;

(4) provide for adequate public participation in the local historic preservation program including the process of recommending properties to the national register; and

(5) satisfactorily perform the responsibilities delegated to it under the act.

C. Each state is required to see that CLGs satisfy these minimum requirements and may specify additional requirements. The minimum requirements for certification of local governments in New Mexico are further defined below.

[4.10.10.9 NMAC - Rp, 4 NMAC 10.10.9, 1/1/08]

4.10.10.10 MINIMUM REQUIREMENTS FOR LOCAL LEGISLATION:

Each CLG shall enact a local preservation ordinance which shall contain, at a minimum, the following provisions for the designation and protection of cultural properties by CLGs in New Mexico:

A. an authorizing statement citing Sections 3-22-1 through 3-22-5 NMSA 1978 of the Historic District and Landmark Act;

B. statement of purpose;

C. definitions;

D. membership and duties of a historic preservation review commission;

E. designation and protection procedures for local landmarks and districts pursuant to Section 3-22-3 NMSA 1978 and the National Historic Preservation Act;

F. criteria for designation of local landmarks and districts pursuant to Section 3-22-3 NMSA 1978 and the National Historic Preservation Act;

G. provisions for holding a public hearing on proposed designations of local landmarks and districts and adequate public notification of such hearing;

H. mandatory review of alterations, demolitions or new construction to listed landmarks and cultural properties within listed historic districts;

I. specific guidelines to be used by the historic preservation review commission including as appropriate the secretary's standards for rehabilitation in 36 CFR 67 and the secretary's *standards and guidelines for archaeology and historic preservation*, available on the the national

park service website at

http://www.nps.gov/history/local-law/arch_stnds_0.htm;

J. specific timeframes for reviews and for consideration of alternatives;

K. penalties for noncompliance; and

L. criteria to enforce appropriate state or local legislation related to the preservation of cultural properties of historic and prehistoric significance.

[4.10.10.10 NMAC - Rp, 4 NMAC 10.10.10, 1/1/08]

[Additional information on standards for the treatment of historic properties with guidelines for preserving, rehabilitating, restoring and reconstructing buildings is available from the national park service web page at <http://www.nps.gov/history/hps/tps/standguide/>.]

4.10.10.11 MINIMUM REQUIREMENTS AND DUTIES OF HISTORIC PRESERVATION REVIEW COMMISSIONS

A. The minimum membership and procedural requirements for historic preservation review commissions for CLGs in New Mexico are detailed below.

(1) The commission shall have at least five members, all of whom have a demonstrated positive interest, competence or knowledge in the professions of architecture, historic architecture, architectural history, archaeology, anthropology, history, historic preservation, planning, real estate, design, building trades, landscape architecture, conservation, law, finance or related disciplines to the extent that these professionals are available in the community. The chief elected local official shall appoint all commission members.

(2) The commission is encouraged to appoint two historic preservation review commission members who meet the professional qualifications standards in appendix A of 36 CFR 61.

(3) Terms of office for commission members shall be no less than two years and shall be staggered;

(4) Rules of procedure shall be established and made public;

(5) The commission shall meet as often as necessary to complete commission responsibilities in a timely fashion, holding no less than four meetings per year, and the meetings shall be held at regular intervals, in a public place, advertised in advance and open to the public; notices of each public meeting shall be mailed to the HPD in advance.

(6) Commission decisions shall be made in a public forum and applicants shall be notified of meetings and advised of decisions.

(7) Written minutes, detailing, at

a minimum, the actions and decisions of the commission, and reasons for such actions or decisions, shall be made available for public inspection except when confidentiality of site location is required pursuant to Section 18-6-11 NMSA 1978 and the Archaeological Resources Protection Act, 16 U.S.C. 470hh.

(8) An annual report of its activities shall be provided to the SHPO as detailed at Section 4.10.10.16 NMAC below.

(9) Vacancies on the commission shall be filled within 90 calendar days, unless an extension is requested.

B. Duties of the historic preservation review commissions shall include, at a minimum, the following:

(1) conducting or causing to be conducted a continuing survey of cultural properties in the community according to guidelines established by the HPD;

(2) making recommendations for designation of local landmarks and historic districts to the appropriate local governing body;

(3) establishing and using written guidelines for the conservation of designated local landmarks and historic districts and cultural properties of historic and prehistoric significance in decisions on requests for permits for alterations, demolition or additions to listed landmarks and buildings within historic districts;

(4) acting in an advisory role to other officials and departments of local government regarding the protection of local cultural properties;

(5) acting as a liaison on behalf of the local government to individuals and organizations concerned with historic preservation; and

(6) working toward the continuing education of citizens within the CLG's jurisdiction regarding historic preservation issues and concerns.

C. Each commission is required to set aside at least one regular meeting for informational or educational purposes per year, to be attended by HPD staff, pertaining to the work and functions of the commission or to historic preservation.

D. The CLG historic preservation review commission, in addition to the above stated duties, reviews all proposed national register nominations for properties within the boundaries of the CLG's jurisdiction. When a commission reviews a nomination or other action that will impact properties within the boundaries and such reviews are normally evaluated by a professional in a specific discipline which is not represented on the commission, the commission shall seek expertise in this area before rendering its decision.

E. Pursuant to chapter 3 of the grants manual, historic preservation review commission members shall not engage in activities that would appear to conflict with the fair, impartial and objective performance of commission responsibilities.

[4.10.10.11 NMAC - Rp, 4 NMAC 10.10.11, 1/1/08]

4.10.10.12 PROFESSIONAL CONSULTANT TO CERTIFIED LOCAL GOVERNMENT:

A. In order to carry out the duties delegated to it, the CLG shall employ or have regular access by contract or letter of agreement to the equivalent of one professional who meets the professional qualification standards of the secretary of the interior's standards and guidelines for archaeology and historic preservation. The HPD will consider written proposals for alternative arrangements for CLGs who submit evidence that they have not been able to obtain such expertise due to a lack of financial resources or available professionals. Such alternatives must ensure that adequate expertise exists to allow the CLG to undertake its responsibilities.

B. Consultants shall be approved by the HPD to ensure that personnel have the necessary skills to carry out the specific responsibilities of that CLG. Staff requirements will vary according to the types of programs which the CLG undertakes and the duties delegated to it. Annual funds transferred to CLGs, as discussed in 4.10.10.19 NMAC below, may be used toward retaining a preservation consultant.

[4.10.10.12 NMAC - Rp, 4 NMAC 10.10.12, 1/1/08]

4.10.10.13 SURVEY STANDARDS: CLGs shall establish a process for surveying the cultural properties within their jurisdiction. Where inventories of cultural properties have already been undertaken or are underway, a process for the continuation, maintenance and organization of these data shall be defined.

A. All inventory activities shall be coordinated with and complementary to the New Mexico cultural resource information system (NMCRIS) which is HPD's archaeological records management and historic cultural properties inventory system.

B. Local inventories shall be in a format which is compatible with and can be easily integrated into the statewide comprehensive historic preservation planning system and other appropriate planning processes used by the HPD.

C. There shall be a cultural properties inventory for each designated historic district.

D. All inventory material shall be updated periodically to reflect changes, alterations, and demolitions. At a minimum, this shall include the updating of forms for all major work to significant and contributing cultural properties in an historic district and to landmarks.

E. All inventory material shall be maintained securely and shall be accessible to the public except when confidentiality of site location is required pursuant to Section 18-6-11 NMSA 1978 and the Archaeological Resources Protection Act, 16 U.S.C. 470hh.

[4.10.10.13 NMAC - Rp, 4 NMAC 10.10.13, 1/1/08]

4.10.10.14 PUBLIC PARTICIPATION:

A. All meetings of the historic preservation review commission shall be publicly announced, open and accessible to the public, and have a previously available agenda. Public notice shall be provided prior to any special meetings. Minutes of all decisions and actions of the commission, including the reasons for making these decisions, shall be kept on file and available for public inspection.

B. The SHPO and the CLG will work together to provide ample opportunity for public participation in the nomination of properties to the national register. All reports submitted by the CLG to the HPD regarding the eligibility of properties shall include assurances of public input. The CLG shall retain a list of all persons contacted during the evaluation period and note comments which it received. If a public meeting was held, a list of those attending shall be included in the report.

[4.10.10.14 NMAC - Rp, 4 NMAC 10.10.14, 1/1/08]

4.10.10.15 CLG PARTICIPATION IN THE NATIONAL REGISTER PROCESS:

A. The CLG shall submit a report to the HPD regarding the eligibility of each cultural property or district proposed for nomination to the national register within its jurisdiction. This report shall include the recommendation of the historic preservation review commission and the chief elected local official.

B. The report may be as simple as an affirmation that the cultural property is eligible or as lengthy as a researched report stating why the property should or should not be nominated. The report should concentrate on the property's eligibility under the national register criteria. If it is felt that the property is not eligible, adequate reasons must be given based on national register criteria.

C. Failure to submit

reports on the eligibility of cultural properties nominated within the jurisdiction of the CLG after the HPD has informed the CLG of a pending nomination will be considered during the annual performance evaluation.

D. The CLG will be involved in the national register process.

(1) In accordance with 36 CFR 61, the HPD will forward a copy of completed national register nominations to the CLG for all properties located in that CLG's jurisdiction within 30 calendar days of receipt unless the CLG itself has initiated the nomination. If the CLG initiates its own nomination(s), it shall provide the completed nomination to the HPD within 30 calendar days of receipt.

(2) After reasonable opportunity for public comment and within 60 calendar days of receipt of the nomination, the CLG shall inform the HPD and the property owner(s) as to its opinion regarding the eligibility of the property. If the historic preservation review commission and the chief elected local official do not agree, both opinions shall be forwarded to the CPRC. If the SHPO does not receive a recommendation within 60 calendar days, the HPD shall continue the nomination process.

(3) If both the commission and the chief elected local official, or their designated representative, recommend that a property not be nominated, the HPD will so inform the property owner(s) and the CPRC and the property will not be nominated unless an appeal is filed with the SHPO under the regulations established for the appeals process, as outlined in the National Historic Preservation Act.

(4) If either or both the commission and the chief elected local official, or their designated representative, agree that the property should be nominated, the nomination will be scheduled for review by the CPRC. The opinion or opinions of the commission and the chief elected local official, or their designated representative, will be presented to the CPRC for their consideration.

(5) The CPRC, after considering all opinions, shall make its recommendation to the SHPO. If the property is determined to be eligible, the SHPO shall forward the nomination to the keeper of the national register; if the property is determined to not be eligible, the SHPO shall return the nomination to the CLG and the owner(s). Either the commission or the chief elected local official, or their designated representative, may appeal the final SHPO decision under the aforementioned appeals procedure.

(6) CLGs shall participate in review and approval of national register nominations whether or not they elect to apply for grants from the historic preservation fund.

[4.10.10.15 NMAC - Rp, 4 NMAC

10.10.15, 1/1/08]

4.10.10.16 PERFORMANCE ASSESSMENT:

A. In order to determine that the CLG is satisfactorily performing the responsibilities delegated to it by the HPD, the CLG shall submit an annual report of the activities of the commission. These reports shall include, but are not limited to, such items as number of cases reviewed, new designations made, revised resumes of commission members, appointments to the commission, attendance records, all minutes related to the national register nominations and goals and objectives of the commission for the coming year. The report shall also document the educational meetings which commission members attended.

B. Notification of commission meetings shall be provided throughout the year to the HPD in a timely manner so that the HPD may attend such meetings or provide pertinent information.

C. The annual report shall be accompanied by a report on the expenditures of any grants received from the HPD during that year and shall follow fiscal accountability guidelines pursuant to the grants manual.

D. The report shall be due within 60 calendar days of the end of each federal fiscal year or at the end of the portion of the fiscal year in the first year of the establishment of the commission. Continued certification shall be based upon performance and review of the annual report of the activities of the commission. The HPD will review the CLG's final report within 45 calendar days of its receipt.

[4.10.10.16 NMAC - Rp, 4 NMAC 10.10.16, 1/1/08]

4.10.10.17 PROCESS FOR CERTIFICATION OF LOCAL GOVERNMENTS

A. The chief elected local official of the appropriate local governing body shall request certification from the HPD. The request shall include:

(1) a written assurance that the local government has fulfilled all of the requirements outlined above;

(2) a copy of the local historic preservation ordinance;

(3) a list and accompanying maps of the areas designated as historic districts or individual landmarks within the local government's jurisdiction;

(4) resumes for each of the members of the historic preservation review commission; and

(5) a written provision that the local government will provide for a consultant who meets the secretary of interior's professional qualification standards to assist the commission, if needed.

B. The SHPO shall respond to the chief elected local official within 60 calendar days of receipt of an adequately documented written request. If the SHPO determines that the local government fulfills the requirements for certification, the SHPO will forward the decision to the United States secretary of the interior, or designee. The secretary of the interior has 15 working days from receipt to take exception to the certification. The SHPO shall respond to the local government within 15 working days of the secretary's response.

C. When a local government's certification request has been approved in accordance with this rule, the HPD shall prepare a written certification agreement that lists the specific responsibilities of the local government. The responsibilities shall include the four minimum requirements and duties as outlined in Section 4.10.10.10 NMAC above and shall also include any additional responsibilities required by legislation or any additional duties delegated to all CLGs in New Mexico.

D. The HPD will forward to the secretary a copy of the approved request and the certification agreement. If the secretary does not take exception to the request or the agreement within 15 working days of receipt, the local government shall be regarded as certified.

[4.10.10.17 NMAC - Rp, 4 NMAC 10.10.17, 1/1/08]

4.10.10.18 MONITORING AND DECERTIFICATION:

A. The HPD will conduct periodic review and monitoring of CLGs to assure that each CLG is meeting applicable standards and fulfilling its duties, including the responsibilities delegated to the CLG under the National Historic Preservation Act. The CLG procedures shall also be in conformance with federal and state standards, including standards for statewide comprehensive historic preservation planning and other appropriate planning processes. These standards will be provided by the HPD. The HPD shall also review the annual reports, records of the administration of funds allocated from the HPD to the CLG, and other documents as necessary.

B. If the HPD evaluation indicates that the performance of a CLG is inadequate, the HPD shall document that assessment and delineate for the CLG ways to improve its performance. The CLG shall have a period of not less than 30 calendar nor more than 180 calendar days, depending on the corrective measures required, to implement improvements. If the HPD determines that sufficient improvement has not occurred, the HPD will recommend decertification of the local government to the secretary of the interior, citing specific reasons

for the recommendations. When the local government is decertified, the HPD will terminate any financial assistance and will conduct a close-out review of any grants the CLG received from the HPD.

[4.10.10.18 NMAC - Rp, 4 NMAC 10.10.18, 1/1/08]

4.10.10.19 TRANSFER OF HISTORIC PRESERVATION FUNDS TO CLGs:

A. Pursuant to the National Historic Preservation Act, 16 U.S.C. 470c, a minimum of 10 percent of the state's annual appropriation from the historic preservation fund of the department of the interior will be designated for funding projects by CLGs as provided by congress. In any year in which the annual historic preservation fund state grant appropriation exceeds \$65,000,000, one-half of the amount above \$65,000,000 shall also be transferred to CLGs according to procedures to be provided by the secretary of the interior. All grants may be awarded on a matching basis for funding of specific projects or activities which meet the state's historic preservation plan and chapter 9 of the grants manual.

B. All funds will be awarded on a competitive basis. CLGs receiving grants through the HPD from the CLG share of the historic preservation fund of the department of the interior shall be considered subgrantees of the state. All local governments which have been certified are eligible to apply for funds but will not automatically receive funds.

C. CLGs receiving funds must maintain an adequate financial management system by adhering to all requirements of the grants manual.

D. Specifically, grants made from the historic preservation fund cannot be used as a matching share for other federal grants. Local financial management systems shall be auditable in accordance with the grants manual. Unless the CLG has a current indirect cost rate approved by the cognizant federal agency, only direct costs may be charged against grant funds.

E. Each CLG shall complete a grant application by the annual deadline. Application forms, annual HPD priorities for funding, and criteria for awarding grants will be made available to allow sufficient time for the CLG to complete projects within a two-year federal grant cycle.

F. Applications will be ranked by the HPD. In general, eligible activities will include any project which furthers the goals of historic preservation of the community's cultural properties. This may include survey, nomination of properties to the national register, public education programs, planning studies, research, adop-

tion and publication of local historic district and landmarks legislation, establishment of commissions and the development of a comprehensive historic preservation plan.

G. Grant funds may be used for the purpose of retaining a preservation consultant to the historic preservation review commission as outlined in Section 4.10.10.12 NMAC above. Priority will be given to projects which assist the CLG in establishing a process for incorporating historic preservation goals and objectives into the community's planning process and which increase the community's awareness and understanding of historic preservation, or which increase the capability and effectiveness of the CLG in addressing local historic preservation issues and needs.

H. The HPD will provide on an annual basis the selection criteria and funding requirements for grant proposals.

I. Once a local government is certified, it remains certified, without further action, unless officially decertified.

J. Grants for CLGs are awarded on a yearly competitive basis, according to availability of funds. Because a CLG is given a grant one year does not mean a grant will be available the following year. The HPD shall make available to the public, upon request, the rationale for the applicants selected and the amounts awarded. The HPD shall make reasonable efforts to distribute funds among the maximum number of eligible local governments to the extent that such distribution is consistent with the selection criteria in Subsection H of 4.10.10.19 NMAC, above. The HPD shall also seek to ensure a reasonable distribution between urban and rural areas in the state, and that no CLG receives a disproportionate share of the allocation. CLG requirements will be included in the state's required written grant agreements with local governments.

K. Use of federal funds will be limited by all existing restrictions imposed by the grants manual. Any state-directed specific uses of funds are to be for activities that are eligible for historic preservation fund assistance. Use of such funds is to be consistent with the state comprehensive historic preservation planning process outlined in the National Historic Preservation Act. The intent of historic preservation fund assistance is to augment, not replace, existing local commitment to historic preservation activities.

L. The HPD is ultimately responsible, through financial audit, for the proper accounting of the CLG share of the historic preservation fund in accordance with the grants manual.

[4.10.10.19 NMAC - Rp, 4 NMAC 10.10.19, 1/1/08]

HISTORY OF 4.10.10 NMAC

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center & archives under HPD Rule 86-1 Certified Local Government Program, filed 7/14/86.

History of Repealed Material:

4 NMAC 10.10, Certified Local Government Program, (filed 11/03/1997) repealed 1/1/08.

Other History:

HPD Rule 86-1 Certified Local Government Program (filed 7/14/86) renumbered, reformatted and replaced by 4 NMAC 10.10, Certified Local Government Program, effective 11/15/97.

4 NMAC 10.10, Certified Local Government Program (filed 11/03/97) renumbered, reformatted and replaced by 4.10.10 NMAC, Certified Local Government Program, effective 1/1/08.

NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS HISTORIC PRESERVATION DIVISION AND CULTURAL PROPERTIES REVIEW COMMITTEE

Renumber Title 4, Chapter 10, Parts 2, 3, 4, 5, 6, 7, 9, 11, 12 and 13.

4 NMAC 10.2, *Historic Preservation Loan Fund*, filed 7/1/97, has been reformatted and renumbered to 4.10.2 NMAC to comply with the current NMAC requirements, effective 1/1/08.

4 NMAC 10.3, *Procedures of the Cultural Properties Review Committee*, filed 11/3/1997, has been reformatted and renumbered to 4.10.3 NMAC to comply with the current NMAC requirements, effective 1/1/08.

4 NMAC 10.4, *Preservation and Maintenance of Registered Cultural Properties*, filed 11/3/1997, has been reformatted and renumbered to 4.10.4 NMAC to comply with the current NMAC requirements, effective 1/1/08.

4 NMAC 10.5, *Cultural Properties Publications Revolving Fund: Guidelines and Fiscal Controls*, filed 11/3/1997, has been reformatted and renumbered to 4.10.5 NMAC to comply with the current NMAC requirements, effective 1/1/08.

4 NMAC 10.6, *Selection and Preparation of Text for Official Scenic Historic Markers*, filed 11/3/1997, has been reformatted and

renumbered to 4.10.6 NMAC to comply with the current NMAC requirements, effective 1/1/08.

4 NMAC 10.7, *Review of Proposed State Undertakings That May Affect Registered Cultural Properties*, filed 11/3/1997, has been reformatted and renumbered to 4.10.7 NMAC to comply with the current NMAC requirements, effective 1/1/08.

4 NMAC 10.9, *Credit to State Income Tax for Approved Restoration, Rehabilitation or Preservation of Registered Cultural Properties*, filed 11/3/1997, has been reformatted and renumbered to 4.10.9 NMAC to comply with the current NMAC requirements, effective 1/1/08.

4 NMAC 10.11, *Issuance of Permits to Excavate Unmarked Human Burials in the State of New Mexico*, filed 11/3/1997, has been reformatted and renumbered to 4.10.11 NMAC to comply with the current NMAC requirements, effective 1/1/08.

4 NMAC 10.12, *Implementation of the Prehistoric and Historic Sites Preservation Act*, filed 11/3/1997, has been reformatted and renumbered to 4.10.12 NMAC to comply with the current NMAC requirements, effective 1/1/08.

4 NMAC 10.13, *Awarding of Grants from the Cultural Properties Restoration Fund*, filed 11/3/1997, has been reformatted and renumbered to 4.10.13 NMAC to comply with the current NMAC requirements, effective 1/1/08.

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT
STATE PARKS DIVISION**

The Energy, Minerals and Natural Resources Department, State Parks Division repeals its rule 19.5.2 NMAC (filed 12/12/2002) entitled Park Visitor Provisions, effective January 1, 2008.

The Energy, Minerals and Natural Resources Department, State Parks Division repeals its rule 19.5.4 NMAC (filed 12/12/2002) entitled Lease Lot Provisions, effective January 1, 2008.

The Energy, Minerals and Natural Resources Department, State Parks Division repeals its rule 19.5.5 NMAC (filed 12/12/2002) entitled Concession Activities, effective January 1, 2008.

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT
STATE PARKS DIVISION**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 5 STATE PARKS AND
RECREATION
PART 2 PARK VISITOR
PROVISIONS**

19.5.2.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, State Parks Division.
[19.5.2.1 NMAC - Rp, 19.5.2.1 NMAC, 1/1/2008]

19.5.2.2 SCOPE: 19.5.2 NMAC applies to persons using the New Mexico state parks system.
[19.5.2.2 NMAC - Rp, 19.5.2.2 NMAC, 1/1/2008]

**19.5.2.3 S T A T U T O R Y
AUTHORITY:** 19.5.2 NMAC is authorized pursuant to NMSA 1978, Sections 9-1-5(E) and 16-2-2 *et seq.*
[19.5.2.3 NMAC - Rp, 19.5.2.3 NMAC, 1/1/2008]

19.5.2.4 D U R A T I O N : Permanent.
[19.5.2.4 NMAC - Rp, 19.5.2.4 NMAC, 1/1/2008]

19.5.2.5 EFFECTIVE DATE: January 1, 2008, unless a later date is cited at the end of a section.
[19.5.2.5 NMAC - Rp, 19.5.2.5 NMAC, 1/1/2008]

19.5.2.6 OBJECTIVE: 19.5.2 NMAC's objective is to provide standards for visitor use of the New Mexico state parks system in a manner that promotes public health, safety and welfare and preserves park facilities and the environment.
[19.5.2.6 NMAC - Rp, 19.5.2.6 NMAC, 1/1/2008]

19.5.2.7 D E F I N I T I O N S : [RESERVED]
[See 19.5.1.7 NMAC for definitions.]
[19.5.2.7 NMAC - Rp, 19.5.2.7 NMAC, 1/1/2008]

19.5.2.8 DELEGATION: The secretary delegates concurrent authority to the director as contained in NMSA 1978, Section 16-2-32(B), (E) and (F).
[19.5.2.8 NMAC - Rp, 19.5.2.8 NMAC, 1/1/2008]

**19.5.2.9 R E S T R I C T E D
AREAS:**

A. Access to parks, both land and water, shall be open to the public, except that each superintendent may close an area or facility by posting or otherwise designating the area as closed to entry. A superintendent may close an area for no more than five consecutive days without the director's approval. The superintendent shall ensure areas designated for seasonal closure are posted indicating the closure period.

B. The superintendent may set a visitor capacity limit for a park or areas within a park. State park officials shall enforce each park's visitor capacity to protect visitors and to prevent damage to the park's natural or cultural resources. Once capacity is reached, state park officials shall not admit additional visitors until some of the visitors already there have left.

C. The superintendent may restrict or prohibit activities in certain areas of a park by posting or otherwise designating the prohibition or restriction.
[19.5.2.9 NMAC - Rp, 19.5.2.9 NMAC, 1/1/2008]

19.5.2.10 HOURS: The director or the director designee establishes opening and closing times for every area and facility of the state parks system. Hours are posted at the established park entrances, offices or pay stations.
[19.5.2.10 NMAC - Rp, 19.5.2.10 NMAC, 1/1/2008]

19.5.2.11 DAY USE:
A. Day use of a park area is from 6:00 a.m. to 9:00 p.m. unless the superintendent posts different hours or extends hours for special programs or events. Visitors shall pay day-use fees upon entering the park. See 19.5.6 NMAC.

B. Visitors may picnic in parks. The division may close areas designated for picnicking to camping.

C. Visitors shall maintain sites in parks in a clean and sanitary condition at all times. Visitors shall clean the site after use and dispose of trash and litter in appropriate waste receptacles.
[19.5.2.11 NMAC - Rp, 19.5.2.11 NMAC, 1/1/2008]

19.5.2.12 CAMPING:
A. Visitors may camp in parks in designated areas, provided that they obtain a valid camping permit. Visitors shall obtain permits upon entry by paying appropriate fees. See 19.5.6 NMAC. Use of park properties and facilities between the hours of 9:00 p.m. and 6:00 a.m., or as posted by the superintendent, is camping. Check out time, the time the campsite is to be vacated, is 2:00 p.m.; however, the

camping permit allows day use of the park until 9:00 p.m. or as posted by the superintendent. Camping is not available at living desert zoo and gardens state park, vietnam veterans memorial state park, rio grande nature center state park, mesilla valley state park or Smokey bear historical park.

B. Campers may not retain and leave vacant a campsite for more than 24 hours without the superintendent's permission.

C. Campers shall maintain campsites in a clean and sanitary condition at all times. Campers shall clean campsites after use and place litter only in appropriate disposal containers. Campers in remote areas shall carry out supplies and refuse, including human bioproducts, and dispose of these items properly in appropriate waste receptacles.

D. Campers may reside in a park for a maximum of 14 calendar days during any 20-calendar day period unless the director otherwise decreases or waives this limit. Campers shall completely remove camping equipment and gear from the park for six calendar days during the 20-calendar day period.

E. The division shall charge fees according to the facilities provided at each campsite, as provided in 19.5.6 NMAC, regardless of whether the camper uses the facilities at the campsite. For example, camping at a site with electricity requires payment of the fee for a developed site with electrical hookup even if the camper uses no electricity.

F. Vehicles in a park between the hours of 9:00 p.m. and 6:00 a.m., or as posted by the superintendent, are individually subject to the appropriate camping fees. The division considers motor homes towing a vehicle or vehicles towing a camper a single vehicle for 19.5.2.12 NMAC's purposes.

G. The division may require visitors to pay fees for their entire stay in advance (rather than on a daily basis) for weekends, holidays or special events.

H. Anchoring a boat or vessel overnight within a park constitutes camping and requires a valid camping permit for the anchored boat or vessel unless the visitor has paid camping fees for the towing vehicle. Visitors may not leave anchored boats or vessels vacant for more than 24 hours without the superintendent's permission. Anchored boats or vessels may remain within a park for a maximum of 14 calendar days during any 20-calendar day period unless the director decreases or waives this limit. Visitors shall completely remove boats or vessels from the park for six calendar days during the 20 calendar-day period. Subsection H of 19.5.2.12 NMAC does not apply to boats or vessels

moored at concession operated facilities such as marinas or buoy lines. Such boats or vessels are not subject to division camping permits and fees or time limits while they are moored at the concession facilities. [19.5.2.12 NMAC - Rp, 19.5.2.12 NMAC, 1/1/2008]

19.5.2.13 USE OF FACILITIES:

A. Facilities are available on a first come, first served basis with the exception of parks where the division has established a reservation program and a visitor has reserved the facility. Campers shall not save or reserve camping spaces for other individuals even by purchasing additional permits. Campers shall not have sole and continuing possession of a picnic or shade shelter or other park facility to the exclusion of other visitors except as provided in 19.5.2.11 or 19.5.2.12 NMAC unless the superintendent has granted permission.

B. Visitors using a park facility shall keep it in a clean and sanitary manner and shall leave it in a clean and sanitary condition.

C. The division has developed and designated special facilities for the use of individuals with disabilities. Individuals with disabilities shall have preferential use of these facilities over other persons.

D. Visitors shall not remove water for domestic use from the park or deposit domestic trash generated outside the park within a park.

E. Advance reservations are required for the use of meeting rooms. Meeting rooms are not available at all parks. A person who reserves a meeting room is responsible for setting up the room, cleaning the room after use and leaving the room in the same condition it was in before use. See 19.5.6 NMAC for meeting room fees.

F. The director may designate areas within the state parks system for use by reservation.

G. Advance reservations are required for the use of group shelters, group areas or reservation campsites. Users shall pay the appropriate day use or camping fees in addition to the reservation fee. The division may accept annual permits at reservation campsites if posted. See 19.5.6 NMAC for group shelter fees. [19.5.2.13 NMAC - Rp, 19.5.2.13 NMAC, 1/1/2008]

19.5.2.14 PARKING:

A. Visitors shall park vehicles only in established parking areas or parking turnouts where provided. It is illegal to park any vehicle in a manner that blocks access, restricts traffic or inhibits the

free movement of other vehicles, persons or wheelchairs. At the superintendent's discretion, the division may remove vehicles so parked at the owner's expense.

B. Visitors shall not park a vehicle in a designated disabled parking space unless the vehicle has registration plates or a state-issued placard indicating disability.

[19.5.2.14 NMAC - Rp, 19.5.2.14 NMAC, 1/1/2008]

19.5.2.15 VEHICLE TRAFFIC:

A. Visitors shall drive vehicles within the state parks system only on established roads or areas authorized for vehicle traffic, provided that vehicle operation is at speeds at or below the posted limit and in a manner that is reasonable and prudent, with due regard for traffic, pedestrians and road surface conditions and width.

(1) Visitors shall not operate vehicles in a manner that endangers the safety of persons, property or wildlife.

(2) Visitors shall not operate vehicles at speeds greater than the posted limit and shall not exceed 30 miles per hour where no limit is posted.

B. Vehicles operating within a park shall be registered and operated according to New Mexico motor vehicle laws.

C. It is unlawful to ride or to allow anyone to ride in a boat loaded on a trailer, except when launching or loading a boat at an established boat ramp.

[19.5.2.15 NMAC - Rp, 19.5.2.15 NMAC, 1/1/2008]

19.5.2.16 OFF-HIGHWAY MOTOR VEHICLES:

A. Visitors shall not operate off-highway motor vehicles in the state parks system.

B. Visitors with disabilities who rely on off-highway motor vehicles to launch or dock boats or to transport themselves from the dock area or other specifically designated area to their vehicle or campsite may submit a written request for an exception to use an off-highway motor vehicle in specific areas to the director. The director may grant a written exception to use an off-highway motor vehicle, which shall specifically designate the areas to which the exception applies and conditions of use, so long as such use complies with other applicable laws and will not adversely affect park resources. In determining whether to grant an exception to Subsection A of 19.5.2.16 NMAC, the director shall consider the nature and extent of the individual's disability and available alternatives. Visitors the director authorizes to operate off-highway motor vehicles within

the state parks system shall comply with federal, state and local laws governing off-highway motor vehicle use.

C. State park officials may use off-highway motor vehicles for park operations and maintenance.

D. Visitors' use of an off-highway motor vehicle pursuant to Subsections B of 19.5.2.16 NMAC is limited to established and customarily used roads, parking areas, boat ramps and approaches. Off-highway motor vehicle use is also subject to more stringent laws of a landowner (e.g. United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir. Visitors and state park officials shall comply with laws of the landowner (e.g. United States department of the interior, bureau of reclamation; New Mexico department of game and fish; United States army corps of engineers, New Mexico state land office, etc.) when applicable.

[19.5.2.16 NMAC - Rp, 19.5.2.16 NMAC, 1/1/2008]

19.5.2.17 SWIMMING :

Swimming shall be at the swimmer's own risk. Swimming is prohibited within 150 feet of public or concession boat docks, launching ramps, above or below dams or where otherwise posted. Visitors using air mattresses, inner tubes, surfboards, sail or wind, styrofoam flotation devices or other similar articles shall wear a United States coast guard approved personal flotation device or a flotation assist device.

[19.5.2.17 NMAC - Rp, 19.5.2.17 NMAC, 1/1/2008]

19.5.2.18 SKIN OR SCUBA DIVING:

A. Skin or scuba diving is at the diver's own risk and is prohibited within 150 feet of marinas, docks and ramps except for official activities and in other areas the superintendent designates.

B. The division permits scuba diving only in groups of two or more divers. An additional scuba diver or competent diver-tender shall remain above water at all times.

C. Equipment such as tanks, weight belts, etc. shall be equipped with quick-release fasteners.

D. Scuba divers shall be equipped with a buoyancy compensator. Scuba divers shall only use self-inflated, air supplied canister, or tank inflated, direct connection to the tank supplied air.

E. Divers shall use a diver's flag to mark the point of submergence. Divers shall fly the diver's flag from a boat or flotation device while diving. The flag shall be red with a white diagonal stripe running from the upper left corner to the lower right corner. Boats shall stay at least

150 feet away from a diver's flag and shall exercise special care in the diver's flags' vicinity.

[19.5.2.18 NMAC - Rp, 19.5.2.18 NMAC, 1/1/2008]

19.5.2.19 HORSEBACK RIDING:

Visitors may ride horses only in designated areas within the state parks system. Visitors wishing to bring or ride horses in parks shall check with the superintendent in advance for approval, restrictions and area designations as some parks prohibit horses and horseback riding.

[19.5.2.19 NMAC - Rp, 19.5.2.19 NMAC, 1/1/2008]

19.5.2.20 FIREARMS AND BOWS:

Visitors shall not possess firearms, including concealed firearms, with a cartridge in any portion of the mechanism or discharge firearms, including concealed firearms, arrows and air or gas fired projectiles, weapons and other devices capable of causing injury to persons or animals or damage or destruction of property in the state parks system, except during designated hunting seasons or in authorized areas. No such activity is allowed within 300 yards of a developed park area or occupied campsite. 19.5.2.20 NMAC does not apply to on duty law enforcement officials.

[19.5.2.20 NMAC - Rp, 19.5.2.20 NMAC, 1/1/2008]

19.5.2.21 ICE-SKATING AND ICE-FISHING:

Visitors may ice-skate or ice-fish within parks at their own risk. Superintendents may prohibit or limit these activities as conditions require. Ice-fishing is permitted as regulated by the state game commission. Visitors shall not cut holes in the ice for ice-fishing larger than 12 inches in diameter.

[19.5.2.21 NMAC - Rp, 19.5.2.21 NMAC, 1/1/2008]

19.5.2.22 LETTER BOXING AND GEOCACHING:

Visitors shall not conduct letter boxing or geocaching activities in parks without the superintendent's written permission.

[19.5.2.22 NMAC - N, 1/1/2008]

19.5.2.23 METAL DETECTING:

Metal detecting within a state park is prohibited unless a visitor obtains the superintendent's permission to use metal detectors for scientific activities such as projects permitted through the New Mexico cultural properties review committee or to retrieve lost items.

[19.5.2.23 NMAC -Rp, 19.5.2.30 NMAC, 1/1/2008]

19.5.2.24 NOISE LIMITATIONS:

A. Park "quiet hours" begin at 10:00 p.m. and end at 7:00 a.m. Visitors shall not operate generators, radios or unmuffled vehicles or engage in other loud activity disturbing others during this time period.

B. Except in case of an emergency, creation of loud noise through the use of a loudspeaker requires the superintendent's advance written approval. Visitors shall operate radios, tape players or other sound producing devices at a reasonable level during non-quiet hours so as not to disturb other visitors.

C. Visitors shall not use fireworks within parks without the superintendent's advance written approval.

[19.5.2.24 NMAC - Rp, 19.5.2.22 NMAC, 1/1/2008]

19.5.2.25 CONDUCT:

A. Visitors are encouraged to enjoy park experiences without infringing upon other visitors' ability to enjoy the same experiences. Threatening, abusive, boisterous, insulting or indecent language or behavior are prohibited. Solicitation, gambling and illegal discrimination are prohibited.

B. Visitors shall not evade, disobey or resist a state park official's lawful order.

C. Parents, guardians or other adults in charge shall exercise constant direct supervision of minor children or adults who do not possess the intelligence or awareness to recognize possible danger.

D. Law enforcement officers may forcibly eject a person who violates a state law or a department rule or a person who evades, disobeys or resists a state park official's lawful order from a park. Based on the severity of conduct or reported incident, *i.e.*, threatening or intimidating conduct toward visitors or park staff, the ejection may be permanent.

(1) Permanent ejection requires the regional manager to issue written notification to the person being permanently ejected.

(2) To request review of a permanent ejection a regional manager issues, an individual ejected from a park or parks shall submit a written request including the reasons for requesting review to the director within 15 calendar days of issuance and provide written notice to the regional manager.

(3) The regional manager and the ejected individual shall submit written statements to the director within 10 working days of the submission of the request for review.

(4) The director shall base his or her decision on the written statements unless the ejected individual or the regional manager requests the opportunity to call

witnesses or make oral arguments within 10 working days of the request for review.

(5) A request for hearing shall explain the need for any witness testimony or oral argument. If the ejected individual or regional manager asks to make oral arguments or call witnesses, the director may set a hearing to be held within 10 working days after receiving that request and provide notice of the hearing date, time and location to the regional manager and the ejected individual. Oral testimony shall be made under oath. A tape or stenographic record shall be made of any oral argument or witness testimony.

(6) The director shall issue a written final decision, including findings of fact within 10 working days after the date for submission of written statements, or a hearing if any, and send copies to the ejected individual and the regional manager. [19.5.2.25 NMAC - Rp, 19.5.2.23 NMAC, 1/1/2008]

19.5.2.26 PETS:

A. Visitors with dogs, cats or other domestic pets in areas of the state parks system shall control their pets, so as not to cause a nuisance to others. Pet owners shall ensure pets are vaccinated in accordance with applicable municipal or county ordinances and state laws.

B. Pet owners shall pick up after their pets and shall maintain the area in a clean and sanitary condition.

C. Pet owners shall restrain pets on leashes that are not more than 10 feet in length, except in areas the superintendent designates. Subsection C of 19.5.2.26 NMAC does not apply to pets being used in authorized activities such as field trials, retriever training or hunting.

D. Pet owners shall prevent their pets from excessive barking, howling and making loud noises, so as not to disturb others. Pet owners shall prevent their pets from biting or attacking any person or destroying property. Pet owners shall not leave their pets unattended in vehicles or campsites.

E. Pets are prohibited, except disability assistance dogs with valid document that verifies the dog is an assistance dog that can be presented to the state park official at time of use, within visitor centers and at the following parks:

(1) rio grande nature center state park;

(2) living desert zoo and gardens state park; and

(3) Smokey Bear historical park. [19.5.2.26 NMAC - Rp, 19.5.2.24 NMAC, 1/1/2008]

19.5.2.27 LITTERING:

A. Visitors shall not dispose of solid or liquid waste in the state

parks system, except in receptacles provided for that purpose.

B. Glass containers are prohibited outside vehicles, motor homes, campers, trailers and tents within the state parks system except on established commercial premises.

[19.5.2.27 NMAC - Rp, 19.5.2.25 NMAC, 1/1/2008]

19.5.2.28 ABANDONED PROPERTY:

Unless the visitor has obtained the superintendent's prior written permission, personal property left in any park for longer than 14 calendar days shall be deemed abandoned. State park officials shall remove property deemed abandoned at the owner's expense and dispose of it as provided by law.

[19.5.2.28 NMAC - Rp, 19.5.2.26 NMAC, 1/1/2008]

19.5.2.29 PROHIBITION OF ALCOHOLIC BEVERAGES:

The director may prohibit alcohol consumption or possession within a park or a designated area within a park and the superintendent shall post notice of the prohibition.

[19.5.2.29 NMAC - Rp, 19.5.2.29 NMAC, 1/1/2008]

19.5.2.30 FEES AND CHARGES:

A. Upon entering a park, visitors shall pay fees and charges in accordance with 19.5.6 NMAC. The visitor shall display applicable permits in accordance with instructions provided with the permit. If a visitor fails to obtain a permit, state park officials may field collect fees and may include an administrative fee in addition to the required fee. See 19.5.6 NMAC. The visitor's failure to pay the administrative fee may result in civil damages, criminal action or eviction from the park.

B. Visitors shall display permits at all times inside a park. Nonstop highway travel through a park on numbered state highways does not require a park use permit.

C. The superintendent may waive or reduce park fees for government agencies. The superintendent or director may waive or reduce park fees for organized youth groups or special events and the director may waive or reduce park fees for special circumstances where the consideration for the reduced or waived fees is to the equal benefit of the division or the park through advertising, promotion, volunteer hours, etc.

D. State park officials may issue rain checks for unused, prepaid daily camping activities or the cancellation of a group shelter reservation.

E. The division or its con-

tractors may charge fees in addition to the appropriate use fee for reservation processing and cancellation. The contractor or state park officials shall collect the reservation fee for those park sites where the division has established a reservation program. See 19.5.6 NMAC. Visitors shall pay the reservation fee in advance with applicable fees for camping, electricity or other service for the total reservation period.

F. The division may charge fees in addition to the appropriate use fees for special events such as concerts, festivals, etc. The fee shall not exceed the value of admission to such event.

[19.5.2.30 NMAC - Rp, 19.5.2.27 NMAC, 1/1/2008]

19.5.2.31 PERMITS AND CONCESSIONS:

Concession-operated camp grounds do not accept division-issued permits.

[19.5.2.31 NMAC - Rp, 19.5.2.28 NMAC, 1/1/2008]

19.5.2.32 DAY USE AND CAMPING PERMITS:

A. Day use permits.

(1) Day use permits authorize visitors to use park facilities that do not require other fees, such as meeting rooms or group shelters, from 6:00 a.m. to 9:00 p.m.; unless the superintendent has posted different hours.

(2) When purchasing the day use permit visitors shall comply with the instructions on the permit and provide, as requested, their name, address and vehicle license number as well as the date of purchase and the amount enclosed and, if applicable, their site number. Visitors shall indicate that they are only paying for day use.

B. Camping permits.

(1) Subject to the availability of a campsite, camping permits authorize visitors to camp in a park.

(2) When purchasing the camping permit visitors shall comply with the instructions on the permit and provide, as requested, their name, address and vehicle license number as well as their site number, the date of purchase, the amount enclosed and length of stay and, if applicable, their annual permit number. Visitors shall also indicate that they are camping.

[19.5.2.32 NMAC - N, 1/1/2008]

19.5.2.33 ANNUAL PERMITS AND PASSES:

A. Annual day use passes.

(1) Annual day use passes authorize the vehicle owner or individual to access and use the park at no additional charge during the times indicated in 19.5.2.11 NMAC. Visitors may use annual day use passes at all parks, except at the living desert zoo and

gardens state park and Smokey Bear historical park.

(2) When purchasing an annual day use pass visitors shall comply with the instructions on the pass and provide their name and address.

(3) The division does not issue extra vehicle passes for annual day use passes.

B. Annual camping permits.

(1) Annual camping permits authorize the vehicle owner or individual to access and use the park at no additional charge except for utility hookups during the times indicated in 19.5.2.12 NMAC. The annual camping permit allows the visitor one sleeping unit. A motor home towing a vehicle or a vehicle towing a camping trailer is considered a sleeping unit. The visitor shall pay the per night camping fee for additional vehicles.

(2) Annual camping permits are available for:

(a) New Mexico residents as documented with a current New Mexico driver's license or other state of New Mexico issued photo identification;

(b) New Mexico residents 62 years of age or older as documented with a current New Mexico driver's license or other state of New Mexico issued photo identification;

(c) New Mexico residents with physical disabilities who present a New Mexico handicap motor vehicle license plate or a blue handicap placard with a placard holder identification card the New Mexico taxation and revenue department, motor vehicle division issues containing their name and placard number to verify disability; a New Mexico game and fish department lifetime hunting and fishing card containing their name; or a photocopy of the award letter the United States department of veterans affairs issues indicating the veteran has a 100% service-connected disability; and

(d) all-out-of-state-residents including senior citizens and persons with disabilities.

(3) When purchasing an annual camping permit, visitors shall comply with the instructions on the permit and provide their name; address; if applicable, proof of age or residency; and the license plate number of the vehicle for which the visitor is purchasing the permit.

(4) Visitors may use annual camping permits at all parks, except at the living desert zoo and gardens state park and Smokey Bear historical park.

C. Annual day use passes and annual camping permits expire 12 months after the date the division issues them. The division shall not make refunds or prorations for permits or passes that

remain in effect for less than 12 months.

D. Visitors may obtain replacement annual camping permits and stickers by submitting a signed affidavit describing the facts of the purchase and the permit's loss or destruction and, if available, the original permit or proof of purchase. The division does not issue replacements for annual day use passes.

E. The division may sell gift certificates for annual day use passes and annual camping permits.

[19.5.2.33 NMAC - Rp, 19.5.2.28 NMAC, 1/1/2008]

19.5.2.34 DISABLED VETERANS PASSES:

A. Disabled veterans camping passes.

(1) A disabled veterans camping pass authorizes New Mexico resident veterans with a 50% or greater service-connected disability to camp at a park at no charge for three nights, consecutive or non-consecutive, within a 12-month period.

(2) To obtain the three one-night passes, an eligible veteran shall apply with the New Mexico department of veterans services for certification that verifies the veteran's disability and residency (current address) and that the New Mexico department of veterans services forwards to the division.

(3) Disabled veterans may obtain replacement camping passes and stickers by submitting a signed affidavit describing the facts of the issuance and loss or destruction of the pass and, if available, the original pass or proof of issuance.

B. Disabled veterans annual day use passes.

(1) Disabled veterans annual day uses passes authorize New Mexico resident veterans with a permanent 50% or greater service-connected disability to obtain one annual day use pass at no charge for personal use only. An eligible veteran desiring more than one annual day use pass shall purchase additional annual day use passes at full price.

(2) To obtain an annual day use pass, an eligible veteran shall apply with the New Mexico department of veterans services for certification that verifies the veteran's disability and residency (current address) and that the New Mexico department of veterans services forwards to the division.

(3) The division does not issue replacements for disabled veterans annual day use passes.

[19.5.2.34 NMAC - N, 1/1/2008]

19.5.2.35 VETERANS' DAY: On the federally designated legal holiday known as Veterans' Day any New Mexico resident who provides satisfactory proof that the resident is currently serving or has

served in the United States armed forces, and the resident's spouse and dependent children are entitled to free use of any park including the waiving of all day use, camping or other fees.

[19.5.2.35 NMAC - N, 1/1/2008]

19.5.2.36 PARK PASSES:

A. Concessionaires. The director or director designee (see Subsection P of 19.5.7 NMAC) may issue park passes to concessionaires, concession permittees or their employees or commercial contractors, suppliers and agents for access to and from the concession. Concessionaires, concession permittees or their employees or commercial contractors, suppliers and agents using the park, lake or facilities away from the concession premise shall pay the appropriate fees.

B. Contractors. The director or director designee (see Subsection P of 19.5.1.7 NMAC) may issue park passes to division contractors, suppliers or agents or other persons providing services to a park for access to the park.

C. Complimentary park passes. The director or director designee (see Subsection P of 19.5.1.7 NMAC) may issue complimentary passes to legislators so that they may learn about park operations; to park advisory board members, volunteers or individuals who significantly contribute to the division; or in exchange for promotion of the division or advertising. The director or director designee may issue complimentary passes as rainchecks to visitors for unused services or to resolve visitor complaints.

[19.5.2.36 NMAC - Rp, 19.5.2.28 NMAC, 1/1/2008]

19.5.2.37 SPECIAL USE PERMITS:

A. The division shall authorize short term events and activities within the state parks system, such as regattas, boat races, parades, races, fishing tournaments, exhibitions and educational activities only by a special use permit and only after payment of associated fees. See 19.5.6 NMAC. State park officials shall only issue special use permits for events and activities that provide a needed service to the park and that benefit the park. Persons shall submit applications for special use permits to the park where the event is proposed at least 15 calendar days prior to the event, or at least 30 calendar days prior to the event if the event is a regatta, motorboat or boat race, marine parade, tournament or exhibition. State park officials shall not issue a special use permit for a period of more than five consecutive calendar days. The park may charge fees in addition to the special use fee to cover costs of additional staff, facilities, etc. needed for the event.

B. Persons shall complete the division-provided special use permit, which may include the park where the event or activity is proposed; the location of the proposed event or activity within the park; the date of the proposed event or activity; start and end times for the proposed event or activity; the number of people expected to attend; a detailed description of the proposed event or activity; the applicant's name, address and phone number; a hold harmless requirement, insurance coverage; and designation of the type of the proposed event or activity (*i.e.* special use, marine event, park event, etc.).

C. No person shall violate a condition or restriction attached to or indicated on the special use permit. The division may cancel a permit if the permit holder violates 19.5.2 NMAC. [19.5.2.37 NMAC - Rp, 19.5.2.28 NMAC, 1/1/2008]

History of 19.5.2 NMAC:

Pre NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

SPRD 67-1, Rules and Regulations, 07/17/67;
 SPRD 68-1, New Mexico Pleasure Boating Requirements and State Park Regulations, 10/17/68;
 SPRD 69-1, New Mexico Pleasure Boating Requirements and State Park Regulations, 09/11/69;
 SPRD 71-1, New Mexico Pleasure Boating Requirements and State Park Regulations, 11/10/71;
 SPRD 72-1, New Mexico Pleasure Boating Requirements and State Park Regulations, 06/05/72;
 SPRD 73-3, New Mexico Pleasure Boating Requirements and State Park Regulations, 09/14/73;
 SPRD 74-1, New Mexico Pleasure Boating Requirements and State Park Regulations, 02/19/74;
 SPRD 75-1, New Mexico State Park and Recreation Commission Regulations, New Mexico Boating Law, 1975 Edition, 02/24/75;
 SPRD 77-1, New Mexico State Park and Recreation Commission Regulations, New Mexico Boating Law, 1977 Edition, 04/15/77;
 SPRD 79-1, New Mexico Park Regulations and Boating Laws, 07/31/79;
 SPRD 82-1, New Mexico Park Regulations and Boating Laws Revised in 1981, 05/17/82;
 NRD 86-1, Prohibition of Alcoholic Beverages Within Designated Areas of Bottomless Lakes State Park, 06/30/86;
 SPRD 87-1, New Mexico State Park Regulations and Boating Laws, Revised in

1987, 05/06/87;
 EMNRD PRD 89-2, New Mexico State Park Regulations, 12/21/89.

History of Repealed Material:

19.5.2 NMAC, Park Visitor Provisions (filed 12/12/02) repealed 1/1/08.

Other History:

NRD 86-1, Prohibition of Alcoholic Beverages Within Designated Areas of Bottomless Lakes State Park, filed 06/30/86 and EMNRD PRD 89-2, New Mexico State Park Regulations, filed 12/21/89 were **renumbered, reformatted and replaced** by 19 NMAC 5.2, Park Visitor Provisions, filed 12/17/96.

19 NMAC 5.2, Park Visitor Provisions (filed 12/17/96) **renumbered, reformatted, amended and replaced** by 19.5.2 NMAC, Park Visitor Provisions; effective 12/31/02.

19.5.2 NMAC, Park Visitor Provisions (filed 12/12/02) replaced by 19.5.2 NMAC, Park Visitor Provisions, effective 1/1/08.

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT
STATE PARKS DIVISION**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 5 STATE PARKS AND
RECREATION
PART 5 C O N C E S S I O N
ACTIVITIES**

19.5.5.1 ISSUING AGENCY:
Energy, Minerals and Natural Resources
Department, State Parks Division.
[19.5.5.1 NMAC - Rp, 19.5.5.1 NMAC,
1/1/2008]

19.5.5.2 SCOPE: 19.5.5
NMAC applies to a person conducting commercial activity within the state parks system and to a person who proposes to conduct commercial activity within the state parks system, except for a park support group unless the division director determines that the commercial activity's scale requires 19.5.5 NMAC's application to such group. 19.5.5 NMAC does not apply to repair or assistance services the public hires for personal property assistance or repair within a park. 19.5.5 NMAC does not apply to contractors the division hires to perform construction or other services for the division within the state parks system.
[19.5.5.2 NMAC - Rp, 19.5.5.2 NMAC,
1/1/2008]

**19.5.5.3 S T A T U T O R Y
AUTHORITY:** 19.5.5 NMAC is authorized pursuant to NMSA 1978, Section 9-1-5(E) and Sections 16-2-2 *et seq.*
[19.5.5.3 NMAC - Rp, 19.5.5.3 NMAC,
1/1/2008]

19.5.5.4 D U R A T I O N :
Permanent.
[19.5.5.4 NMAC - Rp, 19.5.5.4 NMAC,
1/1/2008]

19.5.5.5 EFFECTIVE DATE:
January 1, 2008, unless a later date is cited at the end of a section.
[19.5.5.5 NMAC - Rp, 19.5.5.5 NMAC,
1/1/2008]

19.5.5.6 OBJECTIVE: 19.5.5
NMAC's objective is to establish standards and procedures for allowing commercial activities within the state parks system, which will provide essential, quality service to the public while preserving natural and cultural resources; provide economic development opportunities for the public; and provide revenue for the state of New Mexico.

[19.5.5.6 NMAC - Rp, 19.5.5.6 NMAC,
1/1/2008]

19.5.5.7 D E F I N I T I O N S :
[RESERVED]
[19.5.5.7 NMAC - Rp, 19.5.5.7 NMAC,
1/1/2008]
[See 19.5.1.7 NMAC for definitions.]

**19.5.5.8 SUBMITTAL OF
PROPOSALS FOR CONCESSION
CONTRACTS:**

A. An interested person seeking to operate a concession within a park or a concessionaire within a park who wishes to expand services beyond the location the concession contract authorizes may send a proposal summary including a brief description of the concession operation with the services to be offered, the concession's proposed location within the park and a description of how the concession meets the criteria in Subsection A of 19.5.5.9 NMAC to the superintendent at the park where the concession is proposed.

B. The director shall evaluate the proposal summary, with the understanding that new or replacement contracts shall be awarded on a competitive basis and notify the interested person and any existing concessionaire that:

(1) the proposal summary indicates the concession does not fit the criteria as listed in Subsection A of 19.5.5.9 NMAC; or

(2) the division will issue a request for concession proposals and the interested person may submit a proposal.

C. The division may request concession proposals when the division determines that there is a concession opportunity within a park, when a concession contract with an existing concessionaire has been terminated or expires or when an existing concessionaire no longer wishes to provide the services. The division shall consider at least the following in deciding whether to issue a request for proposals for the concession:

(1) the park's location, remoteness and facility accommodations;

(2) the population of the area surrounding the park and similar services being offered within the area;

(3) whether other persons have expressed an interest in providing the concession;

(4) the proposed concession operation's size; and

(5) whether an existing concession can provide the new and expanded service, as provided by the existing contract.

D. An interested person responding to a request for concession proposals shall submit the original of a concession proposal consisting of a cover letter

and proposal summary, bound with tab dividers indicating the separately numbered paragraphs corresponding to the following numbers and information requested to the concessions administrator at the division office in Santa Fe through the superintendent at the prospective park where the concession is to be located.

(1) Business plan for the proposed concession that identifies:

(a) the type of business;

(b) the park name and the business' specific location within the park;

(c) services to be offered;

(d) proposed concession fee;

(e) the percentage mark up of goods and services to be offered;

(f) a description of how the business will be operated;

(g) an assurance statement that the concessionaire will follow all federal, state and local statutes or ordinances and regulations or rules;

(h) a proposed maintenance schedule;

(i) a building and improvements schedule outlining any proposed capital improvements, including a plan for the financing of the capital improvements, if applicable;

(j) identification of all investors or potential investors; and

(k) a current financial statement.

(2) A market analysis that:

(a) defines the market area;

(b) identifies existing concessions and other similar ventures within the market area and an indication of their success;

(c) provides the results of any existing public demand survey; and

(d) estimates the economic impact to the park and neighboring community.

(3) Plan for advertising and promoting the proposed concession and the park.

(4) Environmental evaluation of the effects of operating the proposed business that addresses solid and liquid waste generation/removal; air quality; water quality; and compliance with federal, state and local environmental laws.

(5) A cultural property evaluation that includes the identification and significance of cultural properties in the project area and outlines the project impact on cultural properties and proposed impact mitigation, which follows appropriate state or federal cultural property legislation, guidelines and standards, and is coordinated with appropriate federal and state agencies, including the state historic preservation office.

(6) Statement of the proposed terms and conditions relating to revenue generated to the state and term of agreement.

(7) Identification of required permits from other agencies and authorization or pre-approval, as required.

(8) Description of past business or other experience that demonstrates the interested person's ability to operate the concession.

(9) Projected revenue statement.

E. The division shall not evaluate incomplete proposals. The division may request additional information from the interested person as necessary for the proposal's review and evaluation.

F. The division may allow persons submitting proposals the opportunity to discuss the proposals with the division and revise the proposals, but may accept proposals without these discussions. The division may permit interested persons to revise their proposals after submittal of proposals and prior to the division's acceptance for the purpose of obtaining best and final offers. The division may conduct negotiations with interested persons who submit proposals the division finds to be reasonably likely to be selected.

G. The division should notify the interested person of its decision to accept or reject the proposal. During the review process, the division reserves the right to seek comment on a proposal from the public, federal and state agencies and other appropriate entities. If the division requests comments, it may take additional time to review and evaluate a proposal and reach a decision to accept or reject the proposal.

H. When an existing concession contract expires, the division shall not give the existing concessionaire preference for selection. The division may consider performance and the amount of capital investment in the selection process.

[19.5.5.8 NMAC - Rp, 19.5.5.8 NMAC, 1/1/2008]

19.5.5.9 CRITERIA FOR GRANTING CONCESSION CONTRACTS: The secretary shall consider at least the following in determining whether or not to grant a concession contract.

A. Concessions shall:

(1) provide a needed service or a service in which visitors have shown a substantial interest and the service is not adequately provided within the park or within the area;

(2) provide services to the general public rather than a particular individual or group;

(3) enhance, improve, protect and conserve park natural, historical and cultural resources;

(4) provide reasonable revenue to the state in exchange for the concession agreement;

(5) include facilities that are of sufficient size to support the proposed activity and that are harmonious in form, line, color and texture with the surrounding landscape; and

(6) be consistent with the park management and development plan in effect for the park in which the concession is to be located.

B. The division shall not grant new concession contracts unless the director and secretary have approved a park management and development plan that identifies the concession development.

C. Concessionaires shall:

(1) provide evidence to the division that the concessionaire possesses a sufficient level of experience and adequate financial resources to operate the concession in an efficient and professional manner; and

(2) not have past concession performance problems, such as repeated non-compliance with previous or current concession contracts or concession permits or 19.5.5 NMAC.

[19.5.5.9 NMAC - Rp, 19.5.5.9 NMAC, 1/1/2008]

19.5.5.10 CONCESSION CONTRACT PROVISIONS: Following a proposal's acceptance, the division shall enter into negotiations with the successful offeror for a concession contract to operate the concession or with a concessionaire to amend an existing concession contract. To the extent 19.5.5.10 NMAC contradicts an existing concession contract in effect on May 15, 1997, 19.5.5.10 NMAC shall not apply to those contracts unless they are renegotiated or amended. The concession contract's provisions shall be consistent with the following requirements.

A. The concession contract's term shall be limited to the shortest period possible and the term shall not exceed five years unless justified by at least the following: the amount of a concessionaire's investment, the capital improvements made or to be made on the premises and the types of services offered. Under no circumstances shall the concession contract's term exceed 30 years. The division may terminate the concession contract for the concessionaire's noncompliance with the concession contract or 19.5.5 NMAC.

B. Each concession contract shall include a legal description or a detailed map that defines the area in which the concession will operate.

C. A concession contract is subject to limitations applicable federal and state agencies place on the division. The division reserves the right to install park facilities and utilities and to use the park for authorized purposes. The division

reserves the right to close the park or the concessionaire's operations for reasonable law enforcement or safety purposes.

D. A concession contract shall require the concessionaire to pay the division a monthly concession fee, based on a flat fee or a percentage of the concessionaire's net receipts from sales and services. The concessionaire shall submit the concession fee and a monthly report detailing net receipts from sales and services on a division provided form to the concessions administrator at the division office in Santa Fe. The concession fee and monthly report shall be postmarked no later than 5:00 p.m. on the 25th day of the month after the reporting month, unless the 25th falls on a Saturday, Sunday or state-recognized holiday in which case the concession fee and monthly report shall be postmarked no later than 5:00 p.m. of the next business day. The concessionaire's failure to submit the concession fee and monthly report shall result in a penalty fee of 10 percent of the concession fee for the month that is late or \$50.00, whichever is greater.

E. The concession contract shall include a schedule for construction. If the schedule for construction includes improvements to publicly owned property, the division may authorize the concessionaire in writing to expend a percentage of amounts due the division in lieu of remitting them to the division for construction and alterations to publicly owned property to benefit the park. Improvements shall be consistent with the park management and development plan and the concessionaire shall obtain the division's prior approval for the improvements.

F. The concession contract shall require the concessionaire to have liability and workers' compensation insurance naming the state of New Mexico as co-insured, and indemnifying the state of New Mexico, the department and other state agencies or the United States, if required, for public liability, personal injury and property damage in amount equal to or greater than the liability limits set forth in NMSA 1978, Section 41-4-19, as it may be amended from time to time along with worker's compensation insurance, prior to taking control of the concession premises.

G. The concession contract shall require the concessionaire, prior to taking control of the concession premises, to have the greater of:

(1) financial assurance satisfactory to the division conditioned upon the faithful performance of the concession contract in a minimum amount of 10 percent of the gross receipts from sales and services for the prior year; or

(2) financial assurance satisfactory to the division conditioned upon the

faithful performance of the concession contract in a minimum amount of \$5,000 annually, by performance bond or irrevocable letter of credit; if the receipts are anticipated to be less than \$50,000, the division shall consider the concession operation's size and nature and may reduce the financial assurance amount.

H. The concessionaire shall properly maintain concession facilities and real property the concessionaire intends to use in operating the concession and capital improvements the concessionaire makes to the premises. The concessionaire shall complete maintenance with due diligence, in a commercially reasonable manner, so as to ensure visitors' health, safety and welfare. The concessionaire shall prepare an annual operation and maintenance plan, which requires the superintendent's approval. The superintendent shall submit a copy of the approved operation and maintenance plan to the concessions administrator. The approved operations and maintenance plan shall become part of the file the concessions administrator maintains.

I. The concessionaire shall comply with appropriate local, state and federal laws and shall comply with current applicable environmental regulations or rules and building code requirements, including those for accessibility, historical preservation and cultural properties protection. The concessionaire shall obtain applicable permits prior to beginning construction and provide copies to the superintendent.

J. Concessions offering food services shall comply with federal statutes and regulations, state statutes and rules and county or municipal ordinances regarding food sanitation.

K. A concession's advertising and signs within the park shall be subject to the director's prior written approval, and the appropriate federal agency if applicable. Approvals shall become a part of the file the concessions administrator maintains. Advertising through any media, including the internet, shall acknowledge that the concession premises are within the park in which the concession is located. Printed information using the logo of the division or a federal agency requires prior written approval from the division or the federal agency.

L. No concession contract shall be amended except by written instrument executed by the parties and approved by the New Mexico board of finance and applicable state or federal agencies.

M. Either the division or a concessionaire may request to amend the concession contract provisions or to renegotiate the contract at any time during the contract term. A concessionaire shall make such a request in writing to the superintendent.

dent. Within 30 calendar days of receipt of such a request, the division should either notify the concessionaire of its decision or schedule a meeting with the concessionaire to negotiate the contract. If the concessionaire seeks to amend the contract provisions or to renegotiate the contract in order to expand services beyond those authorized by the concession contract, the concessionaire shall comply with 19.5.5.8 NMAC. The concessionaire shall also submit a copy of a request for amendment to the concessions administrator.

N. Upon expiration or termination of the concession contract, the concessionaire shall have 120 calendar days to either sell the permanent improvements that have been placed on the concession premises with the secretary's prior written approval as required in Subsection N of 19.5.5.10 NMAC or remove the personal and movable property from the concession premises at the concessionaire's own cost. The concessionaire shall restore the concession premises to a safe and natural condition after removing permanent improvements that the division has not authorized the concessionaire to leave in place.

O. A concessionaire shall establish and maintain a system for record keeping that uses generally accepted accounting principles. A concessionaire shall submit a year-end financial statement a New Mexico independent certified public accountant prepared that includes an income statement, balance sheet and statement of cash flows no later than 90 calendar days after the end of the concession fiscal year to the concessions administrator at the division office in Santa Fe. The level of certified public accountant assurance certification may be an audit, review or compilation of the financial statements. The division shall consider the amount of the concessionaire's gross receipts from sales and services and length of term of the concession contract when determining the level of certification required.

P. The department and, if applicable, the federal agency shall have access to and may examine and audit a concessionaire's pertinent books, documents, papers and other records related to the concession business operated pursuant to the concession contract during the concession contract's term and for three years after the concession contract has expired. A concessionaire shall make such records available at the concession operation or at the division's office in Santa Fe upon demand during usual business hours. Such records include financial, employer and equipment records.

Q. If the division operates the park in which the concession is located pursuant to a lease with a local, state or federal agency, the concession contract is subject to the lease agreement between the divi-

sion and the agency and may require the appropriate agency's approval.

[19.5.5.10 NMAC - Rp, 19.5.5.10 NMAC, 1/1/2008]

19.5.5.11 CONCESSION CONTRACT APPROVAL BY NEW MEXICO BOARD OF FINANCE:

Concession contracts require the New Mexico board of finance's approval. After the parties have agreed on contract terms and signed the concession contract, the division shall submit the concession contract to the board of finance for approval.

[19.5.5.11 NMAC - Rp, 19.5.5.11 NMAC, 1/1/2008]

19.5.5.12 ASSIGNMENT AND SUBCONTRACTS OF CONCESSION CONTRACTS:

A. A concessionaire shall not transfer, sell, subcontract, encumber, assign, extend, renew, assign management responsibilities, exchange concession business or property or assign rights a concession contract grants, without the secretary's prior written approval. In addition, the above transactions may also require the approval of the New Mexico board of finance and the appropriate federal or state agency. Subcontracts are subject to the concession contract's terms and provisions.

B. The secretary may choose not to approve a transfer, sale, subcontract, encumbrance, assignment, extension, renewal, assignment of management responsibilities, exchange of concession business or property or an assignment of rights that a concession contract grants at the secretary's discretion or may place appropriate conditions on approval, including modification of the concession contract's terms and conditions as a condition of approval. The secretary shall not unreasonably withhold a sale or transfer or place unreasonable conditions or modifications on a concession contract as a condition of approval.

C. A concessionaire who seeks to subcontract services the concession contract authorizes shall submit a proposed subcontract to the superintendent who shall attach a forwarding letter with recommendations concerning the proposed subcontracting to the concessions administrator. The division may request additional information from the concessionaire as necessary for the subcontract's review and evaluation. The division shall notify the concessionaire after the proposed subcontract's receipts of its decision to approve or reject the subcontract. The concessionaire shall submit the subcontract for approval at least 90 calendar days prior to the subcontract's intended effective date to allow for approval by the board of finance and the appropriate federal or state agency, if required.

[19.5.5.12 NMAC - Rp, 19.5.5.12 NMAC, 1/1/2008]

19.5.5.13 REVIEW OF DECISIONS BY THE DEPARTMENT:

A. Requests for review or written responses.

(1) If the division proposes to terminate a concession contract for noncompliance with the contract terms, the division shall send a notice of proposed termination to the concessionaire identifying the areas of noncompliance. The notice shall provide that the concessionaire may request review by the secretary of the division's proposal to terminate by responding in writing to the proposal to terminate within 15 calendar days after the notice of the proposed termination's receipt. The notice shall provide that proposed termination shall be effective 30 calendar days after the concessionaire's receipt of the notice if the concessionaire does not request review. The division may include in a concession contract provisions that provide other reasons for termination and a review process for terminations based upon those reasons.

(2) If the division decides to terminate a concession contract immediately without notice due to a life endangering situation, the concessionaire may request review by the secretary or respond in writing within 15 calendar days after termination.

(3) If the division does not approve a concessionaire's request for transfer, sale, subcontract or any other transaction requiring approval as set forth in Subsection A of 19.5.5.12 NMAC, the concessionaire may request review by the secretary or respond in writing within 15 calendar days after receipt of notice that the division did not approve the transfer, sale, subcontract or other transaction.

B. Review by the secretary shall consist of an informal oral response by the concessionaire in which the concessionaire may present justification, facts, etc. that support continuing the concession's operation. If the concessionaire requests review of a decision, the department shall meet with the concessionaire within 15 calendar days following the request. The secretary may designate an employee of the department, but not of the division, to hear the concessionaire's response.

C. The secretary shall consider the concessionaire's written or oral response. The secretary shall send a final notice to the concessionaire either affirming or withdrawing the decision within 15 calendar days after the written response's receipt or within 15 calendar days after the oral response. The secretary's decision shall be final and is not subject to further review or appeal within the department.

[19.5.5.13 NMAC - Rp, 19.5.5.13 NMAC, 1/1/2008]

19.5.5.14 CONCESSION PERMITS:

A. A concession permit is valid for one year or less. For outfitters and guides, the concession permit's full one-year period is from April 1st until March 31st annually. All other concession permits are valid for 12 months from the date of issue, unless otherwise indicated on the concession permit.

B. A person applying for a concession permit shall obtain a concession permit application from the superintendent at the park where the applicant intends to operate. The application shall require the following information: a detailed description and location of the proposed activity, when the proposed activity will take place and the number of people involved; the applicant's information including name, address and telephone number; the applicant's New Mexico tax identification number and proof of insurance naming the state of New Mexico, the department and the division as additional insured; and a hold harmless agreement signed by the applicant. The person shall complete the application and return it to the superintendent along with the concession permit fee (see 19.5.6 NMAC). An outfitter or guide shall submit a concession permit application to the superintendent by March 1st if the applicant intends to hold a concession permit for the full permit term beginning April 1st.

C. The superintendent shall review the application and determine whether the service or activity meets the following criteria:

(1) does not significantly adversely impact an existing concessionaire's operation;

(2) provides a needed service to park visitors or a service in which the public has shown a substantial interest;

(3) enhances, improves or protects park resources or enjoyment thereof; and

(4) meets the concession permit definition in 19.5.1.7 NMAC.

D. The superintendent should contact the applicant within 15 calendar days if the application is incomplete. The superintendent may request additional information from the applicant as necessary for the application's review and evaluation. The regional manager shall submit applications the superintendent and regional manager approve to the concessions administrator for the division's processing and review and the secretary's final approval.

E. The concession permittee shall not maintain fixed assets within the park.

F. The concession permittee's business address shall be outside of the park.

G. Concession permittees, their employees and their clients shall pay applicable fees associated with a park's use. See 19.5.6 NMAC.

H. A concession permit is valid only within the park for which it is issued. However, a concession permittee may use a single concession permit for Heron Lake state park and El Vado Lake state park or Elephant Butte Lake state park and Caballo Lake state park.

I. The division shall not issue a concession permit until the applicant has provided proof of insurance, which shall at a minimum provide a \$1,000,000 limit for each occurrence and a \$2,000,000 general aggregate limit.

J. Concession permittees, their employees and their clients are subject to appropriate state rules and federal regulations.

K. Concession permits are not transferable. A concession permittee shall not sell or transfer a concession permit for any reason. The department shall not refund a portion of the permit fee if the permittee ceases business during the permit year.

L. The director may limit the number and type of concession permits issued for a park in order to protect park resources. In determining whether to limit the number or type of concession permits, the director shall consider factors such as impact to the park infrastructure or impact to natural resources such as vegetation, erodible soils, etc. The director may prescribe special requirements and conditions for concession permits when it is in the division or state's best interests, including limitations on use of park resources, grounds and facilities; designation of a specific area within a park in which a concession permittee is allowed to operate; designation of specific days or hours during which a concession permittee is allowed to operate; limitations on prices the concession permittee charges; requirements for submission of use and price data including number of customers and charges for services provided; and training requirements.

M. A permittee shall not violate a condition or restriction of the concession permit or 19.5.5 NMAC. The division may immediately cancel a concession permit if the permittee violates the concession permit or 19.5.5 NMAC.

[19.5.5.14 NMAC - Rp, 19.5.5.14 NMAC, 1/1/2008]

19.5.5.15 OUTFITTERS AND GUIDES:

A. An outfitter may apply

for one concession permit and purchase guide cards for guides the outfitter employs who will be conducting guided fishing, boating or rafting trips. The outfitter shall provide the superintendent with a list of guides and request the number of guide cards the outfitter wishes to purchase at the time the outfitter submits a concession permit application and fee. The fee for a guide card shall be the same as the fee for a concession permit. See 19.5.6 NMAC. During the concession permit's term, the outfitter shall have public liability and workers' compensation insurance in force and effect with a carrier licensed to do business in New Mexico, naming the state of New Mexico, the department and the division as principal beneficiaries. The public liability insurance shall cover personal injury and property damage in amounts equal to or greater than the liability limits set forth in NMSA 1978, Section 41-4-19, as it may be amended from time to time.

B. The number of guides on the permittee's guide list may exceed the number of guide cards the permittee purchased. However, at no time shall the number of guides conducting commercial activity in a park exceed the number of guide cards the division issued to the permittee. Only guides whose names appear on the permittee's guide list may conduct guided trips.

C. Each guide shall be able to present a guide card to a state park official at all times when the guide is conducting commercial activity in a park.

D. The permittee is responsible for all guide cards the division issues to the permittee and for updating the guide list as necessary and providing the updated guide list to the superintendent.

E. Each outfitter shall submit an annual report that provides information concerning the outfitter's activities for the preceding year to the superintendent by March 15th. Annual reports shall include dates of guided trips, number of trips on each date and total number of clients on each date or a statement that no trips were made during the year.

[19.5.5.15 NMAC - Rp, 19.5.5.14 NMAC, 1/1/2008]

19.5.5.16 SPECIAL REQUIREMENTS FOR THE SAN JUAN RIVER LOCATED IN NAVAJO LAKE STATE PARK:

A. A permittee or guide shall not take more than three clients on a wade trip or more than three clients on a float boat at one time.

B. Permittees and guides are subject to boat safety inspections at all times while boating.

C. Permittees shall not anchor boats to fishing piers and shall

anchor boats well away from fishing piers.

D. Commercial boat use is allowed only from the Texas hole downstream.

E. Permittees and guides shall ready their boats before launching. After launching, permittees and guides shall remove vehicles and trailers from the launching area or park the vehicles and trailers in designated parking areas. Vehicle use is restricted to launching and retrieving roads. Vehicle use on other roads or trails inside gated areas is prohibited.

F. Permittees and guides may access restricted or special use areas for launching and loading boats. Permittees, guides and permittees' employees or agents shall close gates upon leaving those areas when no other boaters are using or waiting to use the launching or loading areas.

G. Permittees shall identify their boats with the permittee's company name prominently and clearly printed on the vessel on both the port and starboard sides. Lettering shall be at least three inches in height.

H. Division personnel shall mark annual day use passes for outfitters and guides with a code number specifically assigned to each outfitter. When purchasing annual passes, permittees and guides shall advise division personnel that they represent an outfitter.

I. Permittees shall submit a Navajo Lake state park San Juan river trip ticket for commercial trips taken on the San Juan river. The superintendent shall provide permittees with trip tickets. The permittee, or the permittee's guide or agent, shall complete this form on the day of each commercial trip and deposit the completed form in a park self-pay tube on the same day a trip is made. Self-pay tubes are available on the San Juan river for this purpose. A self-pay tube is also available at the Navajo Lake state park visitor center.

J. Permittees and guides operating on the San Juan river shall have a current red cross or American heart association CPR certificate and a current red cross or American heart association basic first aid certificate. Permittees shall submit certificates to the superintendent.

K. Permittees are responsible for training guides in safe boating and wading operations and proper fishing etiquette.

[19.5.5.16 NMAC - Rp, 19.5.5.14 NMAC, 1/1/2008]

19.5.5.17 PROHIBITED COMMERCIAL ACTIVITIES: The following commercial activities are prohibited within the state parks system:

A. commercial activity without written authorization pursuant to a

concession contract, concession permit, film permit or special use permit;

B. services or activities not benefiting the visitor's experience;

C. services or activities that may threaten the public's health or safety;

D. services or activities that may threaten or damage park resources;

E. sale of goods or services outside of a specifically-defined location designated for a concession, unless authorized in a concession permit, special use permit or cooperative agreement; and

F. solicitation of unwanted business.

[19.5.5.17 NMAC - Rp, 19.5.5.15 NMAC, 1/1/2008]

19.5.5.18 CONCESSION MANAGEMENT PROCEDURES:

The superintendent is the division's designated representative with concessionaires and concession permittees in day-to-day operations. Concessionaires shall direct questions concerning a concession contract or permit, including responsibilities pursuant to the contract or permit and interpretation of a contract's or permit's terms to the superintendent. Concessionaires or concession permittees shall direct questions, problems or complaints to the superintendent. The concessions administrator shall maintain historical, fiscal and administrative records at the division office in Santa Fe to ensure compliance with the concession contract. The concessions administrator shall notify the director of a concession contract's expiration at least nine months prior to the expiration date.

[19.5.5.18 NMAC - Rp, 19.5.5.16 NMAC, 1/1/2008]

19.5.5.19 INSPECTIONS:

A. Concessionaires are subject, with prior notice, to a state park official's inspection of the concession premises for public safety and health reasons and to monitor compliance with the concession contract and operation and maintenance plan. Concessionaires shall always maintain a safe and healthy environment for the public and the concessionaire's employees.

B. The department shall have the right to close down a concession operation at any time without prior notice in order to protect the safety and health of parks, visitors and staff.

C. Concession operations shall comply with applicable codes and rules or regulations of applicable authorities.

[19.5.5.19 NMAC - Rp, 19.5.17 NMAC, 1/1/2008]

19.5.5.20 PREFERENCES FOR BLIND PERSONS:

The department

shall comply with NMSA 1978, Section 22-14-27 in assuring that it gives blind persons the commission for the blind licenses preference in the establishment and operation of vending machines with the state parks system when blind persons may properly and satisfactorily operate vending machines.
[19.5.5.20 NMAC - Rp, 19.5.5.19 NMAC, 1/1/2008]

History of 19.5.5 NMAC:

Pre NMAC History: None.

History of Repealed Material:

19.5.4 NMAC (filed 12/12/02), Lease Lot Provisions, repealed 1/1/2008.

Other History:

19 NMAC 5.5, Concession Activities, filed 12/17/96, was **renumbered, reformatted, amended and replaced** by 19.5.5 NMAC, Concession Activities; effective 12/31/02.

19.5.5 NMAC, Concession Activities (filed 12/12/02) replaced by 19.5.5 NMAC, Concession Activities, effective 1/1/08.

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT
STATE PARKS DIVISION**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 5 STATE PARKS AND
RECREATION
PART 7 FILMING IN STATE
PARKS**

19.5.7.1 ISSUING AGENCY:
Energy, Minerals and Natural Resources
Department, State Parks Division.
[19.5.7.1 NMAC - N, 1/1/2008]

19.5.7.2 SCOPE: 19.5.7
NMAC applies to filming and photography
occurring with a park.
[19.5.7.2 NMAC - N, 1/1/2008]

**19.5.7.3 S T A T U T O R Y
AUTHORITY:** 19.5.7 NMAC is author-
ized pursuant to NMSA 1978, Section 9-1-
5(E) and Section 16-2-2 *et seq.*
[19.5.7.3 NMAC - N, 1/1/2008]

19.5.7.4 D U R A T I O N :
Permanent.
[19.5.7.4 NMAC - N, 1/1/2008]

19.5.7.5 EFFECTIVE DATE:
January 1, 2008, unless a later date is cited
at the end of a section.
[19.5.7.5 NMAC - N, 1/1/2008]

19.5.7.6 OBJECTIVE: 19.5.7
NMAC's objective is to establish proce-

dures for issuance of film permits within parks.

[19.5.7.6 NMAC - N, 1/1/2008]

19.5.7.7 DEFINITIONS: [RESERVED]

[See 19.5.1.7 NMAC for definitions.]

[19.5.7.7 NMAC - N, 1/1/2008]

19.5.7.8 ACTIVITIES REQUIRING A FILM PERMIT: An individual or entity shall obtain a division-issued film permit for a film or photography project when the film or photography project:

- A.** involves commercial filming;
- B.** will or may impact a park's natural, cultural or recreational resources or disrupt or interfere with visitors' use and enjoyment;
- C.** uses actors, models, special effects, vehicles, sets or props;
- D.** requires entry into areas closed to visitors;
- E.** involves articles of commerce for the purpose of commercial advertising; or
- F.** requires closure of all or part of a park.

[19.5.7.8 NMAC - N, 1/1/2008]

19.5.7.9 ACTIVITIES NOT REQUIRING A FILM PERMIT: An individual or entity does not need to obtain a film permit:

- A.** when using a camera or other audio or video recording device for the individual or entity's own personal use in areas open to visitors;
- B.** for commercial photography, so long as the project does not require a film permit for any of the reasons stated in 19.5.7.8 NMAC; or
- C.** when filming or photographing a news event that occurs in a park.

[19.5.7.9 NMAC - N, 1/1/2008]

19.5.7.10 APPLICATION FOR A FILM PERMIT:

A. An individual or entity shall apply for a film permit with the division's office in Santa Fe at least 30 calendar days before the film or photography project is to start by submitting a division-developed film permit application and the non-refundable film permit application fee. The individual or entity may not begin the film or photography project until the division issues the film permit.

B. The film permit application shall include the following, as applicable:
(1) name, address, phone number, fax number and e-mail of the individual or entity applying for the film permit and the local contact;

(2) a brief description of the proposed film or photography project including:
(a) whether it is a feature film; still photography; television series, movie or pilot; documentary; video; television commercial; or other;

(b) title or product;

(c) the project's content;

(d) producer;

(e) director;

(f) production manager; and

(g) number in cast;

(3) the name of the park where the proposed film or photography project would occur;

(4) the dates and times the proposed film or photography project would occur in the park;

(5) description of how the individual or entity would use the park, the approximate number of people and vehicles involved, special accommodations needed and special effects planned, including any activity that involves fire;

(6) whether partial or full closures of the park will be needed;

(7) whether equipment or vehicles will be used off of established trails or outside of developed areas; and

(8) additional information the division requests to determine the proposed project's nature and potential impacts upon the park's resources and visitors.

[19.5.7.10 NMAC - N, 1/1/2008]

19.5.7.11 FILM PERMIT ISSUANCE OR DENIAL:

A. After receipt of the film permit application and the application fee, the division shall either:

(1) issue the film permit with such conditions as the division deems necessary, including those needed to protect park resources or to ensure visitors' safety and enjoyment,

upon the applicant's submission of the following:

(a) payment of film permit fees pursuant to 19.5.7.12 NMAC, park fees pursuant to 19.5.7.13 NMAC, as well as costs for division staff or equipment needed for the project to occur (e.g. providing a snowplow and operator to remove snow from roads normally closed for the winter) and for park fees the division loses as a result of a park's full or partial closure;

(b) a damage deposit sufficient to cover the division's costs for restoration that public liability insurance does not cover and clean up; the division will calculate the damage deposit based on the size, number of hours and days, number of individuals involved and the project's overall complexity;

(c) certificate of worker's compensation; and

(d) certificate of insurance for public liability for personal injury and property damage in amounts greater than or equal to the liability limits set forth in NMSA 1978, Section 41-4-19, as it may be amended, which shows the department as an additional insured; or

(2) deny the film permit application in writing for any of the following reasons:

(a) the film permit application does not contain the information required by 19.5.7.10 NMAC.

(b) the proposed film or photography project is incompatible with park resources and visitor use and demand;

(c) the proposed film or photography project depicts activities that are incompatible with or damage the division's image;

(d) the proposed film or photography project will or may risk division employee and visitor safety or damage division property or the park's natural and cultural resources; or

(e) the park lacks sufficient staff to monitor the proposed film or photography project's activity.

B. If the division denies the film permit application because it is incomplete or for any reason listed in Paragraph (2) of Subsection A of 19.5.7.11 NMAC, the applicant may provide additional information to complete the film permit application or revise the film permit application for the division's reconsideration.

[19.5.7.11 NMAC - N, 1/1/2008]

19.5.7.12 FILM PERMIT FEES:

A. Non-refundable application fee: \$100.00.

B. Rental fees.

Motion pictures/videos/television documentaries:	
1-30 people	\$250/location/day
31-60 people	\$500/location/day
over 60 people	\$1000/location/day
Commercial still photography:	
1-10 people	\$100/location/day
11-30 people	\$150/location/day
over 30 people	\$250/location/day

C. Monitoring fees: \$25 per ranger/per hour.

D. Damage deposits.

Less than five people, no stock (animals), props or sets	\$500
Five to 10 people, no stock (animals)	\$1000
Six to 24 people or up to five consecutive calendar days scheduled filming; complex sets; construction of sets at location	\$2000 plus \$100 per animal/per day
25 or more people or more than five consecutive calendar days scheduled filming; complex sets; construction of sets at location	\$5000 plus \$100 per animal/per day

[19.5.7.12 NMAC - N, 1/1/2008]

19.5.7.13 PAYMENT OF PARK FEES:

A. Persons associated with the filming project shall pay the generally applicable visitor fees including camping and electrical and sewage hook-up. Day use fees are not charged.

B. The permittee or those involved in the film or photography project shall not use annual permits to cover day use or camping fees for film or photography projects that require closure of all or part of a park.

[19.5.7.13 NMAC - N, NMAC, 1/1/2008]

19.5.7.14 PARK MONITORS:

A. The division may assign staff to monitor all aspects of filming. The number of monitors the division assigns shall depend upon the number of individuals involved in the project. Generally, the division will assign the following number of monitors.

Less than 50 people one monitor

51-89 people two monitors

More than 90 people three monitors

B. The division may assign fewer or no monitors, such as for a commercial still photography shoot that is using only one location and using no props or sets, or assign additional monitors due to the complexity of the shoot, locations used, special effects or fire

danger or other hazards.

[19.5.7.14 NMAC - N, 1/1/2008]

19.5.7.15 ADDITIONAL REQUIREMENTS:

A. The permittee shall remove equipment and materials brought into a park for the film or photography project immediately upon the project's completion unless otherwise agreed upon in the film agreement.

B. The permittee shall, on a daily basis, remove and properly dispose of garbage, trash, food, supplies, temporary props and other debris associated with the film or photography project's activities from all filming location, staging, catering, parking and storage areas located within the park. The permittee shall arrange for private trash service and shall not use the park's trash disposal facilities or sewage dump stations.

C. If a film project uses animals, the film project shall comply with the American humane association guidelines for the safe use of animals in filmed media, have an American humane animal safety representative present on the set and qualify for the End Credit Disclaimer "No Animals Were Harmed"™. For the most current edition of the American humane association guidelines for the safe use of animals in filmed media please go to www.americanhumane.org/film.

D. Helicopter or aircraft operations within park boundaries require specific approval in the film permit and helicopters and aircraft shall maintain at least a 500-foot altitude above known bird nesting sites, occupied campgrounds and other sensitive park locations that the division identifies.

E. If the film or photography project involves more than 10 people, the permittee shall provide or hire its own security services. The permittee shall provide one security officer for every 20 people involved.

F. The permittee shall include the division and the individual park where the actual filming occurred in the "credits" listing at the end of each motion picture, video, sound recording or television documentary.

[19.5.7.15 NMAC - N, 1/1/2008]

19.5.7.16 DAMAGE TO PARK RESOURCES OR STRUCTURES:

A. Unless modified in the film permit, the permittee shall not:

(1) use materials, adhesives or paints on geological, paleontological or archaeological or other scientific resources within a park;

(2) disturb trees, shrubs, forbs, grasses or other vegetative resources; or

(3) temporarily or permanently

modify the interior or exterior of any park structure.

B. The permittee shall ensure that no material is discharged into waters of the state or storm drainage system.

C. The permittee shall repair, replace or compensate the division for damage to park resources or structures caused or allowed by the permittee's activities within seven days after the division has notified the permittee of the damage.

[19.5.7.16 NMAC - N, 1/1/2008]

HISTORY OF 19.5.7 NMAC: [RESERVED]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT STATE PARKS DIVISION

This is an amendment to 18.17.3 NMAC, Sections 1 through 3 and 6 through 21, effective 1/1/2008.

18.17.3.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, State Parks Division (~~"division"~~).

[18.17.3.1 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.2 SCOPE: ~~[This part]~~ 18.17.3 NMAC applies to the construction and maintenance of private, non-commercial boat docks ("private boat docks") on lakes that are subject to the division's authority. ~~[This rule]~~ 18.17.3 NMAC does not address the construction or maintenance of commercial boat docks or marinas, which are addressed in 19.5.5 NMAC.

[18.17.3.2 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.3 STATUTORY AUTHORITY: ~~[These rules are]~~ 18.17.3 NMAC is established under the authority of NMSA 1978, Section 16-2-7, or under such other authority or agreements that grant the division authority over such private boat docks (for purposes of ~~[this rule]~~ 18.17.3 NMAC all such lakes being described as "lakes subject to the authority of the division").

[18.17.3.3 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.6 OBJECTIVE: ~~[The objective of this part]~~ 18.17.3 NMAC's objective is to provide construction and maintenance standards for private boat docks on lakes that are subject to the division's authority ~~[of the division]~~.

[18.17.3.6 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.7 DEFINITIONS:

A. "BLM" means the United States department of the interior, bureau of land management.

~~[A.]~~ **B.** "Boat dock" ~~[or "Dock"]~~ means a structure extending from the shore into the water to permit the landing and mooring of vessels. The term "boat dock" ~~[or "dock"]~~ includes the anchoring system, and any catwalks or bridges that will attach to the dock itself.

C. "BOR" means the United States department of the interior, bureau of reclamation.

D. "Bridge" means a passage that provides access from the land to a boat dock, marina or other floating facility.

~~[B.]~~ **E.** "Catwalk" ~~[or "Bridge"]~~ means a passage that provides access from the land to a boat dock, marina or other floating facility.

~~[C.]~~ **E.** "Community boat dock" means a private, non-commercial boat dock for use by the owner-members or other authorized residents of a residential community, such as a planned unit development or condominium, and is not available for commercial use. The imposition of a fee for the maintenance or use of a community boat dock by owner-members or other residents of a residential community served by a community boat dock will not result in the boat dock being characterized as a "commercial" boat dock.

~~[D.]~~ **G.** "Dead load" means the permanent inert weight of the boat dock structure, including fixed or permanent attachments, such as bumpers, railings, winch stands, roof structures, etc.

~~[E.]~~ **H.** "Decking" means the surface material that forms the floor of the boat dock or catwalk.

L. "Division" means the energy, minerals and natural resources department, state parks division.

~~[F.]~~ **L.** "Flotation live load" means the total load that a boat dock can carry without capsizing or sinking. The flotation live load is equal to the dead load plus the live load.

~~[G.]~~ **K.** "Habitable structure" means any structure on a boat dock or catwalk, whether permanent or temporary, including tents, which humans may use for overnight occupancy of any duration.

~~[H.]~~ **L.** "Hunt absorption test" means a test documenting the rate at which flotation material absorbs liquid, as well as the quantity of liquid absorbed.

~~[I.]~~ **M.** "Live load" means any moving or variable superimposed load on the boat dock.

N. "PSF" means per square foot.

[J] O. "Registered professional engineer" means a professional engineer currently registered with the New Mexico professional engineer and surveyors board, or its successor agency, with a specialization in civil or structural engineering.

P. "RPE" means a registered professional engineer.

[K] Q. "Sanitation device" means any enclosure or equipment used as a toilet or bathing facility, or device capable of holding refuse, garbage or trash.

[L] R. "Shoreline" means that line where the surface of the lake water and the land meet, regardless of the current lake elevation.

[M] S. "Structural live load" means the weight of the boat dock itself and its ability to support itself.

T. "USFS" means the United States department of agriculture, forest service.

[N] U. "Working load safety factor" means the ability of a boat dock anchoring system to hold or withstand loads. A safety factor of 3.0 means the anchoring system is rated to hold or withstand a load equal to three times the entire weight of the structure; e.g., if the structure weighs 1000 pounds, the cable attached to the anchor will be able to hold 3000 pounds. [18.17.3.7 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.8 GENERAL PROVISIONS:

A. Boat docks approved under ~~[these regulations]~~ 18.17.3 NMAC shall be for personal, family or community uses only and shall not be used for commercial activity.

B. The division operates a number of state parks under agreements with other entities. Those agreements and applicable federal, state and local statutes, regulations, rules and ordinances may contain provisions that supersede ~~[these regulations]~~ 18.17.3 NMAC. In addition, conditions at a particular lake, or the ownership of land on which a state park operates or around a lake, may restrict the construction or use of boat docks at a particular lake. Provisions applicable to individual state parks are set forth ~~[at the end of this part]~~ in 18.17.3.21 NMAC.

C. ~~[Interpretation of these regulations shall be guided by]~~ The provisions of the New Mexico Boat Act, NMSA 1978, Sections 66-12-1 through 66-12-23, and statutory provisions applicable to the acquisition and management of state parks, including NMSA 1978, Section 16-2-11, shall guide interpretation of 18.17.3 NMAC.

D. In reviewing project plans for a boat dock, the division may consider, without limitation: applicable federal,

state and local statutes, regulations, rules and ordinances; agreements with other public agencies and private parties, including concessionaires; the purposes for which the lake and the state park were created; the management plan for the state park; the health, safety and welfare of other users and activities at the lake and state park, including the impact on boating, fishing and other recreation activities; and, conditions at a given location.

[18.17.3.8 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.9 APPROVED PLANS AND CERTIFICATION OF COMPLETION:

A. Persons seeking to construct a boat dock ~~[must]~~ shall submit to the division: two complete sets of project plans for the boat dock, including the anchoring system, and any catwalks or bridges that will attach to the boat dock; the surety bond required by 18.17.3.11 NMAC; and the permit or approval from other entities with authority over the lake or body of water.

(1) When a boat dock will use existing facilities as part of the new proposed boat dock, the project plans ~~[must]~~ shall include a complete description of the existing facilities, and those facilities ~~[must]~~ shall comply with the specifications set forth in ~~[these regulations]~~ 18.17.3 NMAC.

(2) The plans must be signed and sealed by a registered professional engineer ~~[RPE]~~, and contain a statement that the proposed boat dock complies with the specifications set forth in ~~[these regulations]~~ 18.17.3 NMAC.

(3) Each plan set also ~~[must]~~ shall include a copy of the manufacturer's certified plans for any components that will be a part of a boat dock, such as floats, decking, railing or awning systems.

(4) Both engineered plans and manufacturer's certified plans ~~[must]~~ shall be based upon the actual conditions at the site of the proposed boat dock.

B. Persons seeking approval for a boat dock are required to obtain a permit or written approval for the proposed boat dock from other entities with authority over the lake or body of water on which the proposed boat dock will be constructed or the land to which any part of the boat dock will be affixed.

(1) Persons seeking approval for a boat dock ~~[shall be]~~ are responsible for determining what, if any, such permits or approvals are required, and for obtaining the permits or approvals.

(2) The division shall condition approval of the project plans for the boat dock upon receipt of proof that the person has received such other permits or approvals required to construct the boat dock.

C. During construction of a boat dock, a complete set of all permits and approvals required for construction of the boat dock ~~[must]~~ shall be posted in a readily visible location at or adjacent to the construction site, and one complete set of the approved plans ~~[must]~~ shall be kept available at the construction site.

D. Construction of a boat dock ~~[must]~~ shall be completed within six months of the date that the ~~[permit is approved by the]~~ permitting entity approves the permit.

E. After a boat dock is completed, an RPE ~~[must]~~ shall submit to the division a signed and sealed certification that it was built in accordance with the requirements set forth in ~~[these regulations]~~ 18.17.3 NMAC; the plans submitted to and approved by the division and any entity issuing a permit or approval for construction of the boat dock; and, with any special conditions or requirements imposed by the this division or any entity issuing a permit or approval for the construction of a boat dock.

F. The number shown on an approved permit shall be permanently affixed to the end of boat dock facing the lake using reflective numbers and letters three inches in height, and of a color contrasting with the background. Example: UT-00-001.

[18.17.3.9 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.10 COMPLIANCE WITH OTHER STATUTES:

A. All boat docks shall be constructed in compliance with the provisions of the New Mexico Cultural Properties Act, NMSA 1978, Sections 18-6-1 through 18-6-17, and the Cultural Properties Protection Act, NMSA 1978, Sections 18-6A-1 to 18-6A-6.

B. If federal land will be impacted in the construction or maintenance of a dock, federal law, including ~~[but not limited to]~~ the following acts, ~~[must]~~ shall be complied with: the Archaeological Resources Protection Act of 1979, 16 U.S.C. Section 470aa-11; the Native American Grave Protection and Repatriation Act of 1990, 25 U.S.C. Section 3001; and the National Historic Preservation Act of 1966, 16 U.S.C. Section 4691.

[18.17.3.10 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.11 LIABILITY AND SURETY BOND:

A. Boat dock owners are fully responsible for all damage, direct and indirect, of whatever nature, and by whomever suffered, arising out of ~~[the]~~ a project described ~~[herein]~~ in 18.17.3

NMAC and agree to release, hold harmless and indemnify the state from any and all liability, claims or demands of any nature whatsoever, including the cost of defending against those claims or demands, arising out of or in any manner related to the ownership, construction, operation, maintenance or use of a boat dock.

B. Boat dock owners shall provide evidence of a surety bond in favor of the permitting entity and the state of New Mexico and its agencies including the division issued by a corporate surety company qualified and authorized to do business in New Mexico, to cover the cost of salvage and removal by the division or permitting entity of any boat dock that has come loose from its anchors or has become a hazard to navigation or to the use of state park lakes by virtue of its condition; or, was constructed in a manner that violates [~~these regulations~~] 18.17.3 NMAC or other applicable statutes or regulations or rules. The surety bond shall be in an amount not less than [~~five thousand dollars (\$5,000)~~] \$5000, but a larger amount may be required based on the size and configuration of the proposed boat dock or conditions at the lake where the boat dock will be located. Boat dock owners shall provide evidence annually to the division's boating safety and law enforcement bureau chief that the surety bond is in effect.

C. In addition to the surety bond required above, where a lake on which a boat dock will be constructed is owned or subject to the authority of an entity other than the division, persons applying for a permit to construct a boat dock may be required to secure an additional surety bond and insurance coverage in amounts satisfactory to, and for the purposes of, that entity.

D. A boat dock owner's failure to keep in effect the required surety bond and any required general liability coverage [~~will be~~] grounds for the permitting entity to revoke the boat dock permit and to require the boat dock owner to remove the boat dock [~~to be removed at the permit holder's~~] at their expense. [18.17.3.11 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.12 BOAT DOCK SIZE AND CONFIGURATION:

A. Except as otherwise provided by [~~these regulations~~] 18.17.3 NMAC, boat docks shall not exceed 38 feet in length and 30 feet in width. Catwalks shall not be more than 32 feet in length. An entire boat dock, including catwalks and bridges, shall not project into a lake more than 70 feet from the shoreline at any time, regardless of lake elevation.

B. Boat docks located in coves or other narrow channels may not

have a length greater than one-third of the distance to the opposite shoreline, or extend to within 25 feet of the center of the cove, whichever is more limiting, regardless of lake elevation.

C. Except as otherwise provided by [~~these regulations~~] requirements in 18.17.3 NMAC for community boat docks, boat docks shall be constructed only in the following configurations: straight pier, T, L, F or U-shaped.

D. Persons seeking approval for a community boat dock may propose alternate configurations, such as an E shape, where the use of such configurations would be appropriate. In evaluating whether to approve the use of an alternate configuration for a community boat dock, the permitting entity may consider the factors described below for limiting the length or configuration of a boat dock, catwalk or boat dock.

E. Every boat dock shall have a minimum 50-foot setback from any other boat dock.

F. Notwithstanding the foregoing, based upon conditions at a given location the division or permitting entity may require length of a boat dock, catwalk and an entire boat dock to be shorter than the lengths set forth above, or may require greater setbacks from other boat docks. In addition, the division or permitting entity may limit the acceptable configurations of a boat dock. Conditions that the division or permitting entity may consider when determining whether to limit lengths or acceptable configurations or in requiring greater setbacks include, without limitation, the width or depth of a lake, channel or waterway at the location of the proposed boat dock; existing or proposed boat docks and boat docks in the vicinity of that location; and use of the surrounding area by others such as boaters, fishermen and water recreationists.

G. Boat docks may not be configured or placed in a manner that will restrict public access to a lake where such access is otherwise permitted by law. [18.17.3.12 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.13 GENERAL CONSTRUCTION GUIDELINES; MAINTENANCE:

A. Sanitation devices, electric power sources or permanent storage facilities are not allowed on docks, or adjacent to floating facilities, whether permanent or temporary in nature.

B. No habitable structures [~~shall be~~] are permitted on boat docks.

C. Boat docks shall be constructed with environmentally safe materials. The use of wood treated with creosote or penta is prohibited.

D. All steel used in boat docks shall be hot-dip galvanized. All holes, cuts or welds on steel members shall be made prior to hot-dip galvanizing. Connectors shall be hot-dip galvanized steel or stainless steel.

E. Boat docks shall not have enclosed or partially enclosed structures or any type of attached siding above the surface of the decking.

F. American society of civil engineers (ASCE) manuals and reports on engineering practice number 50 "planning and design guidelines for small craft harbors" (as amended or modified), ISBN #0-7844-0033-4, which is available for purchase from the ASCE bookstore at www.ASCE.org, is a recognized standard for the design of boat docks, and may be relied upon in designing boat docks and when seeking approval for a boat dock under [~~these regulations~~] 18.17.3 NMAC. However, the requirements set forth in [~~this part shall~~] 18.17.3 NMAC take precedence over the standards set forth in ASCE Number 50.

G. Maintenance, repairs, modifications or alterations to an existing boat dock shall conform to the requirements set forth in [~~these regulations~~] 18.17.3 NMAC.

[18.17.3.13 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.14 F L O T A - TION REQUIREMENTS:

A. Flotation material shall be extruded polystyrene, expanded polystyrene or a copolymer of polyethylene and polystyrene and shall have a minimum density of 0.9 pounds per cubic foot, and be of consistent quality throughout the float. Beads shall be firmly fused together, and there shall be no voids inside the encasement. Flotation material shall have a water rate absorption of less than 3.0 pounds per cubic foot over [~~7~~] seven days when tested by the Hunt absorption test. Other flotation material may be considered if it meets all of the requirements set forth in this section.

B. Flotation material shall be encased in solid polyethylene or a polyurethane type coating, both of which shall be watertight and have a nominal thickness of .125 inches.

C. Drums made of plastic, whether new or recycled, or metal shall not be used for encasements or floats.

D. All floats shall be warranted for a minimum of eight years against sinking, becoming waterlogged, cracking, peeling, fragmenting, or losing beads, and shall not be prone to damage by animals.

E. Floats that are punctured, exposing the foam to erosion or deterioration, shall be replaced immediately.

[18.17.3.14 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.15 LOADING REQUIREMENTS:

A. Flotation devices for docks, catwalks and bridges shall be designed to support the dead load plus 30-pounds ~~[per square foot (PSF)]~~ PSF live load applied to deck area.

B. Boat dock and dock structural frame shall be designed to support 50 pounds PSF live load applied to the full surface area of the deck.

C. Roofs on boat docks shall have a minimum flotation live load of 12 pounds PSF and a structural live load of 15 pounds PSF.

D. Catwalks and bridges shall be designed to support a live load of 50 pounds PSF.

E. Catwalk and bridge handrails shall be designed to withstand a 200-pound load applied in any direction and at any point along the handrail.

F. Catwalks and bridges shall have a maximum slope under dead load of a 4:1 ratio in any direction.

G. Boat docks shall be able to withstand a minimum of two-foot high wave action. Based upon conditions at a specific site, the division may require a dock to withstand a larger wave loading.

H. Boat docks, anchoring systems and connectors, including cables and chains, shall be designed to resist wind loads of up to 77 miles per hour (15 pounds PSF) in any direction.

I. Cables and chains used in anchoring systems shall be designed with a minimum working load safety factor of 3.0 for cables and 2.0 for chains.

[18.17.3.15 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.16 ANCHORING SYSTEMS: The anchoring systems for boat docks shall be designed and constructed in accordance with sound engineering practice and the actual soil properties encountered at the location of a proposed boat dock and shall meet the standards set forth ~~[above]~~ in 18.17.3.12 NMAC through 18.17.3.15 NMAC.

[18.17.3.16 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.17 INSPECTIONS, REMOVAL FOR VIOLATIONS:

A. Boat docks ~~[may be]~~ are subject to inspection by the division, or its authorized agents, without notice, at reasonable times. Boat dock owners shall also allow entities permitting or approving docks to conduct inspections in accordance with ~~[the guidelines established by that entity]~~ that entity's guidelines. If there are no

such guidelines, the mandatory inspection guidelines in Subsection C of 18.17.3.17 NMAC shall be followed.

B. Boat dock owners and boat docks ~~[must]~~ shall comply with ~~[these regulations]~~ 18.17.3 NMAC and any requirements contained in a permit at all times.

C. Boat dock owners ~~[must]~~ shall have their boat docks inspected every five years by an RPE at their own expense. Inspections ~~[must]~~ shall cover every component of the entire boat dock, including boat dock, catwalk, anchorage, winches, cable, decking and ~~[floatation]~~ flotation material and encasements. After each inspection, boat dock owners ~~[must]~~ shall submit a letter to the division signed and sealed by the RPE who conducted the inspection stating that the entire boat dock meets or exceeds the design standards set forth in ~~[this part]~~ 18.17.3 NMAC.

D. Failure to complete inspections, follow inspection guidelines set forth above, or to correct any violations of ~~[these rules]~~ 18.17.3 NMAC within ~~[thirty]~~ 30 days of receipt of written notice, may result in the division or permitting entity requiring removal of the boat dock at the boat dock owner's expense.

E. The division or permitting entity may remove boat docks that become hazards to navigation at the boat dock owner's expense.

[18.17.3.17 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.18 REMOVAL OF BOAT DOCKS: When a boat dock is removed for any reason whatsoever, including at the initiative of the boat dock owner or at the direction of the division or permitting entity, the boat dock owner ~~[shall be]~~ is responsible for the complete removal of the entire boat dock including the boat dock, catwalk, anchoring system, cables, floats and any other related components or materials installed in conjunction with the construction, maintenance or use of the boat dock.

[18.17.3.18 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.19 SPECIAL RULINGS, ADDITIONAL REQUIREMENTS AND VARIANCES: Where conditions on a lake or at a proposed boat dock location warrant, the division in the reasonable exercise of its discretion, may make special rulings, impose additional requirements and allow appropriate variances from ~~[these regulations]~~ 18.17.3 NMAC. In addressing these matters, the division may take into consideration, without limitation: applicable federal, state, and local statutes, regulations, rules and ordinances; agreements with other public agencies and private parties, includ-

ing concessionaires; the purposes for which the state park and the lake were created; the management plan for the state park; the health, safety and welfare of other users; and activities at the lake and state park, including the impact on boating, fishing and other recreation activities; and conditions at a given location.

[18.17.3.19 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.20 EMERGENCY USE BY PUBLIC AGENCIES: Boat dock owners shall allow the division, any other entity permitting or approving the boat dock, law enforcement agencies, fire departments and emergency personnel to access and use a boat dock for emergency purposes, without charge or other compensation, or liability for such use.

[18.17.3.20 NMAC - N, 7/1/2002; A, 1/1/2008]

18.17.3.21 PROVISIONS APPLICABLE TO INDIVIDUAL PARKS:

A. ~~[This section]~~ 18.17.3.21 NMAC addresses restrictions on obtaining permits for private boat docks under ~~[these regulations]~~ 18.17.3 NMAC at state parks with or adjacent to lakes. ~~[The regulations state]~~ 18.17.3 NMAC states whether private boat docks are allowed on a lake and what entity must be contacted to obtain permission to build such a boat dock. The applicant shall obtain written authorization for a private boat dock ~~[must be obtained]~~ from the appropriate authority before submitting an application [is submitted] to the division for a permit.

B. Bluewater Lake state park. Private boat docks are not permitted.

C. Bottomless Lakes state park. Because of the size of the lakes at this state park, private boat docks are not permitted.

D. Brantley Lake state park. The division operates this state park pursuant to an agreement with the ~~[bureau of reclamation of the United States department of the interior (BOR)]~~ BOR. Private boat docks are not permitted.

E. Caballo Lake state park. The division operates this state park pursuant to an agreement with the BOR. Private boat docks are not permitted.

F. Clayton Lake state park. The division operates this state park pursuant to an agreement with the New Mexico state game commission, and the state owns the land surrounding the lake. Private boat docks are not permitted.

G. Conchas Lake state park. The division operates this state park pursuant to an agreement with the United States army corps of engineers. ~~[That]~~ The United States army corps of engineers has

~~designated that~~ part of the shoreline and lake ~~[operated by]~~ the division ~~operates~~ ~~[have been designated]~~ "public recreation use" areas ~~[by the corps]~~ and private boat docks are not allowed.

H. Eagle Nest Lake state park. The division operates this state park pursuant to an agreement with the New Mexico state game commission and the New Mexico department of game and fish. Private boat docks are not permitted.

~~[H.]~~ **I.** Elephant Butte Lake state park. The division operates this state park pursuant to an agreement with the BOR. Private boat docks are not permitted.

J. El Vado Lake state park. The division operates this state park pursuant to an agreement with the BOR. Private boat docks are not permitted.

K. Fenton Lake state park. The division operates this state park pursuant to an agreement with the New Mexico department of game and fish ~~[department]~~. The New Mexico department of game and fish ~~[department]~~ constructed the dam at the lake pursuant to an agreement with the ~~[forest service (USFS) of the United States department of agriculture]~~ USFS. That agreement does not permit any structure other than a dam to be built or maintained on land ~~[owned by]~~ the USFS owns. The New Mexico department of game and fish ~~[department]~~ owns the remaining land around the lake. Private boat docks are not permitted.

~~[K.]~~ **L.** Heron Lake state park. The division operates this state park pursuant to an agreement with the BOR. Private boat docks are not permitted.

~~[L.]~~ **M.** Morphy Lake state park. The division operates this state park pursuant to an agreement with the New Mexico state game commission, under which the New Mexico state game commission controls the use of boats and other floating devices on the lake. The New Mexico state game commission operates the lake pursuant to an agreement with the Acequia de San Jose and the Acequia de la Isla of Le Doux (the acequias), which own the lake and the surrounding land. Private boat docks are not permitted.

~~[M.]~~ **N.** Navajo Lake state park. The division operates this state park pursuant to an agreement with the BOR. Private boat docks are not permitted.

~~[N.]~~ **O.** Oasis Lake state park. The division operates this state park pursuant to an agreement with the ~~[commissioner of public lands]~~ New Mexico state land office, which owns the land on which the state park is located. The agreement does not authorize private boat docks.

~~[O.]~~ **P.** Santa Rosa state park. The division operates this state park pursuant to an agreement with the United States army corps of engineers. Pursuant to

federal regulation, private boat docks are not permitted in the area ~~[operated by]~~ the division operates.

~~[P.]~~ **Q.** Storrie Lake state park. The division operates this state park pursuant to an agreement with the Storrie project water users association. Private boat docks are not permitted.

~~[Q.]~~ **R.** Sugarite ~~[Lake]~~ Canyon state park. The division operates this state park pursuant to an agreement with the city of Raton. Private boat docks are not permitted on Lake Alice or Lake Maloya.

~~[R.]~~ **S.** Summer Lake state park. The division operates this state park pursuant to an agreement with the BOR. Private boat docks are not permitted.

~~[S.]~~ **T.** Ute Lake state park. ~~[The division operates this park pursuant to an agreement with the New Mexico interstate stream commission.]~~ The New Mexico interstate stream commission owns this lake and must approve applications for private boat docks.

[18.17.3.21 NMAC - N, 7/1/2002; A, 1/1/2008]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT STATE PARKS DIVISION

This is an amendment to 19.5.1 NMAC, Sections 1 through 3 and 6 and 7, effective 1/1/2008.

19.5.1.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, State Parks Division.
[12-31-96; 19.5.1.1 NMAC - Rn, 19 NMAC 5.1.1, 12/31/02; A, 1/1/08]

19.5.1.2 SCOPE: ~~[This part]~~ 19.5.1 NMAC applies to ~~[all]~~ persons using the New Mexico state parks system.
[12-31-96, A, 12-31-98; 19.5.1.2 NMAC - Rn, 19 NMAC 5.1.2, 12/31/02; A, 1/1/08]

19.5.1.3 S T A T U T O R Y AUTHORITY: ~~[This part]~~ 19.5.1 NMAC is authorized pursuant to NMSA 1978, Section 9-1-5(E) ~~[NMSA 1978]~~ and Sections 16-2-2 *et seq.* ~~[NMSA 1978]~~.
[12-31-96; 19.5.1.3 NMAC - Rn, 19 NMAC 5.1.3, 12/31/02; A, 1/1/08]

19.5.1.6 OBJECTIVE: ~~[The objective of this part]~~ 19.5.1 NMAC's objective is to identify general provisions and definitions, which apply to ~~[all]~~ parts in Title 19, Chapter 5.
[12-31-96; 19.5.1.6 NMAC - Rn, 19 NMAC 5.1.6, 12/31/02; A, 1/1/08]

19.5.1.7 DEFINITIONS:

A. "Boating and rafting excursions" means ~~[any]~~ a guiding service for boating or rafting trips offered to the general public.

B. "Capital improvement" means a construction project by a concessionaire to the concession premises that is not maintenance or repair and that costs at least ~~[\$1,000.00]~~ \$1000.

C. "Commercial activity" means ~~[any]~~ for-profit sales or services but does not include the operation of vending machines unless the vending machine is operated as part of a larger concession operation.

D. "Commercial filming" means the use of motion picture, videotaping, sound recording or other moving image or audio recording equipment that involves the advertisement of an event, product or service; the creation of a product for sale including film, videotape, television broadcast or documentary of participants in commercial sporting or recreation events for the purpose of generating income; or the use of actors, models, sets, or props.

E. "Commercial photography" means still images taken with a camera that the photographer intends to sell.

~~[D.]~~ **E.** "Concession" means ~~[any]~~ commercial activity conducted within a ~~[state]~~ park ~~[or recreation area and authorized in writing by]~~ the department has authorized in writing.

~~[E.]~~ **G.** "Concessionaire" means the owner or operator of a concession who operates pursuant to a ~~department-~~ issued concession contract ~~[with the department]~~.

~~[F.]~~ **H.** "Concessions administrator" means ~~[an employee of the state parks]~~ a division employee who maintains ~~[all]~~ records and documentation concerning concession contracts and concession permits.

~~[G.]~~ **L.** "Concession contract" means an agreement between the department and a person, or business entity, ~~[or park support group]~~ which allows the concessionaire to provide services, merchandise, accommodations or facilities within a ~~[state]~~ park ~~[or recreation area]~~. The concessionaire shall occupy a permanent structure or location within the ~~[state]~~ park ~~[or recreation area]~~. The ~~[term of the concession contract]~~ concession contract's term shall not exceed 30 years pursuant to NMSA 1978, Section 16-2-9 ~~[NMSA 1978]~~.

~~[H.]~~ **J.** "Concession permit" means a permit ~~[issued]~~ the department issues to a person or business entity ~~[or park support group by the department]~~ to provide services in a ~~[state]~~ park ~~[or recre-~~

~~ation area~~] for a time period of ~~[one year or less]~~ up to one year. The fee for a concession permit is established in 19.5.6 NMAC. ~~[The director may waive this fee for concession permits issued to friends groups. The concession permittee shall not maintain any fixed assets within the state park and recreation area. The concession permittees business address shall be outside of the state park or recreation area.]~~ Services ~~[authorized]~~ the division may authorize under a concession permit ~~[are limited to]~~ include guiding and ~~[fishing]~~ outfitting services for fishing, boating and rafting excursions; educational ~~[services]~~ and park resource protection services; ~~[for example firewood sales]~~ and other services, including commercial services, that enhance visitors' experience and enjoyment, such as sales of firewood, propane, ice, food or refreshments.

~~[F.]~~ **K.** "Concession permittee" means the holder of a department-issued concession permit ~~[issued by the department].~~

~~[J.]~~ **L.** "Cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

~~[K.]~~ **M.** "Department" means the energy, minerals and natural resources department.

~~[L.]~~ **N.** "Developed site" means a park camping site with at least one shelter, table or grill or ~~[any]~~ a combination of two or more such facilities at the site. Sites with recreational vehicle utility hookups ~~[shall be]~~ are considered developed regardless of the presence of shelters, tables or grills.

~~[M.]~~ **O.** "Director" means the director of the ~~[state parks division of the]~~ energy, minerals and natural resources department, state parks division.

~~[N.]~~ **P.** "Director designee" means persons ~~[appointed by]~~ the director ~~[to include]~~ appoints including deputy directors, bureau chiefs, regional managers and park superintendents.

~~[O.]~~ **Q.** "Division" means the ~~[state parks division of the]~~ energy, minerals and natural resources department, state parks division.

~~[P.]~~ **R.** "Flotation assist device" means a wet suit or wearable flotation device in good condition capable of providing flotation to the wearer on the water's surface ~~[of the water].~~

~~[Q.]~~ **"Friends group"** means an organized group of individuals recognized by the division that volunteers time, services or funds to promote and support the division.]

S. "Geocaching" means an outdoor treasure-hunting activity in which the participants use a global positioning system receiver or other navigational

means to hide or find containers called "geocaches" or "caches".

~~[R.]~~ **T.** "Gross receipts from sales and services" means the total amount of receipts from sales and services.

~~[S.]~~ **U.** "Guide" means an individual or an employee of an outfitter who is hired to escort or accompany clients in fishing, rafting or boating.

~~[F.]~~ **"Lessor"** means the state parks division.]

~~[U.]~~ **"Leaseholder"** means an individual who leases a portion of land from the state parks division.]

V. "Letter boxing" means an outdoor hobby that combines elements of orienteering, art and puzzle solving. Letter boxers hide small, weatherproof boxes in publicly-accessible places and distribute clues to finding the boxes in printed catalogs, on websites or by word of mouth. The activity is characterized by the boxes containing a logbook and a rubber stamp. Letter boxers stamp the box's logbook with personal rubber stamps and use the box's stamp to imprint their personal logbooks as proof they found the box.

~~[W.]~~ **W.** "Net receipts from sales and services" means the total amount of receipts from sales and services, less the amount of gross receipts taxes.

~~[W.]~~ **X.** "Off highway motor vehicle" means ~~[any]~~ a motor vehicle operated or used exclusively off ~~[the]~~ New Mexico's highways ~~[of this state]~~ and that is not legally equipped for operation on the highway; this includes all terrain vehicles.

~~[X.]~~ **Y.** "Outfitter" means a person or company who employs guides.

Z. "Park" means an area designated as a state park within the state parks system and that the division manages or owns.

~~[Y.]~~ **AA.** "Park management and development plan" means a plan used as a guide for ~~[all]~~ expansion, services, programs and development for the park.

~~[Z.]~~ **BB.** "Park support ~~[groups]~~ group" means ~~[a friends group or other organization]~~ an organization as defined in NMSA 1978, Section ~~[6-5-1(A) 1(A)(2)]~~ 6-5A-1 or an organized group of individuals that volunteers time, services or funds to promote and support the division or an individual park and whose principal purpose as authorized by the division is to complement, contribute to and support, aid the function of or forward the division's or park's purposes.

~~[AA.]~~ **CC.** "Person" means an individual, partnership, firm, corporation, association, joint venture or other entity.

~~[BB.]~~ **DD.** "Personal flotation device" means a coast guard approved life preserver, buoyant vest, hybrid device, ring buoy or buoyant cushion.

ion.

~~[CC.]~~ **EE.** "Primitive site" means a camping site that offers no facilities except a cleared area for camping. Primitive sites may have trash receptacles, chemical toilets or parking.

~~[DD.]~~ **"Property marker"** means a secured object, such as a flag or pole, that is used to mark lease lot boundaries.]

FF. "Rally" means a parking area or facility designated for group functions.

~~[EE.]~~ **GG.** "Receipts" means ~~[all]~~ consideration in money and in trade received from sales and charges for services.

~~[FF.]~~ **HH.** "Regional manager" means a ~~[state parks]~~ division employee responsible for several parks within a region.

~~[GG.]~~ **"Resolution committee"** means a group of individuals that consists of one representative from the state parks division, one representative from the United States bureau of reclamation, when applicable, and leaseholders involved in survey dispute.]

~~[HH.]~~ **II.** "Sales and services" means ~~[all]~~ transactions by a concessionaire, or a concessionaire's agents or employees ~~[of a concessionaire]~~, for which the concessionaire receives consideration in money or money's worth in connection with the concession business operated pursuant to the concession contract.

~~[H.]~~ **JJ.** "Secretary" means the secretary of the ~~[energy, minerals and natural resources]~~ department.

~~[JJ.]~~ **KK.** "Special use permit" means a permit the division has issued to a person, business entity, park support group or organized group ~~[by the division]~~ to provide an event or activity within a ~~[state]~~ park ~~[and recreation area]~~. Examples of special use events and activities include regattas, boat races, parades, races, fishing tournaments, exhibitions and educational activities. The term of a special use permit shall be for the duration of the approved event or activity but shall not be issued for a period of more than five consecutive calendar days.

~~[KK.]~~ **LL.** "State park official" means ~~[any employee of the state parks division]~~ a division employee.

~~[LL.]~~ **MM.** "State parks system" means ~~[all]~~ land and water in a ~~[state]~~ park ~~[and recreation areas]~~.

~~[MM.]~~ **NN.** "Superintendent" means ~~[an employee of the state parks division]~~ a division employee who is in charge of a specific ~~[park(s)]~~ park; which includes a park superintendent or park manager.

~~[NN.]~~ **OO.** "Vending machine" means ~~[any]~~ a coin-operated bev-

erage, snack or service machine subject to ~~approval by the~~ division approval.

~~OO. "Veterans permit" means one annual day use permit for entry into state parks, issued to a New Mexico resident veteran with a permanent one hundred percent service connected disability. A veteran's permit is non transferable.~~

PP. "Working days" means Monday through Friday, excluding state holidays.

[7-17-67, 7-25-72, 7-31-79, 12-21-89, 12-31-89, 5-20-92, 12-31-96, 12-31-98, 7-1-99; 19.5.1.7 NMAC - Rn & A, 19 NMAC 5.1.7, 12/31/02; A, 5/1/04; A, 1/1/08]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT STATE PARKS DIVISION

This is an amendment to 19.5.3 NMAC, Sections 1 through 3 and 6 through 12, effective 1/1/2008.

19.5.3.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, State Parks Division.
[12-31-96; 19.5.3.1 NMAC - Rn, 19 NMAC 5.3.1, 12/31/2002; A, 1/1/2008]

19.5.3.2 SCOPE: ~~[This part]~~ 19.5.3 NMAC applies to the division and the general public.
[12-31-96; 19.5.3.2 NMAC - Rn, 19 NMAC 5.3.2, 12/31/2002; A, 1/1/2008]

19.5.3.3 STATUTORY AUTHORITY: ~~[This part]~~ 19.5.3 NMAC is authorized pursuant to NMSA 1978, Section 9-1-5(E) ~~[NMSA 1978]~~ and Sections 16-2-2 *et seq.* ~~[NMSA 1978]~~.
[12-31-96; 19.5.3.3 NMAC - Rn, 19 NMAC 5.3.3, 12/31/2002; A, 1/1/2008]

19.5.3.6 OBJECTIVE: ~~[The objective of this part]~~ 19.5.3 NMAC's objective is to provide direction for the management and development of the ~~[state]~~ parks in the New Mexico state parks system in a manner that enhances recreational opportunities, protects park resources, provides for public input and protects the ~~[natural]~~ environment.
[12-31-96; A, 12-31-98; 19.5.3.6 NMAC - Rn, 19 NMAC 5.3.6, 12/31/2002; A, 1/1/2008]

19.5.3.7 DEFINITIONS: ~~[See 19.5.1 NMAC for definitions.]~~ [RESERVED]
[12-31-96; 19.5.3.7 NMAC - Rn, 19 NMAC 5.3.7, 12/31/2002; A, 1/1/2008]
[See 19.5.1.7 NMAC for definitions.]

19.5.3.8 REQUIREMENT: Each ~~[state]~~ park shall establish a park management and development plan and conform to the plan at all times except in cases of emergency in order to protect life or property. This requirement shall not prevent the director or secretary from making and implementing policy decisions concerning a park's management and operation ~~[of a state park]~~ if a plan is not in place and shall not require an existing plan to be amended before such policy decision is made and implemented.
[12-31-96; 19.5.3.8 NMAC - Rn & A, 19 NMAC 5.3.8, 12/31/2002; A, 1/1/2008]

19.5.3.9 CONTENT OF PARK MANAGEMENT AND DEVELOPMENT PLANS:

A. Park management and development plans shall address at a minimum:

(1) the park's mission and goals ~~[of the state park];~~

(2) park operational and management programs that:

(a) identify how public use facilities, support facilities and infrastructure are maintained;

(b) identify how the division manages the ~~[state]~~ park ~~[is managed]~~ to provide recreation opportunities and to protect park resources and visitors; and

(c) provide for the park's administration ~~[of the state park];~~

(3) current and future concessions at the ~~[state]~~ park; and

(4) expansion and development concepts ~~[which]~~ that identify future capital improvement needs to facilities, structures and recreational use areas.

B. Park management and development plans shall include a map that identifies current facilities~~;~~ and activity areas and may identify areas where future development, management and recreational activities may be planned in the ~~[state]~~ park.
[12-31-96, 12-31-98; 19.5.3.9 NMAC - Rn & A, 19 NMAC 5.3.9, 12/31/2002; A, 1/1/2008]

19.5.3.10 PUBLIC COMMENT: The park management and development plan shall be available for public comment for 30 calendar days before ~~[it is implemented or modified]~~ the division implements or modifies it. The division shall publish a public notice ~~[shall be published]~~ in a newspaper of general circulation in the park's locality ~~[of the state park and mailed]~~ and mail it to ~~[all]~~ persons who have made a written request for advance notice at least 30 calendar days before the division implements or modifies a park management and development plan ~~[is implemented or modified].~~

[12-31-96; 19.5.310 NMAC - Rn & A, 19 NMAC 5.3.10, 12/31/2002; A, 1/1/2008]

19.5.3.11 APPROVAL: Park management and development plans ~~[shall be approved in writing by the director and secretary]~~ require the director and secretary's written approval.

[12-31-96; 19.5.311 NMAC - Rn & A, 19 NMAC 5.3.11, 12/31/2002; A, 1/1/08]

19.5.3.12 MODIFICATION OF PARK MANAGEMENT AND DEVELOPMENT PLAN: ~~[No]~~ The division shall not modify or change a park management and development plan ~~[shall be modified or changed]~~ without a public comment period as provided in ~~[Section 10 of this Part]~~ 19.5.3.10 NMAC. The division shall review and update park management and development plans in effect ~~[shall be reviewed and updated]~~ at least every five years. The division may review and update park management and development plans ~~[may be reviewed and updated]~~ at any time if the director determines review is necessary.
[12-31-96; 19.5.312 NMAC - Rn & A, 19 NMAC 5.3.12, 12/31/2002; A, 1/1/2008]

**NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES
DEPARTMENT
STATE PARKS DIVISION**

This is an amendment to 19.5.6 NMAC, Sections 1 through 3 and 6 through 18, effective 1/1/2008.

19.5.6.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, State Parks Division.
[19.5.6.1 NMAC - Rp, 19 NMAC 5.6.1, 5/1/04; A, 1/1/08]

19.5.6.2 SCOPE: [~~This part~~] 19.5.6 NMAC applies to [all] persons using the state parks system.
[19.5.6.2 NMAC - Rp, 19 NMAC 5.6.2, 5/1/04; A, 1/1/08]

19.5.6.3 STATUTORY AUTHORITY: [~~This part~~] 19.5.6 NMAC is authorized pursuant to NMSA 1978, Section 9-1-5(E) [~~NMSA 1978~~] and Sections 16-2-2 *et seq.* [~~NMSA 1978~~].
[19.5.6.3 NMAC - Rp 19 NMAC 5.6.3, 5/1/04; A, 1/1/08]

19.5.6.6 OBJECTIVE: [~~The objective of this part~~] 19.5.6 NMAC's objective is to establish fees for [park] visitors to off-set the cost of park operations so that each [state] park may be made as nearly self-supporting as possible.
[19.5.6.6 NMAC - Rp, 19 NMAC 5.6.6, 5/1/04; A, 1/1/08]

19.5.6.7 DEFINITIONS: [RESERVED]
[19.5.6.7 NMAC - Rp, 19 NMAC 5.6.7, 5/1/04; A, 1/1/08]
[See 19.5.1.7 NMAC for definitions.]

19.5.6.8 DAY USE PERMIT (use fees):

- ~~A. All Parks (except as noted in Subsection B of 19.5.6.8 NMAC):~~
 - (1) Per motor vehicle \$ 5.00
 - (2) Walk in /bicycle No Charge
 - (3) Bus \$15.00
- B. Parks with exceptions:**
 - (1) Rio Grande nature center
 - (a) per motor vehicle \$ 3.00
 - (b) walk in/bicycle No Charge
 - (c) buses \$15.00
 - (2) Living Desert zoo and gardens
 - (a) adult \$ 5.00
 - (b) child (7-12 years old) \$ 3.00
 - (c) child (6 and under) No Charge
 - (d) group rate adults (20 or more) per person \$ 3.00
 - (e) youth school groups (per person) \$.50
 - (f) American zoological association reciprocal fees
 - (i) adult \$ 2.50
 - (ii) child \$ 1.50
 - (3) Smokey Bear historical park
 - (a) adult \$ 2.00
 - (b) child (7-12 years old) \$ 1.00
 - (c) child (6 and under) No Charge
 - (d) youth/school groups (per person) No Charge
 - (e) bus \$15.00

A. All parks (except as noted in Subsection B of 19.5.6.8 NMAC).

Per motor vehicle	\$5.00
Walk in/bicycle	No Charge
Bus	\$15.00

B. Parks with exceptions

Rio Grande nature center state park	
Per motor vehicle	\$3.00
Walk in/bicycle	No Charge
Buses	\$15.00
Living Desert zoo and gardens state park	
Adult	\$5.00
Child (seven to 12 years old)	\$3.00
Child (six years and under)	No Charge
Group rate adults (20 or more) per person	\$3.00
Youth school groups (per person)	\$.50

<u>American zoological association reciprocal fees</u>	
<u>Adult</u>	<u>\$2.50</u>
<u>Child</u>	<u>\$1.50</u>
<u>Smokey Bear historical park</u>	
<u>Adult</u>	<u>\$2.00</u>
<u>Child (seven to 12 years old)</u>	<u>\$1.00</u>
<u>Child (six years and under)</u>	<u>No Charge</u>
<u>Youth/school groups (per person)</u>	<u>No Charge</u>
<u>Bus</u>	<u>\$15.00</u>
<u>Vietnam veterans memorial state park</u>	
	<u>No Charge</u>

[19.5.6.8 NMAC - Rp, 19 NMAC 5.6.8, 5/1/04; A, 1/1/08]

19.5.6.9 CAMPING PERMIT (per night per vehicle or per walk-in/bicycle):

- [A. Primitive site \$ 8.00
- B. Developed site \$10.00
- C. Developed site with electric hookup \$14.00
- D. Developed site with electric and sewage hookups \$18.00
- E. Electric hookup with annual camping permit \$ 4.00
- F. Electric and sewage hookup with annual camping permit \$ 8.00]

<u>Primitive site</u>	<u>\$8.00</u>
<u>Developed site</u>	<u>\$10.00</u>
<u>Developed site with electric hookup</u>	<u>\$14.00</u>
<u>Developed site with electric and sewage hookups</u>	<u>\$18.00</u>
<u>Electric hookup with annual camping permit</u>	<u>\$4.00</u>
<u>Electric and sewage hookup with annual camping permit</u>	<u>\$8.00</u>

[19.5.6.9 NMAC - Rp, 19 NMAC 5.6.9, 5/1/04; A, 1/1/08]

19.5.6.10 ANNUAL DAY USE [PERMIT] PASS (per vehicle):

- [A. State-wide permit to all state parks: \$30.00
 - (1) effective January 1, 2005 \$35.00
 - (2) effective January 1, 2006 \$40.00
- B. Extra vehicle permit (limit one) \$10.00 (effective January 1, 2006 the extra vehicle permit is eliminated):
- C. Veterans permit No Charge (one hundred percent disabled New Mexico resident)

<u>State-wide pass to all parks</u>	<u>\$40.00</u>
<u>Disabled veterans pass</u>	<u>No Charge (New Mexico resident veteran with a 50% or greater service -connected disability)</u>

[19.5.6.10 NMAC - Rp, 19 NMAC 5.6.10, 5 /1/04; A, 1/1/08]

19.5.6.11 ANNUAL [OVERNIGHT] CAMPING PERMIT (per vehicle includes one tow vehicle upon request):

- [A. New Mexico resident \$180.00
- B. New Mexico senior resident - 62 years or older \$100.00
- C. New Mexico disabled resident \$100.00
- D. Out of state residents

<u>New Mexico resident</u>	<u>\$180.00</u>
<u>New Mexico senior resident - 62 years or older</u>	<u>\$100.00</u>
<u>New Mexico physically disabled resident (see Subsection B of 19.5.2.33 NMAC)</u>	<u>\$100.00</u>
<u>Out-of-state resident</u>	<u>\$225.00</u>

\$225.00]

[19.5.6.11 NMAC - Rp, 19 NMAC 5.6.11, 5/1/04; A, 1/1/08]

19.5.6.12 [REPLACEMENT OF ANNUAL PERMITS]:

- A. Camping permit

\$10.00

- B. Day use permit

~~\$10.00 (effective January 1, 2006 no replacement for annual day use permit):~~
REPLACEMENT OF ANNUAL CAMPING PERMIT: \$10.00

[19.5.6.12 NMAC - Rp, 19 NMAC 5.6.12, 5/1/04; A, 1/1/08]

19.5.6.13 DIVISION-OPERATED PUMPOUT FACILITY:

- [A. Minimum charge per pump out \$ 20.00

- B. Dry dock (per month) \$ 40.00]

<u>Minimum charge per pump out</u>	<u>\$20.00</u>
<u>Dry dock (per month)</u>	<u>\$40.00</u>

[19.5.6.13 NMAC - Rp, 19 NMAC 5.6.13, 5/1/04; A, 1/1/08]

19.5.6.14 GROUP SHELTER:

The following fees are for use of the facility or area only and do not include day use fees.

- [A. 750 sq. ft. or less \$ 30.00
- B. More than 750 sq. ft \$ 60.00
- C. Rally (as designated)
 - (1) Groups less than 30 persons \$ 60.00
 - (2) Groups 30 or more persons \$ 90.00]

<u>750 square feet or less</u>	<u>\$30.00</u>
<u>More than 750 square feet</u>	<u>\$60.00</u>
<u>Rally (as designated)</u>	
<u>Groups less than 30 persons</u>	<u>\$60.00</u>
<u>Groups 30 or more persons</u>	<u>\$90.00</u>

[19.5.6.14 NMAC - Rp, 19 NMAC 5.6.14, 5/1/04; A, 1/1/08]

19.5.6.15 SPECIAL USE PERMIT: \$15.00 (see [19.5.2.28]19.5.2.37 NMAC)

[19.5.6.15 NMAC - Rp 19 NMAC 5.6.15, 5/1/04; A, 1/1/08]

19.5.6.16 CONCESSION PERMIT:

- [A. Guide, fishing services, boating and rafting excursions for Navajo lake state park \$ 500.00
- B. For all other state parks, guide, fishing services, boating and rafting excursions \$ 300.00
- C. Educational and park

~~resource protection services~~ ~~\$ 300.00]~~

<u>Guide, fishing services, boating and rafting excursions for Navajo lake state park</u>	<u>\$500.00</u>
<u>For other parks, guide, fishing services, boating and rafting excursions</u>	<u>\$300.00</u>
<u>Educational, park resource protection services and other services</u>	<u>\$300.00</u>

[19.5.6.16 NMAC - Rp, 19 NMAC 5.6.16, 5/1/04; A, 6/30/04; A, 1/1/08]

19.5.6.17 GUIDE CARD:

- ~~[A. Guide, fishing services, boating and rafting excursions for Navajo lake state park \$ 500.00~~
- ~~B. For all other state parks guide, fishing services, boating and rafting excursions \$ 300.00]~~

<u>Guide, fishing services, boating and rafting excursions for Navajo lake state park</u>	<u>\$500.00</u>
<u>For other parks guide, fishing services, boating and rafting excursions</u>	<u>\$300.00</u>

[19.5.6.17 NMAC - Rp, 19 NMAC 5.6.17; 5/1/04; A, 6/30/04; A, 1/1/08]

19.5.6.18 MEETING ROOM:

- ~~[A. Conference Room~~
- ~~(1) park open hours \$ 30.00~~
- ~~(2) after hours \$ 60.00~~
- ~~B. Entire Entrance Building~~
- ~~(1) park open hours \$125.00~~
- ~~(2) after hours \$275.00~~
- ~~C. Hyde park lodge 8:00 a.m. to 10:00 p.m. \$500.00 (Hyde park lodge rental inclusive of day use fees)~~
- ~~D. Hyde park lodge damage and cleaning deposit \$ 200.00 (reimbursed upon satisfactory inspection)]~~
- ~~A. Conference room.~~

<u>Park open hours</u>	<u>\$30.00</u>
<u>After hours</u>	<u>\$60.00</u>

B. Entire entrance building.

<u>Park open hours</u>	<u>\$125.00</u>
<u>After hours</u>	<u>\$275.00</u>

~~C. Hyde memorial state park lodge, Mesilla valley state park visitor center, Eagle Nest lake state park visitor center and Bottomless lakes state park pavilion.~~

<u>Rental inclusive of day use fees</u>	<u>\$500.00</u>
<u>Damage and cleaning deposit (reimbursed upon satisfactory inspection)</u>	<u>\$200.00</u>

[19.5.8.14 NMAC - Rp, 19 NMAC 5.6.18, 5/1/04; A, 1/1/08]

NEW MEXICO HIGHER EDUCATION DEPARTMENT

5.55.4 NMAC, Dual Credit, filed 8-30-2006 is repealed and replaced by 5.55.4 NMAC, Dual Credit, effective 1-1-2008.

NEW MEXICO HIGHER EDUCATION DEPARTMENT

**TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 7 TUITION AND FINANCIAL AID
PART 23 COLLEGE AFFORDABILITY GRANT**

5.7.23.1 ISSUING AGENCY: New Mexico Higher Education Department.

[5.7.23.1 NMAC - N, 12/31/2007]

5.7.23.2 SCOPE: Provisions of 5.7.23 NMAC apply to all state public post-secondary institutions in the state of New Mexico.

[5.7.23.2 NMAC - N, 12/31/2007]

5.7.23.3 STATUTORY AUTHORITY: Sections 21-21L-1 through 21-21L-8, NMSA 1978.

[5.7.23.3 NMAC - N, 12/31/2007]

5.7.23.4 DURATION: Permanent.

[5.7.23.4 NMAC - N, 12/31/2007]

5.7.23.5 EFFECTIVE DATE: December 31, 2007, unless a later date is cited at the end of a section.

[5.7.23.5 NMAC - N, 12/31/2007]

5.7.23.6 OBJECTIVE: The objective of 5.7.23 NMAC is to encourage New Mexico students with financial need, who do not qualify for other state grants or scholarships, to attend and complete educational programs at a New Mexico public college or university. This level of financial support is intended to help defray the cost of tuition, fees, books and course supplies at the public postsecondary institution where the student is enrolled.

[5.7.23.6 NMAC - N, 12/31/2007]

5.7.23.7 DEFINITIONS:

A. **“Department”** means the New Mexico higher education department.

B. **“Grant”** means the college affordability grant.

C. **“Academic year”** means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year.

D. **“Award recipient”** means a student awarded a college affordability grant.

E. **“Eligible institution”** means any New Mexico public post-secondary institution.

F. **“Satisfactory academic progress”** means maintaining the required academic progress toward degree completion as determined by the institution.

G. **“Half-time”** means an enrolled student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices.

H. **“Undergraduate student”** means a student who is enrolled in a degree-seeking program and has not earned his or her first baccalaureate degree.

I. **“Returning adult”** means a student enrolling in a public post-

secondary educational institution at any time later than the first semester following high school graduation or the award of a general educational development certificate.

J. "FAFSA" means the free application for federal student aid. [5.7.23.7 NMAC - N, 12/31/2007]

5.7.23.8 STUDENT ELIGIBILITY:

A. First year eligibility. College affordability grants may be granted to an individual who:

(1) is a resident of New Mexico as defined in 5.7.18.9 NMAC or is eligible for the SB582 waiver as defined in Section L, 5.7.18.10 NMAC;

(2) is enrolled at least half time as an undergraduate student at a New Mexico public college or university;

(3) has demonstrated financial need as determined by the eligible college or university; and

(4) has completed a high school diploma or general educational development (GED) diploma.

B. Students demonstrating a financial need shall:

(1) complete the FAFSA;

(2) have unmet need after all other financial aid has been awarded; and

(3) may not be receiving any other state grants or scholarships.

C. Continuing eligibility. Grants may be renewed to an individual who:

(1) maintains satisfactory academic progress;

(2) remains enrolled for at least half-time status for consecutive semesters; and

(3) continues to demonstrate financial need as determined by the college or university.

[5.7.23.8 NMAC - N, 12/31/2007]

5.7.23.9 AMOUNT OF GRANT:

A. Each grant award is for a period of one year and shall not exceed \$1,000 per semester. The grant may be renewed on an annual basis until the award recipient has received eight (8) consecutive semesters of scholarship awards, or until the student graduates with a bachelor's degree from an eligible institution, whichever comes first.

B. Summer grants may be provided, if the amount thereof would not cause the two semester cumulative limit of \$2,000 to be exceeded.

C. Summer grants are excluded from being counted toward the eight (8) consecutive semesters.

D. Transferability from institution to institution will be subject to

available funding.

E. A leave of absence may be approved by the institution if extenuating circumstances exist for a period not to exceed one (1) year.

F. Part-time awards will be pro-rated.

(1) Grants offered to students enrolled three-quarters time may not exceed \$750 per semester.

(2) Grants offered to students half-time may not exceed \$500 per semester.

[5.7.23.9 NMAC - N, 12/31/2007]

5.7.23.10 ADMINISTRATION OF THE COLLEGE AFFORDABILITY GRANT:

A. Eligible public colleges and universities shall:

(1) develop a method to notify students of their possible eligibility;

(2) designate an officer responsible for administering the program; the officer designated by the institution shall be responsible for determining initial and continuing student eligibility for the college affordability grant under the terms of these rules and regulations;

(3) provide an annual report to the department to include the number of grants, amount of grants awarded, number of grants renewed, and ethnicity and gender of students receiving the grant;

(4) enter into consortium agreements, as defined in the code of federal regulations, 34 CFR 6685, in order to greater facilitate the enrollment of students and to facilitate the student's participation in this program.

B. The department shall:

(1) allocate money to eligible colleges and universities based on a student need formula calculated according to income reported on the FAFSA and on the percentage of the institution's students classified as returning adults who are other wise ineligible for state financial aid;

(2) invest, through the state treasurer's office, the appropriated funds, while utilizing 50% of the interest on the investment for new awards;

(3) convene an annual meeting with the financial aid directors of eligible institutions to review the program; and

(4) conduct audits to ascertain compliance with rules and regulations.

C. At least a random audit of each participating institution's records shall take place on at least an annual basis by members of the department staff. If, during the audit process, evidence indicates that a student should not have received a scholarship, the institution will be held harmless for a semester payment, if the student's file is appropriately documented. The institution must notify the student of termination of their award, subject to continuing eligibility requirements.

[5.7.23.10 NMAC - N, 12/31/2007]

5.7.23.11 TERMINATION OF SCHOLARSHIPS: A scholarship is terminated upon noncompliance by the award recipient with the college affordability grant rules, regulations or procedures as promulgated by the department.

[5.7.23.11 NMAC - N, 12/31/2007]

HISTORY OF 5.7.23 NMAC: [RESERVED]

NEW MEXICO HIGHER EDUCATION DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 7 TUITION AND FINANCIAL AID
PART 31 PUBLIC SERVICE LAW LOAN REPAYMENT PROGRAM

5.7.31.1 ISSUING AGENCY: State of New Mexico Higher Education Department
 [5.7.31.1 NMAC - N, 12/31/2007]

5.7.31.2 SCOPE: Provisions for 5.7.31 NMAC apply to certain practicing public law professionals in New Mexico.
 [5.7.31.2 NMAC - N, 12/31/2007]

5.7.31.3 STATUTORY AUTHORITY: Sections 21-22F-1 through 21-22F-11, NMSA 1978.
 [5.7.31.3 NMAC - N, 12/31/2007]

5.7.31.4 DURATION: Permanent.

[5.7.31.4 NMAC - N, 12/31/2007]

5.7.31.5 EFFECTIVE DATE:
December 31, 2007, unless a later date is cited at the end of a section.

[5.7.31.5 NMAC - N, 12/31/2007]

5.7.31.6 OBJECTIVE: The objective of the Public Service Law Loan Repayment Program is to improve access to the justice systems in New Mexico by increasing the number of attorneys in public service employment through a legal education loan repayment program.

[5.7.31.6 NMAC - N, 12/31/2007]

5.7.31.7 DEFINITIONS:

A. **"Department"** means the New Mexico higher education department.

B. **"Committee"** means the public service law advisory committee.

C. **"Legal education"** means education at an accredited law school and any bar review preparation courses for the state bar examination.

D. **"Loan"** means money allocated to defray the costs incidental to a legal education under a contract between the federal government or a commercial lender and a law school student, requiring either repayment of principal and interest or repayment in services.

E. **"Participating attorney"** means an attorney who receives a loan repayment award from the department pursuant to the provisions of the Public Service Law Loan Repayment Program.

F. **"Public service employment"** means employment with:

(1) an organization that is exempt from taxation pursuant to Section 501 (c) (3) of Title 26 of the United States Code and that provides for the care and maintenance of indigent persons in New Mexico through civil legal services;

(2) the public defender department; or

(3) a New Mexico district attorney's office.

[5.7.31.7 NMAC - N, 12/31/2007]

5.7.31.8 HIGHER EDUCATION DEPARTMENT - POWERS AND DUTIES

A. The department may:

(1) grant an award to repay loans obtained for legal education expenses of a participating attorney as consideration and inducement to the attorney to engage in public service employment; and

(2) delegate to other agencies or contract for the performance of services required by the provisions of the Public Service Law Repayment Program.

B. The department shall make a full and careful investigation of the ability, character and qualifications of each

applicant and determine fitness to become a participating attorney in the public service law loan repayment program.

[5.7.31.8 NMAC - N, 12/31/2007]

5.7.31.9 LOAN REPAYMENT PROGRAM ELIGIBILITY AND AWARD CRITERIA

A. An applicant shall be licensed to practice in New Mexico as an attorney and shall declare intent to practice as an attorney in public service employment.

B. Prior to submitting an application to the public service law loan repayment program, an applicant shall apply to all available legal education loan repayment programs offered by the applicant's law school for which the applicant qualifies.

C. An applicant who intends to practice as an attorney in a public service employment position that earns more than forty-five thousand dollars (\$45,000) per year is not eligible for participation in the public service law loan repayment program.

D. Prior to receiving a loan repayment award, the applicant shall file with the department:

(1) a declaration of intent to practice as an attorney in public service employment;

(2) proof of prior application to all legal education loan repayment programs offered by the applicant's law school for which the applicant qualifies; and

(3) documentation that includes the applicant's total legal education debt, salary, any amounts received by the applicant from other law loan repayment programs and other sources of income deemed by the department as appropriate for consideration.

E. Award criteria shall provide that:

(1) preference in making awards shall be to applicants who:

(a) have graduated from the university of New Mexico law school;

(b) have the greatest financial need based on legal education indebtedness and salary;

(c) work in public service employment that has the lowest salaries; and

(d) work in public service employment in underserved areas of New Mexico that are in greatest need of attorneys practicing in public service employment;

(2) an applicant's employment as an attorney in public service employment prior to participation in the public service law loan repayment program shall not count as time spent toward the minimum three-year period of service requirement pursuant to the contract between the participating attorney and the department acting on

behalf of the state;

(3) award amounts are dependant upon the applicant's total legal education debt, salary and other sources of income deemed by the department as appropriate for consideration;

(4) award amounts may be modified based upon available funding or other special circumstances;

(5) an award shall not exceed the total legal education debt of any participant; and

(6) award amounts shall be reduced by the sum of the total award amounts received by the participant from other legal education loan repayments programs.

F. The following legal education debts are not eligible for repayment pursuant to the Public Service Law Repayment Program:

(1) amounts incurred as a result of participation in state or law school loan-for-service programs or other state or law school programs whose purposes state that service be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) personal loans from relatives or friends; and

(4) loans that exceed individual standard school expense levels.

[5.7.31.9 NMAC - N, 12/31/2007]

5.7.31.10 LOAN REPAYMENT CONTRACT TERMS

A. The loan repayment award shall be evidenced by a contract between the participating attorney and the department acting on behalf of the state. The contract shall state the amount of the award and the obligations of the participating attorney under the public service law loan repayment program, including a minimum three-year period of service, quarterly reporting requirements and other policies established by the department.

B. A participating attorney shall serve a complete year in order to receive credit for that year. The credit for a year shall be established by the department but shall not exceed seven thousand two hundred dollars (\$7,200).

(1) Payments are made quarterly during each year of service.

(2) The advisory committee will conduct an annual review of eligibility for every participant. If participant becomes ineligible, future payments may be terminated.

(3) Once a full year (12 months) of service is completed, no penalty which might thereafter be imposed would be assessed with respect to the credit amount satisfied by that year of completed service.

(4) Once two (2) years of service

is completed, no penalty which might thereafter be imposed would be assessed with respect to the credit amounts satisfied by those two (2) years of completed service.

C. If a participating attorney does not comply with the terms of the contract, the department shall require immediate repayment of the award plus eighteen percent interest and may assess a penalty of up to three times the amount of award disbursed, unless the department finds acceptable extenuating circumstances for why the participating attorney cannot serve or comply with the terms of the contract. If the department does not find acceptable extenuating circumstances for the participating attorney's failure to comply with the contract, the department shall require immediate repayment of the award plus the amount of the penalty.

D. The department, in consultation with the committee, shall adopt rules to implement the provisions of this section.

[5.7.31.10 NMAC - N, 12/31/2007]

5.7.31.11 CONTRACTS AND ENFORCEMENT

A. The general form of the contract required shall be prepared and approved by the attorney general and the department of finance and administration and signed by the participating attorney and by the cabinet secretary of the department or the cabinet secretary's designated representative on behalf of the state.

B. The department is vested with full and complete authority and power to sue in its own name for any balance due the state from any attorney on any such contract.

[5.7.31.11 NMAC - N, 12/31/2007]

5.7.31.12 PUBLIC SERVICE LAW ADVISORY COMMITTEE

A. The "public service law advisory committee" is created to advise the department on matters relating to the administration of the Public Service Loan Repayment Program.

B. The committee is composed of:

(1) the dean of the university of New Mexico law school or the dean's designee;

(2) the executive director of New Mexico legal aid or the director's designee who shall be an attorney employed with an organization that is exempt from taxation pursuant to Section 501 (c) (3) of Title 26 of the United States Code and that provides civil legal services to indigent persons in New Mexico;

(3) the chief public defender of the chief's designee;

(4) a district attorney appointed by the New Mexico district attorney's asso-

ciation; and

(5) a financial aid or career services officer of the university of New Mexico law school designated by the dean.

C. The committee shall:

(1) make recommendations to the department on applicants for the public service law loan repayment program;

(2) advise the department on the adoption of rules to implement the provisions of the Public Service Law Loan Repayment Program; and

(3) give advice or other assistance to the department as requested.

[5.7.31.12 NMAC - N, 12/31/2007]

5.7.31.13 CANCELLATION:

The department may cancel any contract made between it and any participating attorney for any reasonable cause deemed sufficient by the department.

[5.7.31.13 NMAC - N, 12/31/2007]

5.7.31.14 REPORTS:

The department shall make an annual report to the governor and the legislature, prior to each regular session, of its activities, including the loan repayment awards granted, the names and addresses of participating attorneys and their employers who are in public service employment pursuant to the Public Service Law Loan Repayment Program and the names of participating attorneys who are not employed in public service employment, the reason they are not employed in public service employment and the amounts owed and paid on loans and loan repayment awards.

[5.7.31.14 NMAC - N, 12/31/2007]

HISTORY OF 5.7.31 NMAC: Reserved

NEW MEXICO HIGHER EDUCATION DEPARTMENT

**TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 55 PUBLIC POST-SECONDARY EDUCATION GENERAL PROVISIONS
PART 4 DUAL CREDIT**

5.55.4.1 ISSUING AGENCY: New Mexico Higher Education Department (NMHED)

[5.55.4.1 NMAC - Rp, 5.55.4.1 NMAC, 01/01/08]

5.55.4.2 SCOPE: This rule applies to public school districts, high school students who attend public school districts, and public postsecondary institutions in New Mexico. Districts and public postsecondary institutions are required to implement rules no later than the beginning of the 2008-2009 school year.

[5.55.4.2 NMAC - Rp, 5.55.4.2 NMAC, 01/01/08]

5.55.4.3 STATUTORY AUTHORITY: Section 22-2-1, 22-2-2, 9-25-8, 21-1-1.2 NMSA 1978.

[5.55.4.3 NMAC - Rp, 5.55.4.3 NMAC, 01/01/08]

5.55.4.4 DURATION: Permanent

[5.55.4.4 NMAC - Rp, 5.55.4.4 NMAC, 01/01/08]

5.55.4.5 EFFECTIVE DATE: January 1, 2008, unless a later date is cited at the end of a section.

[5.55.4.5 NMAC - Rp, 5.55.4.5 NMAC, 01/01/08]

5.55.4.6 OBJECTIVE: The purposes of dual credit are:

A. to increase educational opportunities for high school students, and

B. to increase the overall quality of instruction and learning available through secondary schools.

[5.55.4.6 NMAC - Rp, 5.55.4.6 NMAC, 01/01/08]

5.55.4.7 DEFINITIONS:

A. "ACT" is the academic competency test.

B. "Agreement" is the dual credit master agreement.

C. "Concurrent enrollment" [RESERVED]

D. "Core course" means courses required for high school graduation as defined in 22-13-1.1 NMSA, 1978, excluding electives.

E. "District" as defined in 6.30.2.9 NMAC means a public school district, including a charter school or charter school district, and a state supported educational institution.

F. "Dual credit council" is an advisory group consisting of staff of the public education department and higher education department that issues recommendations to the secretaries of the higher education and public education departments regarding dual credit issues outside of the scope of the agreement.

G. "Dual credit program" means a program that allows high school students to enroll in college-level courses offered by a public postsecondary institution that may be academic or career technical but not remedial or developmental, and simultaneously to earn credit toward high school graduation and a postsecondary degree or certificate.

H. "Early college" [RESERVED]

I. "Elective course" means courses defined and approved by

local school boards.

J. "FERPA" is the Family Educational Rights and Privacy Act [20 U.S. Code 1232g].

K. "Form" is the dual credit request form.

L. "General fees" as defined in 5.7.18 NMAC means a fixed sum charged to students for items not covered by tuition and required of such a proportion of all students that the student who does not pay the charge is an exception. General fees include fees for matriculation, library services, student activities, student union services, student health services, debt service and athletics. An institution may charge fees in addition to general fees that are course-specific or that pertain to a smaller proportion of students.

M. "Individualized education program" or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR Secs. 300.320 through 300.324.

N. "Postsecondary institution" refers to a public postsecondary educational institution operating in the state, including a community college, branch community college, technical vocational institute, and four-year educational institution. [5.55.4.7 NMAC - Rp, 5.55.4.7 NMAC, 01/01/08]

5.55.4.8 UNIFORM MASTER AGREEMENT:

A. The agreement specifies the means by which the state will provide equal opportunities to all high school students who wish to participate in the dual credit program.

B. School districts, charter schools and postsecondary institutions providing dual credit programs shall complete the agreement and the school district shall submit the completed agreement to the public education department.

C. A completed agreement shall contain signatures from all parties and includes an appendix developed collaboratively by the school district or charter school, and postsecondary institution that specifies eligible dual credit courses.

D. School districts and charter schools may complete agreements with multiple postsecondary institutions.

E. A fully-executed copy of each agreement shall be submitted to the public education department within 10 days of approval.

F. The agreement:

(1) specifies eligible courses, academic quality of dual credit courses, student eligibility, course approval, course requirements, required content of the form, state reporting, liabilities of parties, and student

appeals;

(2) states the roles, responsibilities, and liabilities of the school district or charter school, the postsecondary institution, student, and the student's family.

G. Duties and responsibilities of the postsecondary institution. The postsecondary institution shall:

(1) designate a representative to review and sign the completed form with the understanding that only forms endorsed by all parties shall constitute a dual credit approval request;

(2) determine, in collaboration with the district or charter school, the required academic standing of each student eligible to participate in the dual credit program;

(3) collaborate with the district or charter school to reach agreement on admission and registration of eligible dual credit students for the stated semester;

(4) provide the form to eligible students and appropriate district or charter school staff online and in hard copy;

(5) provide information and orientation, in collaboration with the district or charter school, to the student and parent or guardian regarding the responsibilities of dual credit enrollment including academic rigor, time commitments, and behavioral expectations associated with taking college courses and the importance of satisfactorily completing the postsecondary institution credits attempted in order for dual credit to be awarded;

(6) inform students of course requirement information which includes course content, grading policy, attendance requirements, course completion requirements, performance standards, and other related course information;

(7) provide course placement evaluation and consider a high school college readiness assessment to verify a student's academic skill level and to ensure compliance with course prerequisites;

(8) employ a method of qualifying the student for dual credit that demonstrates that the student has the appropriate skills and maturity to benefit from the instruction requested;

(9) provide advisement to review the appropriateness of each student's enrollment in a course prior to registration in terms of academic readiness, age requirements, and programmatic issues;

(10) advise the parent or guardian of FERPA rules;

(11) provide the district or charter school, within the first thirty days of the academic term, access to each student's official schedule of classes as verification of registration;

(12) track progress of dual credit enrolled students on the issue of academic performance and provide reports, as needed,

to the district or charter school;

(13) retain the official transcript or grade report of the dual credit student that records the term of enrollment, courses/credits attempted, courses/credits completed, grades and grade point average earned;

(14) release, at the request of the student, official postsecondary institution transcripts in accordance with the postsecondary institution's transcript request practices;

(15) provide final grades to the district or charter school for each dual credit student;

(16) deliver final grades for all dual credit students to the district or charter school with sufficient time for high school teachers to submit their final grades; this schedule shall be defined by the parties in the agreement and shall address the time frame appropriate for determining student graduation from high school;

(17) waive all general fees for dual credit courses;

(18) be encouraged to waive tuition for high school students taking dual credit courses;

(19) formula funding calculations; [RESERVED]

(20) make every effort to adopt textbooks for at least three years;

(21) approve faculty for all dual credit courses;

(22) retain educational records in accordance with New Mexico statutes and record retention regulations as per 1.20.3 NMAC;

(23) have an appeals process pertaining to student enrollment in dual credit programs;

(24) comply with data collection and reporting provisions in 5.55.4.12 NMAC; and

(25) have the right to appeal to the dual credit council on issues related to implementing the dual credit program, agreement, and rules.

H. Duties and responsibilities of the school district or charter school. The district or charter school shall:

(1) designate a representative to collaborate with the postsecondary institution to reach agreement on admission and registration of eligible dual credit students for the stated semester;

(2) provide information and orientation to students about opportunities to participate in dual credit programs during student advisement, academic support, and formulation of annual next step plans;

(3) determine, in collaboration with the postsecondary institution, the required academic standing of each student eligible to participate in the dual credit program;

(4) provide the form to eligible

students and school counselors or appropriate school official online and in hard copy;

(5) provide information and orientation, in collaboration with the postsecondary institution, to the student and student's family regarding the responsibilities of dual credit enrollment including academic rigor, time commitments, and behavioral expectations associated with taking college courses and the importance of satisfactorily completing the college credits attempted in order for dual credit to be awarded;

(6) employ a method of qualifying the student for dual credit based on factors which may include academic performance review, use of next step plan, assessments, advisement and career guidance, and therefore recommend enrollment at the postsecondary institution with evidence that the student has the appropriate skills and maturity to benefit from the instruction requested;

(7) inform students of course requirement information which includes course content, grading policy, attendance requirements, course completion requirements, performance standards, and other related course information;

(8) notify the postsecondary institution if the student's official schedule of classes is in conflict with the school endorsed registration;

(9) provide appropriate accommodations and services for special education students while the students are enrolled in dual credit classes, including academic adjustments and auxiliary aids and services for eligible students across educational activities and settings (e.g. equipping school computers with screen-reading, voice recognition or other adaptive hardware or software and providing note-takers, recording devices, or sign language interpreters, or other adaptation as required by law);

(10) inform students in need of accommodations or other arrangements of the need to speak directly with the disabilities coordinator at the postsecondary institution;

(11) furnish an official high school transcript to the postsecondary institution if required by the postsecondary institution;

(12) work collaboratively with the postsecondary institution to submit a student's request for change in registration according to postsecondary institution policies and within officially published deadlines;

(13) make it clear to students that if they fail or withdraw from dual credit classes that they were intending to use to substitute for a high school requirement that they will have to make up those credits in order to graduate;

(14) record, unchanged, the grade

given to the dual credit student by the postsecondary institution;

(15) pay the cost of the required textbooks and other course supplies for the postsecondary course the dual credit student is enrolled in through purchase arrangements with the bookstore at the postsecondary institution or other cost-efficient methods;

(16) collaborate with the postsecondary institution to offer dual credit courses at the high school site according to district school or charter school site time blocks;

(17) retain educational records in accordance with New Mexico statutes and record retention regulations as per 1.20.3 NMAC;

(18) have an appeals process pertaining to student enrollment in dual credit programs;

(19) comply with data collection and reporting provisions in 5.55.4.12 NMAC; and

(20) have the right to appeal to the dual credit council on issues related to implementing the dual credit program, agreement, and rules.

I. Duties and responsibilities of the student. The student shall:

(1) qualify for dual credit courses by:

(a) being enrolled in a high school or charter school in one-half or more of the minimum course requirements approved by the New Mexico public education department for public school students;

(b) obtaining permission from the district or charter school representative or member of the individualized education program team, parent or guardian, and postsecondary institution representative prior to enrolling in a dual credit course; and

(c) meeting postsecondary institution requirements to enroll as a dual credit student;

(2) discuss potential dual credit courses with the appropriate district or charter school and postsecondary institution staff, including postsecondary institution admission and registration requirements, course requirements, credits to be attempted, credits to be awarded, scheduling under dual credit, and implications for failure to successfully complete the course;

(3) obtain course requirements for each course, including course prerequisites, course content, grading policy, attendance requirements, course completion requirements, performance standards, and other related course information;

(4) meet the prerequisites and requirements of the course(s) to be taken;

(5) complete the form available online or in hard copy from the district, charter school, or postsecondary institution;

(6) return the form with the spe-

cific course(s) requested, required signatures and, if applicable, a current high school transcript, and any assessment results to the district or charter school representative;

(7) obtain approval for enrolling in the dual credit program each semester by acquiring all necessary signatures on the form;

(8) register for courses during the postsecondary institution's standard registration periods;

(9) discuss any request for a change in registration (add, drop, withdrawal) and complete all necessary forms and procedures with appropriate district or charter school and postsecondary institution staff;

(10) comply with the district or charter school and postsecondary institution student code of conduct and other institutional policies;

(11) have rights and privileges that include:

(a) the rights and privileges equal to those extended to public secondary and postsecondary students, unless otherwise excluded by any section of this agreement;

(b) use of the postsecondary institution library, course related labs and other instructional facilities, use of the postsecondary institution programs and services such as counseling, tutoring, advising, and special services for the students with disabilities, and access to postsecondary institution personnel and resources as required; and

(c) the right to appeal, in writing to the district or charter school or postsecondary institution, as applicable, any decision pertaining to enrollment in the dual credit program;

(12) return the textbooks and unused course supplies to the district or charter school when the student completes the course or withdraws from the course;

(13) arrange transportation to the site of the dual credit course; depending upon the time and course location, the student may have access to transportation through the district or charter school if the dual credit course is offered during the school day;

(14) be responsible for course-specific (e.g. lab, computer) fees;

(15) allow educational records to be retained and disseminated in accordance with the requirements of the FERPA;

(16) sign the FERPA release form, along with student parent or guardian, if applicable, in order to participate in dual credit courses; and

(17) abide by regular operating institutional calendar and schedule of both the district or charter school and postsecondary institution; in instances in which the calendars are incongruent, the student is

required to independently satisfy both calendar requirements and may consult with school counselors for assistance.

[5.55.4.8 NMAC - N, 01/01/08]

5.55.4.9 LIMITATIONS OF THE AGREEMENT.

A. The agreement may not be altered or modified by any party adhering to it, with the exception of the appendix.

B. School districts and charter schools, in collaboration with postsecondary institutions, may modify the list of dual credit courses in the appendix of the agreement. Modifications shall be submitted to the higher education department and the public education department by the end of each semester.

C. The agreement shall automatically renew for additional fiscal years unless either party notifies the other party of their intent not to renew 60 days before the end of the fiscal year.

[5.55.4.9 NMAC - N, 01/01/08]

5.55.4.10 LIABILITIES OF PARTIES.

A. Dual credit status shall neither enhance nor diminish on-campus liabilities for the district or charter school or the postsecondary institution.

B. Management of risk and liabilities shall be in accordance with the district or charter school and the postsecondary institution policies and codes of conduct.

C. Personal liabilities for the student shall be equal to those of regular postsecondary institution students.

[5.55.4.10 NMAC - N, 01/01/08]

5.55.4.11 ELIGIBLE COURSES.

A. Types of courses.

(1) College courses that are academic or career technical (but not remedial or developmental) and that simultaneously earn credit toward high school graduation and a postsecondary degree or certificate shall be eligible for dual credit.

(2) Dual credit courses may be taken as elective high school credits.

(3) Dual credit courses may satisfy the requirements of high school core courses when the department standards and benchmarks are met and curriculum is aligned to meet postsecondary requirements.

(4) Dual credit courses may substitute high school core courses when the dual credit council determines there are exigent circumstances, for example there is limited high school capacity (staffing, space, scheduling) and the cabinet secretaries approve the dual credit council recommendation.

(5) Courses eligible for dual credit shall meet the rigor for postsecondary credit and be congruent with the college's normal offerings.

(6) Dual credit courses offered in high school settings shall conform to college academic standards.

(7) Course requirements for high school students enrolled in dual credit courses shall be equal to those of regular college students.

B. Identifying courses.

(1) The district or charter school in collaboration with the postsecondary institution shall determine a list of academic and career technical courses eligible for dual credit for inclusion into the appendix.

(2) The appendix shall contain the higher education common course number, if applicable, course subject and number, course title, and location of course delivery.

(3) The district or charter school shall annually submit the appendix to the higher education department and the public education department.

(4) The higher education department and the public education department shall post the appendix on their respective websites and update the appendix as needed.

C. Course delivery.

(1) Dual credit courses may be offered at high schools, postsecondary institutions, and off-campus centers as determined by the district or charter school in collaboration with the postsecondary institution offering the courses.

(2) Dual credit courses may be delivered during or outside of regular district or charter school hours.

(3) Postsecondary institutions may offer dual credit courses via distance learning (ITV, online, hybrid, correspondence) in accordance with 6.30.8 NMAC as this option becomes available and cost-effective. All dual credit course rules apply.

(4) Districts, charter schools, and postsecondary institutions participating in the cyber academy shall be subject to applicable rules pertaining to it.

D. Semesters dual credit may be taken; caps for dual credit; nature of high school credit earned.

(1) Students may enroll in dual credit courses during the fall and spring semesters. Students enrolled during these semesters are not responsible for the cost of textbooks or general fees. The student shall not be responsible for tuition if the postsecondary institution waives this cost.

(2) There is no state limit to the number of credits a student may earn through dual credit in an academic term.

(3) A 3:1 ratio of course work at the postsecondary to secondary level credit applies to elective courses when no compa-

rable elective courses are offered at the high school. If the district and postsecondary institution offer comparable elective courses, the credit ratio shall be jointly proposed by the district and postsecondary institution to the dual credit council for review and approval. Students taking a 3-credit hour course offered at the postsecondary institution shall be equivalent to 1 unit at the district or charter school level. (3:1; 6-8:2, 1-2:1/2, etc.).

(4) Core course ratio
[RESERVED]

E. Dual credit council.

(1) The secretaries of the higher education department and public education department shall appoint individuals to a dual credit council consisting of six members.

(2) Council composition. The council shall consist of an equal number of higher education department and public education department staff. The higher education and public education department staff serve as council chairs in alternating years.

(3) The council shall issue recommendations to the department secretaries on issues not addressed in the agreement including determination of alignment of course content to determine the appropriate credit ratio.

(4) The council shall administer an appeals process for districts, charter schools, and postsecondary institutions.

(5) Districts and postsecondary institutions shall be allowed to continue current practices regarding core courses offered for dual credit until the council issues its recommendations or no later than the beginning of the 2009-2010 school year, the time that dual credit courses become a high school graduation requirement.

(6) The higher education department and public education department secretaries shall act jointly upon dual credit council recommendations.

[5.55.4.11 NMAC - N, 01/01/08]

5.55.4.12 DATA COLLECTION AND REPORTING.

A. Data collection.

(1) A completed form shall contain the high school student's name, student identification number, grade level, address, phone number, ACT high school code, high school name, postsecondary name, postsecondary course information (college course number, course title, day, time, location, semester, year, higher education credits, high school credits), a signed FERPA release form, required signatures, and, if applicable, date of birth.

(2) Each school district, charter school, and postsecondary institution shall use the completed form to capture dual

credit student data.

(3) Each school district, charter school, and postsecondary institution shall devise procedures for capturing dual credit data from the form.

(4) If applicable, each postsecondary institution shall bear responsibility for obtaining each dual credit student's social security number to meet data reporting requirements.

(5) Each postsecondary institution shall capture the public school student identification number retrieved from the completed form for each dual credit high school student.

(6) The public education department shall modify student transcripts to include the student identification number.

(7) The public education department shall capture the postsecondary institution course subject and number and course title from the appendix of each completed agreement.

B. Data reporting.

(1) For each completed form received, each school district or charter school shall indicate which courses a dual credit student takes within the public education department data system.

(2) Each postsecondary institution shall report dual credit student data to the higher education department.

(3) Each school district and charter school shall submit the dual credit report during the appropriate reporting period to the public education department that contains:

(a) the number of dual credit students enrolled in college courses; and

(b) the courses taken and grades earned of each dual credit student.

(4) Each postsecondary institution shall submit the dual credit report during the appropriate reporting period to the higher education department that contains:

(a) the number of dual credit students enrolled in college courses; and

(b) the courses taken and grades earned of each dual credit student.

(5) The higher education department and the public education department shall verify and reconcile the respective dual credit reports at the end of each academic year.

(6) The public education department shall report to the legislature the high school graduation rates for participating school districts/charter schools for dual credit students once the students graduate from high school.

(7) The higher education department shall report to the legislature on the New Mexico postsecondary institutions dual credit students ultimately attend.

(8) The higher education department and the public education department shall annually report to the legislature the

estimated cost of providing the statewide dual credit program, including tuition, fees, textbooks, and course supplies.

[5.55.4.12 NMAC - N, 01/01/08]

5.55.4.13 NON PUBLIC SCHOOL STUDENTS.

A. A home school, private school, or tribal school student who meets the eligibility criteria may receive both high school and college credit, provided that the student pays the full cost of the college courses.

B. Non public school students taking college courses for both high school and college credit shall be considered as being concurrently enrolled by the postsecondary institution for the purposes of data reporting.

[5.55.4.13 NMAC - N, 01/01/08]

HISTORY OF 5.55.4 NMAC:

History of Repealed Material:

5.55.4 NMAC, Dual Credit, filed 8/30/2006 - Repealed effective 01/01/08.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.500 NMAC, section 8, effective 01/01/2008.

8.102.500.8 GENERAL REQUIREMENTS:

A. **Need determination process:** Eligibility for NMW and EWP cash assistance based on need requires a finding that:

(1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;

(2) the benefit group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;

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

(4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

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

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

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

- | | |
|-------------------|---------------------------|
| (a) one person | \$ 723 |
| (b) two persons | \$ 970 |
| (c) three persons | \$1,216 |
| (d) four persons | \$1,463 |
| (e) five persons | \$1,709 |
| (f) six persons | \$1,956 |
| (g) seven persons | \$2,202 |
| (h) eight persons | \$2,449 |
| (i) add | \$247 for each additional |

person.

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

- | | |
|-------------------|---------------------------|
| (1) one person | \$ 851 |
| (2) two persons | \$1,141 |
| (3) three persons | \$1,431 |
| (4) four persons | \$1,721 |
| (5) five persons | \$2,011 |
| (6) six persons | \$2,301 |
| (7) seven persons | \$2,591 |
| (8) eight persons | \$2,881 |
| (9) add | \$290 for each additional |

person.

D. **Standard of need:**

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

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

(3) The financial standard includes approximately [~~\$79~~] \$91 per month for each participant in the benefit group.

(4) The standard of need for the NMW, and EWP cash assistance benefit group is:

- | | |
|-------------------|---|
| (a) one person | [\$234] \$ 266 |
| (b) two persons | [\$310] \$ 357 |
| (c) three persons | [\$389] \$ 447 |
| (d) four persons | [\$469] \$ 539 |
| (e) five persons | [\$548] \$ 630 |
| (f) six persons | [\$627] \$ 721 |
| (g) seven persons | [\$706] \$ 812 |
| (h) eight persons | [\$802] \$ 922 |
| (i) add | [\$79] <u>\$91</u> for each additional |

person.

E. **Special needs:**

(1) **Special clothing allowance:** In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$100 for the [~~month of August only~~] months of August and January subject to the availability of state or federal funds.

(a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the

child is six years of age or older and less than age 19 by the end of August.

(b) The clothing allowance shall be allowed for each school-age child who is included in the NMW, or EWP cash assistance benefit group for the ~~[month of August]~~ months of August and January subject to the availability of state or federal funds.

(c) The clothing allowance is not allowed in determining eligibility for NMW, or EWP cash assistance.

(2) **Layette:** A one-time layette allowance of \$25 is allowed upon the birth of a child who is included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

(3) **Special circumstance:** Dependent upon the availability of funds and in accordance with the federal act, the HSD secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation. This cash assistance program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.

[8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 11/15/2007; A, 01/01/2008]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.106.500 NMAC, section 8, effective 01/01/2008.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. Need determination process: Eligibility for the GA program based on need requires a finding that the:

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

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

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

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

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

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

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

- (a) one person \$ 723
- (b) two persons \$ 970
- (c) three persons \$1,216
- (d) four persons \$1,463
- (e) five persons \$1,709
- (f) six persons \$1,956
- (g) seven persons \$2,202
- (h) eight persons \$2,449
- (i) add \$247 for each additional person.

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

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

(3) The financial standard includes approximately ~~[\$79]~~ \$91 per month for each individual in the benefit group.

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

- (a) one person [~~\$ 231~~] \$ 266
- (b) two persons [~~\$ 310~~] \$ 357
- (c) three persons [~~\$ 389~~] \$ 447
- (d) four persons [~~\$ 469~~] \$ 539
- (e) five persons [~~\$ 548~~] \$ 630
- (f) six persons [~~\$ 627~~] \$ 721
- (g) seven persons [~~\$ 706~~] \$ 812
- (h) eight persons [~~\$ 802~~] \$ 922
- (i) add [~~\$79~~] \$91 for each additional person.

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

F. Special clothing allowance for school-age dependent children: In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$100 for the ~~[month of August only]~~ months of August and January subject to the availability of state or federal funds.

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

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

group for the ~~[month of August]~~ months of August and January subject to the availability of state or federal funds.

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

[8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 315 OTHER LONG TERM CARE SERVICES PART 6 COMPREHENSIVE COMMUNITY SUPPORT SERVICES

8.315.6.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).

[8.315.6.1 NMAC - N, 1-1-08]

8.315.6.2 SCOPE: The rule applies to the general public.

[8.315.6.2 NMAC - N, 1-1-08]

8.315.6.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, and by state statute. See Section 27-2-12 et seq NMSA 1978 (Repl. Pamp. 1991).

[8.315.6.3 NMAC - N, 1-1-08]

8.315.6.4 DURATION: Permanent

[8.315.6.4 NMAC - N, 1-1-08]

8.315.6.5 EFFECTIVE DATE: January 1, 2008, unless a later date is cited at the end of a section.

[8.315.6.5 NMAC - N, 1-1-08]

8.315.6.6 OBJECTIVE: The objective of these regulations is to provide policies for the service portion of the New Mexico medical assistance programs.

[8.315.6.6 NMAC - N, 1-1-08]

8.315.6.7 DEFINITIONS: A. **Comprehensive community support services (CCSS) agency:**

An agency that is licensed by HSD or its authorized agent, as a community mental health center or licensed by the children, youth and families department (CYFD) as a children's core service agency to provide comprehensive community support services.

B. **Community mental**

health center (CMHC): An agency licensed by the department of health and enrolled as a MAD community mental health center provider.

C. **Children's core service agency (CSA):** A CCSS agency enrolled as a MAD provider and licensed or certified by HSD or its authorized agent.

D. **Family specialist:** An approved provider who is certified as a family specialist through the approved state of New Mexico certification program.

E. **Peer support specialist:** An approved provider who is certified as a peer specialist through the approved state of New Mexico certification program. [8.315.6.7 NMAC - N, 1-1-08]

8.315.6.8 MISSION STATEMENT:

The mission of New Mexico medical assistance division (MAD) is to maximize the health status of eligible recipients by furnishing payment for quality health services at levels comparable to private health plans.

[8.315.6.8 NMAC - N, 1-1-08]

8.315.6.9 COMPREHENSIVE COMMUNITY SUPPORT SERVICES (CCSS):

MAD pays for medically necessary services furnished to eligible recipients. To help New Mexico eligible recipients receive necessary services, MAD pays for covered CCSS.

[8.315.6.9 NMAC - N, 1-1-08]

8.315.6.10 ELIGIBLE PROVIDERS:

In order to be eligible to be reimbursed for providing CCSS services, a provider agency must be: a federally qualified health center (FQHC); an Indian health service (IHS) hospital or clinic; a PL 93-638 tribally operated hospital or clinic; a community mental health center licensed by the New Mexico department of health (DOH); or a children's core service agency licensed by the New Mexico children, youth and families department (CYFD). Prior to the introduction of CSA's as a medicaid provider type, providers of CCSS to adults and to children 18 years of age and older must be an FQHC, IHS hospital or clinic, PL 93-638 hospital or clinic, licensed as a CMHC, certified for psychosocial rehabilitation services (PSR) by DOH or certified for targeted case management (TCM) by DOH. Providers of CCSS for children less than 18 years of age must be an FQHC, IHS hospital or clinic, PL 93-638 hospital or clinic, or certified as a targeted case management agency by CYFD. Upon introduction of CSA's as a medicaid provider type, providers of CCSS to adults and to children 18 years of age or older must be a FQHC, IHS hospital or clinic, PL93-638 hospital or clinic, or licensed as a CMHC. Providers of CCSS for children under 18 years of age

must be an FQHC, IHS hospital or clinic, PL 93-638 hospital or clinic, or licensed as a core service agency (CSA). Eligible recipients', ages 18 through 20, may be served by an agency certified or licensed for CCSS by either CYFD or DOH, as appropriate.

A. CCSS provided by agencies must be rendered by qualified practitioners.

(1) Community support workers (other than a peer or family specialist), who must possess:

(a) the education, skills, abilities, and experience to perform the activities that comprise the full spectrum of CCSS;

(b) a bachelor's degree in a human service field from an accredited university and one year of relevant experience with the target population; or,

(c) an associate's degree and a minimum of two years of experience working with the target population; or,

(d) a high school graduation or general educational development (GED) test and a minimum of three years of experience working with the target population; or,

(e) New Mexico peer or family specialist certification; and,

(f) 20 hours of documented training or continuing education, as identified in the CCSS service definition.

(2) CCSS agency supervisory staff, who must possess:

(a) the education, skills, abilities, and experience to perform the activities that comprise the full spectrum of CCSS;

(b) a bachelor's degree in a human services field from an accredited university;

(c) four years of relevant experience in the delivery of case management or community support services with the target population;

(d) one year of demonstrated supervisory experience; and

(e) 20 hours of documented training or continuing education, as identified in the CCSS service definition.

(3) Agency clinical supervisory staff, who must possess:

(a) the education, skills, abilities, and experience to perform the activities that comprise the full spectrum of CCSS;

(b) be a licensed independent practitioner (psychiatrist, psychologist, LISW, LPCC, LMFT, LPAT, CNS) practicing under the scope of his or her licensure; and,

(c) have one year of documented supervisory training.

(4) Peer specialists, who must:

(a) be 18 years of age or older; and

(b) have a high school diploma or GED; and

(c) be self-identified as a current or former consumer of mental health or substance abuse services; and

(d) have at least one year of mental health or substance abuse recovery; and

(e) have received certification as a certified peer specialist

(5) Family specialists, who must:

(a) be 18 years of age or older; and

(b) have a high school diploma or GED; and

(c) have personal experience navigating any of the child/family-serving systems and/or advocating for family members who are involved with the child/family behavioral health systems; must also have an understanding of how these systems operate in New Mexico; and

(d) if the individual is a current or former consumer, they must be well-grounded in their symptom self-management; and

(e) have received certification as a certified family specialist.

B. Services must be provided within the scope of the practice and licensure for each agency and each rendering provider within that agency. Services must be in compliance with the statutes, rules and regulations of the applicable practice act.

C. Upon approval of a New Mexico medical assistance division provider participation agreement by MAD or its designee, a licensed practitioner or facility that meets applicable requirements is eligible to be reimbursed for furnishing covered services to eligible program recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program policies, billing instruction, utilization review instructions, and other pertinent materials. Once enrolled, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to request hard copies of any program policy manuals, billing and utilization review instructions, and other pertinent materials and to obtain answers to questions on or not covered by these materials. To be eligible for reimbursement a provider is bound by the provisions of the MAD provider participation agreement.

[8.315.6.10 NMAC - N, 1-1-08]

8.315.6.11 PROVIDER

RESPONSIBILITIES: A provider who furnishes services to Medicaid and other health care programs eligible recipients agree to comply with all federal and state laws and regulations relevant to the provision of medical services as specified in the MAD provider participation agreement. A provider also agrees to conform to MAD program policies and instruction as specified in this manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or up-coding services. See 8.302.1 NMAC, *General Provider Policies*.

[8.315.6.11 NMAC - N, 1-1-08]

8.315.6.12 ELIGIBLE RECIPIENTS:

CCSS are provided to eligible recipients 21 years and under who are at risk of/or experiencing serious emotional/neurobiological/behavioral disorders or with chronic substance abuse, or adults with severe mental illness. A co-occurring diagnosis of substance abuse shall not exclude an eligible recipient from eligibility for the service.

[8.315.6.12 NMAC - N, 1-1-08]

8.315.6.13 COVERAGE CRITERIA:

A. MAD covers medically necessary CCSS required by the condition of the eligible recipient.

B. This culturally sensitive service coordinates and provides services and resources to eligible recipients and their families necessary to promote recovery, rehabilitation and resiliency. CCSS identifies and addresses the barriers that impede the development of skills necessary for independent functioning in the community, as well as strengths that may aid the eligible recipient or family in the recovery or resiliency process.

C. CCSS activities are goal-directed and provided as part of the approved service plan.

D. CCSS also includes supporting an eligible recipient or family in crisis situations and providing individual interventions to develop or enhance an eligible recipient's ability to make informed and independent choices.

E. All CCSS must be furnished within the limits of MAD benefits, within the scope and practice of the eligible provider's respective profession as defined by state law, and in accordance with applicable federal, state and local laws and regulations.

F. All services must be provided in compliance with the current

MAD definition of medical necessity. [8.315.6.13 NMAC - N, 1-1-08]

8.315.6.14 COVERED SERVICES:

A. CCSS activities include:

(1) assistance to the eligible recipient in the development and coordination of the eligible recipient's service plan including a recovery or resiliency management plan, a crisis management plan, and, when requested, advanced directives related to the eligible recipient's behavioral health care;

(2) assessment support and intervention in crisis situations, including the development and use of crisis plans that recognize the early signs of crisis or relapse, use of natural supports, use of alternatives to emergency departments and inpatient services;

(3) individualized interventions, with the following objectives:

(a) services and resources coordination to assist the eligible recipient in gaining access to necessary rehabilitative, medical and other services;

(b) assistance in the development of interpersonal, community coping and functional skills (e.g., adaptation to home, school and work environments), including:

- (i) socialization skills;
- (ii) developmental

issues;

- (iii) daily living skills;
- (iv) school and work

readiness activities; and

- (v) education on co-

occurring illness;

(c) encouraging the development of natural supports in workplace and school environments;

(d) assisting in learning symptom monitoring and illness self-management skills (e.g. symptom management, relapse prevention skills, knowledge of medication and side effects, and motivational/skill development in taking medication as prescribed) in order to identify and minimize the negative effects of symptoms that interfere with the eligible recipient's daily living and to support the eligible recipient in maintaining employment and school tenure;

(e) assisting the eligible recipient in obtaining and maintaining stable housing; and

(f) any necessary follow-up to determine if the services accessed have adequately met the eligible recipient's needs;

B. The majority (60% or more) of non facility-based CCSS provided must be face-to-face and *in vivo* (where the eligible recipient is located). The community support must monitor and follow-up to determine if the services accessed have ade-

quately met the eligible recipient's individual treatment needs.

C. CCSS may not be filled in conjunction with the following MAD services:

(1) multi-systemic therapy;

(2) assertive community treatment;

(3) accredited residential treatment;

(4) residential treatment;

(5) group home services;

(6) inpatient hospitalization;

(7) partial hospitalization; and

(8) treatment foster care.

D. For eligible recipients or their families, the comprehensive community support worker will make every effort to engage the eligible recipient in achieving treatment or recovery goals.

E. When the service is provided by a certified peer or family specialist, the above functions/interventions should be performed with a special emphasis on recovery values and process, such as:

(1) empowering the eligible recipient to have hope for, and participate in, his own recovery;

(2) helping the eligible recipient to identify strengths and needs related to attainment of independence in terms of skills, resources and supports, and to use available strengths, resources and supports to achieve independence;

(3) helping the eligible recipient to identify and achieve his or her personalized recovery goals; and,

(4) promoting the eligible recipient's responsibility related to illness self-management.

[8.315.6.14 NMAC - N, 1-1-08]

8.315.6.15 NON COVERED SERVICES:

CCSS are subject to the limitations and coverage restrictions which exist for other MAD services. See 8.301.3 NMAC, *General Noncovered Services* [MAD-602]. MAD does not cover the following mental health specific services:

A. hypnotherapy;

B. biofeedback;

C. conditions that do not meet the standard of medical necessity as defined in MAD policies;

D. treatment for personality disorders;

E. treatment provided for adults 21 years and older in alcohol or drug rehabilitation units;

F. milieu therapy;

G. educational or vocational services related to traditional academic subjects or vocational training;

H. experimental or investigational procedures, technologies or non-drug therapies and related services;

I. activity therapy, group activities and other services which are primarily recreational or divisional in nature;
 J. electroconvulsive therapy;
 K. services provided by non-licensed counselors, therapists or social workers; and,
 L. treatment of mental retardation alone.

[8.315.6.15 NMAC - N, 1-1-08]

8.315.6.16 P R I O R AUTHORIZATION AND UTILIZATION REVIEW:

All MAD services are subject to utilization review for medical necessity and program compliance. Reviews may be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. Once enrolled, providers receive instructions on how to access provider program policies, billing instructions, utilization review instructions, and other pertinent material and to obtain answers to questions on or not covered by these materials. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements.

A. Prior authorization: Certain procedures or services may require prior authorization from MAD or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

B. Eligibility determination: Prior authorization of services does not guarantee that an individual is eligible for a medicaid or other health care program. Providers must verify that individuals are eligible for a specific program at the time services are furnished and determine if eligible recipients have other health insurance.

C. Reconsideration: Providers who disagree with prior authorization request denials or other review decisions can request a re-review and reconsideration. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953].

[8.315.6.16 NMAC - N, 1-1-08]

8.315.6.17 REIMBURSEMENT:

A. CCSS agencies must submit claims for reimbursement on the HCFA/CMS claim form or its successor. See 8.302.2 NMAC, *Billing for MAD Services*. Once enrolled, providers receive instructions on documentation, billing, and claims processing. Reimbursement is made to comprehensive community support agencies for covered services at the lesser of the

following:

(1) the provider's billed charge; or
 (2) the MAD fee schedule for the specific service or procedure.

B. Reimbursement to providers for covered services is made at the lesser of the following:

(1) the provider's billed charge; or
 (2) the MAD fee schedule for the specific service or procedure for the provider, as established after considering cost data.

(a) The provider's billed charge must be its usual and customary charge for services.

(b) "Usual and customary charge" refers to the amount that the individual provider charges the general public in the majority of cases for a specific procedure or service.

C. Reimbursement for Indian health service agencies and federally qualified health centers follow the guidelines and special provisions for those entities.

[8.315.6.17 NMAC - N, 1-1-08]

HISTORY OF 8.315.6 NMAC: [RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.510 NMAC, Sections 11, 12 and 13, which will be effective on January 1, 2008.

8.200.510.11 COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA):

The CSRA standard varies based on when the applicant/recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal medicaid application. If institutionalization began:

(A) Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CSRA is \$60,000.

(B) On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.

(C) On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.

(D) On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.

(E) On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.

(F) On or after January 1, 1994, the state minimum is \$31,290 and the federal

maximum CSRA is \$72,660.

(G) On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.

(H) On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.

(I) On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.

(J) On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.

(K) On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.

(L) On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.

(M) On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.

(N) On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.

(O) On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.

(P) On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.

(Q) On or after January 1, 2005, the state minimum is \$31,290 and the federal maximum CSRA is \$95,100.

(R) On or after January 1, 2006, the state minimum is \$31,290 and the federal maximum CSRA is \$99,540.

(S) On or after January 1, 2007, the state minimum is \$31,290 and the federal maximum CSRA is \$101,640.

(T) On or after January 1, 2008, the state minimum is \$31,290 and the federal maximum CSRA is \$104,400.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.11 NMAC - Rn, 8 NMAC 4.MAD.510.1 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08]

8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT):

Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

<u>DEDUCTION</u>	<u>AMOUNT</u>
A. Personal needs allowance for institutionalized spouse	\$58
B. Basic community spouse monthly income allowance standard (CSMIA)	\$1,712
(CSMIA standard minus income of community spouse = deduction	
C. * Excess shelter allowance for allowable expenses for community spouse	[\$829] \$898

D. ** Extra maintenance allowance

E. Dependent family member 1/3 X (CSMIA - dependent member's income)

F. Non-covered medical expenses

G. * The allowable shelter expenses of the community spouse must exceed \$514 per month for any deduction to apply.

H. ** To be deducted, the extra maintenance allowance for the community spouse must be ordered by a court of jurisdiction or a state administrative hearing officer.

I. **MAXIMUM TOTAL:** The maximum total of the community spouse monthly income allowance and excess shelter deduction is ~~[\$2,541]~~ \$2,610. [1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03; A, 7-1-03; A, 1-1-04; A, 7-1-04; A, 1-1-05; A, 7-1-05; A, 1-1-06; A, 7-1-06; A, 1-1-07; A, 7-1-07; A, 1-1-08]

8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS: Costs of care are based on the date of application registration.

<u>DATE</u>	<u>AVERAGE COST PER MONTH</u>
A. July 1, 1988 - Dec. 31, 1989	\$ 1,726 per month
B. Jan. 1, 1990 - Dec. 31, 1991	\$ 2,004 per month
C. Jan. 1, 1992 - Dec. 31, 1992	\$ 2,217 per month
D. Effective July 1, 1993, for application register on or after Jan. 1, 1993	\$ 2,377 per month
E. Jan. 1, 1994 - Dec. 31, 1994	\$2,513 per month
F. Jan. 1, 1995 - Dec. 31, 1995	\$2,592 per month
G. Jan. 1, 1996 - Dec. 31, 1996	\$2,738 per month
H. Jan. 1, 1997 - Dec. 31, 1997	\$2,889 per month
I. Jan. 1, 1998 - Dec 31, 1998	\$3,119 per month
J. Jan. 1, 1999 - Dec. 31, 1999	\$3,429 per month
K. Jan. 1, 2000 - Dec. 31, 2000	\$3,494 per month
L. Jan. 1, 2001 - Dec. 31, 2001	\$3,550 per month
M. Jan. 1, 2002 - Dec. 31, 2002	\$3,643 per month
N. Jan. 1, 2003 - Dec. 31, 2003	\$4,188 per month
O. Jan. 1, 2004 - Dec. 31, 2004	

\$3,899 per month

P. Jan. 1, 2005 - Dec. 31, 2005

Q. Jan. 1, 2006 - Dec. 31, 2006

R. Jan. 1, 2007 - Dec. 31, 2007

S. Jan. 1, 2008 -

Any fraction of a month remaining when this calculation is completed is dropped. [1-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 7-1-00; 8.200.510.13 NMAC - Rn, 8 NMAC 4.MAD.510.3 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06 ; A, 1-1-07; A, 1-1-08]

\$4,277 per month

\$4,541 per month

\$4,551 per month

\$4,821 per month

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.520 NMAC, Sections 12, 13, 15, 16 and 20, which will be effective on January 1, 2008.

8.200.520.12 COLA DISREGARD COMPUTATION

<u>Current amt/cost of living</u>	<u>Benefit period</u>
Current Title II amount =	<u>Benefit before 1/08</u>
1.023	
<u>Benefit before 1/08 =</u>	Benefit before 1/07
1.033	
<u>Benefit before 1/07 =</u>	Benefit before 1/06
1.041	
<u>Benefit before 1/06 =</u>	Benefit before 1/05
1.027	
<u>Benefit before 1/05 =</u>	Benefit before 1/04
1.021	
<u>Benefit before 1/04 =</u>	Benefit before 1/03
1.014	
<u>Benefit before 1/03 =</u>	Benefit before 1/02
1.026	
<u>Benefit before 1/02 =</u>	Benefit before 1/01
1.035	
<u>Benefit before 1/01 =</u>	Benefit before 1/00
1.025	
<u>Benefit before 1/00 =</u>	Benefit before 1/99
1.013	
<u>Benefit before 1/99 =</u>	Benefit before 1/98
1.021	
<u>Benefit before 1/98 =</u>	Benefit before 1/97
1.029	
<u>Benefit before 1/97 =</u>	Benefit before 1/96
1.026	
<u>Benefit before 1/96 =</u>	Benefit before 1/95
1.028	
<u>Benefit before 1/95 =</u>	Benefit before 1/94
1.026	
<u>Benefit before 1/94 =</u>	Benefit before 1/93
1.030	
<u>Benefit before 1/93 =</u>	Benefit before 1/92
1.037	
<u>Benefit before 1/92 =</u>	Benefit before 1/91
1.054	
<u>Benefit before 1/91 =</u>	Benefit before 1/90
1.047	
<u>Benefit before 1/90 =</u>	Benefit before 1/89
1.040	
<u>Benefit before 1/89 =</u>	Benefit before 1/88
1.042	
<u>Benefit before 1/88 =</u>	Benefit before 1/87
1.013	
<u>Benefit before 1/87 =</u>	Benefit before 1/86
1.031	
<u>Benefit before 1/86 =</u>	Benefit before 1/85
1.035	
<u>Benefit before 1/85 =</u>	Benefit before 1/84
1.035	

<u>Benefit before 1/84 =</u> 1.074	Benefit before 7/82
<u>Benefit before 7/82 =</u> 1.112	Benefit before 7/81
<u>Benefit before 7/81 =</u> 1.143	Benefit before 7/80
<u>Benefit before 7/80 =</u> 1.099	Benefit before 7/79
<u>Benefit before 7/79 =</u> 1.065	Benefit before 7/78
<u>Benefit before 7/78 =</u> 1.059	Benefit before 7/77

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.12 NMAC - Rn, 8 NMAC 4.MAD.520.6 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08]

8.200.520.13 FEDERAL BENEFIT RATES

YEAR	Individual FBR	Inst. FBR	Indiv. VTR	Couple FBR	Inst. FBR	Couple VTR
1/89 to 1/90	\$368	\$30	\$122.66	\$553	\$60	\$184.33
1/90 to 1/91	\$386	\$30	\$128.66	\$579	\$60	\$193.00
1/91 to 1/92	\$407	\$30	\$135.66	\$610	\$60	\$203.33
1/92 to 1/93	\$422	\$30	\$140.66	\$633	\$60	\$211.00
1/93 to 1/94	\$434	\$30	\$144.66	\$652	\$60	\$217.33
1/94 to 1/95	\$446	\$30	\$148.66	\$669	\$60	\$223.00
1/95 to 1/96	\$458	\$30	\$152.66	\$687	\$60	\$229.00
1/96 to 1/97	\$470	\$30	\$156.66	\$705	\$60	\$235.00
1/97 to 1/98	\$484	\$30	\$161.33	\$726	\$60	\$242.00
1/98 to 1/99	\$494	\$30	\$164.66	\$741	\$60	\$247.00
1/99 to 1/00	\$500	\$30	\$166.66	\$751	\$60	\$250.33
1/00 to 1/01	\$512	\$30	\$170.66	\$769	\$60	\$256.33
1/01 to 1/02	\$530	\$30	\$176.66	\$796	\$60	\$265.33
1/02 to 1/03	\$545	\$30	\$181.66	\$817	\$60	\$272.33
1/03 to 1/04	\$552	\$30	\$184.00	\$829	\$60	\$276.33
1/04 to 1/05	\$564	\$30	\$188	\$846	\$60	\$282.00
1/05 to 1/06	\$579	\$30	\$193	\$869	\$60	\$289.66
1/06 to 1/07	\$603	\$30	\$201	\$904	\$60	\$301.33
1/07 to 1/08	\$623	\$30	\$207.66	\$934	\$60	\$311.33
1/08 to 1/09	\$637	\$30	\$212.33	\$956	\$60	\$318.66

Ineligible child deeming allocation: [~~\$301.00~~] \$319.00

Part B premium is [~~\$93.50~~] \$96.40 per month.

VTR (value of one third reduction) is used when an individual or couple lives in the household of another and receives food and shelter from the household or when the individual or couple is living in their own household but receiving support and maintenance from others.

Effective January 1, 1989, the SSI resource standard was increased to \$2,000 for an individual and \$3,000 for a couple. These amounts did not change in 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, ~~or~~ 2007, or 2008.

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.13 NMAC - Rn, 8 NMAC 4.MAD.520.7 & A, 1-1-01; A, 1-01-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08]

8.200.520.15 SSI LIVING ARRANGEMENTS

A. Individual living in his/her own household who own or rent

Payment amount: [~~\$623~~] \$637 Individual
[~~\$934~~] \$956 Couple

B. Individual receiving support and maintenance payments: For an individual or couple living his/her own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).

Payment amount: [~~\$623 - 207.66 = \$415.34~~] \$637 - \$212.33 = \$424.67 Individual
[~~\$934 - \$311.33 = \$622.67~~] \$956 - \$318.66 = \$637.34 Couple

C. Individual or couple living household of another: For an individual or couple living in another person's household and not contributing his/her pro-rata share of household expenses, subtract the VTR.

Payment amount: [~~\$623 - 207.66 = \$415.34~~] \$637 - \$212.33 = \$424.67 Individual
[~~\$934 - \$311.33 = \$622.67~~] \$956 - \$318.66 = \$637.34 Couple

D. Child living in home with his/her parent(s)

Payment amount: [~~\$623~~] \$637

E. **Individual in institution**

Payment amount: \$30.00

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.15 NMAC - Rn, 8 NMAC 4.MAD.520.9 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08]

8.200.520.16 MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID AND HOME AND COMMUNITY BASED WAIVER CATEGORIES: Effective January 1, [2007] 2008, the maximum countable monthly income standard for institutional care medicaid and the home and community based waiver categories is [~~\$1,849~~] \$1,891.

[4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 4-1-99; 8.200.520.16 NMAC - Rn, 8 NMAC 4.MAD.520.10 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08]

8.200.520.20 COVERED QUARTER INCOME STANDARD:DATECALENDAR QUARTER AMOUNT

Jan. 2008 - Dec. 2008

\$1,050 per calendar quarter

Jan. 2007 - Dec. 2007

\$1,000 per calendar quarter

Jan. 2006 - Dec. 2006

\$970 per calendar quarter

Jan. 2005 - Dec. 2005

\$920 per calendar quarter

Jan. 2004 - Dec. 2004

\$900 per calendar quarter

Jan. 2003 - Dec. 2003

\$890 per calendar quarter

Jan. 2002 - Dec. 2002

\$870 per calendar quarter

[8.200.520.20 NMAC - Rn, 8.200.510.14 NMAC & A, 1-1-02; A, 4-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.231.400 NMAC, Sections 5, 9, 10 and 13, which will be effective on January 1, 2008. This rule was renumbered from 8 NMAC 4.NBN.400 to 8.231.400 NMAC to conform to NMAC requirements.

8.231.400.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.

[2/1/95; 8.231.400.5 NMAC - Rn, 8 NMAC 4.NBN.000.5 & A, 1/1/08]

8.231.400.9 NEWBORN - CATEGORY 031: The New Mexico medicaid program (medicaid) covers infants born to mothers who are eligible for and receiving New Mexico medicaid at the time of birth or mothers deemed to have been eligible for and receiving New Mexico medicaid at the time of the birth. Emergency medical services for undocumented aliens (EMSA) qualifies as receipt of medicaid for the mother. [2/1/95; 8.231.400.9 NMAC - Rn, 8 NMAC 4.NBN.400 & A, 1/1/08]

8.231.400.10 BASIS FOR DEFINING THE GROUP: The infant is eligible for medicaid for [(42)] 12 months starting with the month of birth, as long as the following conditions are met:

A. the mother remains eligible for medicaid or would be eligible if she were still pregnant;

B. the mother was approved for emergency medical services for undocumented aliens for the birth and

delivery of the infant;

C. the infant remains a member of the mother's household; and

D. both mother and infant continue to reside in New Mexico.

[2/1/95; 8.231.400.10 NMAC - Rn, 8 NMAC 4.NBN.402 & A, 1/1/08]

8.231.400.13 CITIZENSHIP: Refer to medical assistance [~~Program Manual Section MAD 412, 412.1, and 412.2~~] eligibility manual, 8.200.410 NMAC. Documentation of citizenship and identity is required at the first re-determination.

[2/1/95, 4/30/98; 8.231.400.13 NMAC - Rn, 8 NMAC 4.NBN.412 & A, 1/1/08]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.231.500 NMAC, Sections 5 and 11, which will be effective on January 1, 2008. This rule was renumbered from 8 NMAC 4.NBN.500 to 8.231.500 NMAC to conform to NMAC requirements.

8.231.500.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.

[2/1/95; 8.231.500.5 NMAC - Rn, 8 NMAC 4.NBN.000.5 & A, 1/1/08]

8.231.500.11 INCOME STANDARDS: To be eligible, the newborn must be born to a woman who is eligible for and receiving medicaid on the date the newborn is born. Receipt of emergency medical services to undocumented aliens is considered as medicaid eligibility for the mother

provided it covered the birth and delivery of the infant.

[2/1/95; 8.231.500.11 NMAC - Rn, 8 NMAC 4.NBN.520 & A, 1/1/08]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.231.600 NMAC, Sections 5, 10, 13 and 14, which will be effective on January 1, 2008. This rule was renumbered from 8 NMAC 4.NBN.600 to 8.231.600 NMAC to conform to NMAC requirements.

8.231.600.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.

[2/1/95; 8.231.600.5 NMAC - Rn, 8 NMAC 4.NBN.000.5 & A, 1/1/08]

8.231.600.10 BENEFIT DETERMINATION:

A. Medical service providers must give the name and case number of the New Mexico medicaid eligible mother and the name, birthdate, sex of the newborn, and the name of the hospital where the birth occurred to local county income support division (ISD) office. Within three [(3)] days after receipt of this information, the income support specialist (ISS).

(1) determines if the mother was eligible for New Mexico medicaid at the time of birth or if the birth and delivery was covered by emergency medical services to undocumented aliens (EMSA);

(2) registers the newborn for medicaid on the system; a signed application is not required;

(3) provides eligibility information to the hospital; and

(4) notifies the mother that a signed application is necessary to establish the newborn's eligibility for [AFDC] TANF, if applicable.

B. Processing time limit:

All applications must be processed within ~~forty five (45)~~ 45 days from the date of application. The time limit begins on the day the signed application is received. Applications must be acted upon and notice of approval, denial or delay sent out within the required time limit. The ISS explains the time limit and that the applicant may request an administrative hearing if the application pends longer than the time limit allows.

[2/1/95; 8.231.600.10 NMAC - Rn, 8 NMAC 4.NBN.620 &A, 1/1/08]

8.231.600.13 RETROACTIVE BENEFIT COVERAGE:

A woman who applies for New Mexico medicaid after the birth of her newborn and is determined retroactively eligible for the month of the newborn's birth, or for a prior month within the three ~~(3)~~ month retroactive period, is deemed to have been eligible for and receiving medicaid at the time of the birth. Her newborn qualifies for New Mexico medicaid for ~~twelve (12)~~ 12 months beginning with the month of birth, providing the criteria listed above apply. Up to three ~~(3)~~ months of retroactive medicaid coverage can be furnished to applicants who have received medicaid-covered services during the retroactive period and would have met applicable eligibility criteria had they applied during the three ~~(3)~~ months prior to the month of application [42 CFR Section 435.914].

A. Application for retroactive benefit coverage: Application for retroactive medicaid can be made by checking "yes" in the "application for retroactive medicaid payments" box on the application/redetermination of eligibility for medicaid assistance (MAD 381) form or by checking "yes" to the question on "does anyone in your household have unpaid medical expenses in the last three ~~(3)~~ months?" on the application for assistance (ISD S) form. Applications for retroactive medicaid benefits must be made ~~by~~ no later than 180 days from the date of application for assistance. Medicaid-covered services which were furnished more than two ~~(2)~~ years prior to application are not covered.

B. Approval requirements: To establish retroactive eligibility, the ISS must verify that all conditions of eligibility were met for each of the three ~~(3)~~ retroactive months and that the applicant received medicaid-covered services. Each month must be approved or denied on its

own merits. Retroactive eligibility can be approved on either the ISD2 system (for categories programmed on that system) or on the retroactive medicaid eligibility authorization (ISD 333) form.

C. Notice:

(1) Notice to applicant: The applicant must be informed if any of the retroactive months are denied.

(2) Recipient responsibility to notify provider: After the retroactive eligibility has been established, the ~~ISS~~ ISD worker must notify the recipient that ~~he/she~~ he is responsible for informing all providers with outstanding bills of the retroactive eligibility determination. If the recipient does not inform all providers and furnish verification of eligibility which can be used for billing and the provider consequently does not submit the billing within 120 days from the date of approval of retroactive coverage, the recipient is responsible for payment of the bill.

[2/1/95; 8.231.600.13 NMAC - Rn, 8 NMAC 4.NBN.625 & A, 1/1/08]

8.231.600.14 CHANGE IN ELIGIBILITY:

If the newborn is placed on ~~AFDC~~ TANF or category 032 and then loses eligibility for either of these categories, the newborn can still be eligible for category 031 if ~~he/she~~ he meets category 031 requirements for the remainder of the ~~twelve (12)~~ 12 month period. A new application is not required.

[2/1/95; 8.231.600.14 NMAC - Rn, 8 NMAC 4.NBN.630 & A, 1/1/08]

NEW MEXICO LIVESTOCK BOARD

This is an amendment to 21.32.4 NMAC, Sections 5 and 10. This action also renumbers and reformats 21 NMAC 32.4 NMAC, "Import Requirements (Transportation of Livestock in New Mexico)" (filed 01/28/1999) to conform to the current NMAC requirements and will be numbered and known as 21.32.4 NMAC, "Import Requirements (Transportation of Livestock in New Mexico)", effective 12/31/2007:

21.32.4.5 EFFECTIVE DATE:

March 1, 1999, unless a later date is cited at the end of the section ~~or paragraph~~.
[3/1/99; 21.32.4.5 NMAC - Rn & A, 21 NMAC 32.4.5, 12/31/2007]

21.32.4.10 TUBERCULOSIS TEST REQUIREMENTS FOR CATTLE AND BISON:

A. All sexually intact import dairy cattle ~~(except steers and spayed heifers)~~ 4 months of age or older and beef breeding bulls 12 months of age

and older **must** have a negative tuberculin test within 30 days prior to entry **regardless** of the status of the state of origin or TB free herd.

B. All cattle imported to New Mexico having originated in Michigan, regardless of age, must have a negative tuberculosis test within 30 days prior to entry. All cattle originating in Michigan must have a health certificate, with individual animal identification, issued within 15 days of movement and must have a prior entry permit issued by the New Mexico livestock board. All cattle originating in Michigan must be quarantined upon arrival in New Mexico and will not be released until a negative tuberculosis test is completed 60 to 90 days post entry.

[3/1/99, 2/29/2000; 21.32.4.10 NMAC - Rn & A, 21 NMAC 32.4.10, 12/31/2007]

NEW MEXICO PHYSICAL THERAPY BOARD

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 20 PHYSICAL THERAPISTS**

PART 11 DISCIPLINARY PROCEEDINGS

16.20.11.1 ISSUING AGENCY:

New Mexico Physical Therapy Board.
[16.20.11.1 NMAC - N, 1-12-08]

16.20.11.2 SCOPE: All individuals who wish to practice physical therapy in the state of New Mexico.
[16.20.11.2 NMAC - N, 1-12-08]

16.20.11.3 STATUTORY AUTHORITY:

This part is adopted pursuant to the Physical Therapy Act, NMSA 1978, Sections 61-12D-5C, 61-12D-13, 61-12D-14 and 61-12D-15.
[16.20.11.3 NMAC - N, 1-12-08]

16.20.11.4 DURATION:

Permanent.
[16.20.11.4 NMAC - N, 1-12-08]

16.20.11.5 EFFECTIVE DATE:

January 12, 2008, unless a later date is cited at the end of a section.
[16.20.11.5 NMAC - N, 1-12-08]

16.20.11.6 OBJECTIVE:

The objective of Part 11 of Chapter 20 is to establish the procedures for filing complaints and taking disciplinary actions against licensed physical therapists and physical therapy assistants, applicants for such licensure and unlicensed persons engaging in the practice of physical therapy.
[16.20.11.6 NMAC - N, 1-12-08]

16.20.11.7 DEFINITIONS:

A. "Complaint" means a sworn written complaint, filed with the board.

B. "Complaint committee" means the committee consisting of a member of the board appointed by the chairperson and the board administrator.

C. "Complainant" means the complaining party who has filed a complaint with the board.

D. "Notice of contemplated action" means the administrative process used by the board for a licensee, registrant or applicant for licensure or registration to be afforded notice and an opportunity to be heard in a formal hearing before the board, before the board has authority to take any action which would result in denial, suspension, revocation, restriction, probation, monitoring, censuring, etc., of a license, registration, application or licensure or registration.

E. "Respondent" is the party against whom a complaint is filed. [16.20.11.7 NMAC - N, 1-12-08]

16.20.11.8 COMPLAINT PROCEDURES:

A complaint may be initiated by any person through a telephone call, in writing or by visiting the board office. Only complaints written on the official physical therapy complaint form will be formally addressed by the board. The forms required for an official complaint can be obtained from the board office, board of examiners for physical therapy, P.O. Box 25101, Santa Fe, NM, 87504. Complaints must contain factual allegations, constituting the alleged violations of any provisions of the Physical Therapy Act. [16.20.11.8 NMAC - N, 1-12-08]

16.20.11.9 GENERAL PROVISIONS:

A. A complaint may be initiated in writing by any person.

B. Complaints must be legible, either printed in black ink or typed.

C. Complaints must contain factual allegations, constituting the alleged violations of any provisions of the Physical Therapy Practice Act and 16.20 NMAC. [16.20.11.9 NMAC - N, 1-12-08]

16.20.11.10 PROCEDURES FOR RECEIPT OF A COMPLAINT:

A. The board's designee will maintain a written log of all complaints received which records at a minimum, the date the complaint was received, and name, addresses of the complainant(s) and respondent(s).

B. Upon receipt of a com-

plaint the board's designee will:

(1) log in the date the complaint was received;

(2) determine whether the respondent is licensed, registered or an applicant for licensure or registration with the board;

(3) assign a complaint number and create an individual file. Complaint numbering shall begin in January of each year;

(4) send complainant written acknowledgment of receipt of the complaint;

(5) immediately forward the complaint to the complaint committee; the complaint committee chair will be responsible for convening the complaint committee to review the complaint(s).

[16.20.11.10 NMAC - N, 1-12-08]

16.20.11.11 COMPLAINT COMMITTEE:

A. The board chair will appoint a complaint committee consisting of at least one member of the board, who will chair the committee. The board chair may also appoint to the complaint committee the board administrator and/or a complaint manager.

B. The complaint committee will handle complaints in a confidential manner as required by law.

C. The complaint committee will review all complaints received by the board and make recommendations for disposition of the complaint to the full board in executive session.

D. No complaint committee meeting will be held without the presence of the board member.

E. A complaint committee member who believes he or she is not capable of judging a particular complaint fairly on the basis of its own circumstances will not participate; another professional member will be appointed by the chair to serve as committee chair for the complaint being considered.

F. For any complaint which the complaint committee reasonably anticipates may be referred to the board for consideration of the issuance of a notice of contemplated action, the respondent will be provided a copy of the complaint and will be allowed a reasonable time in which to respond to the allegations in the complaint.

G. The foregoing notwithstanding, the complaint committee will not be required to provide the respondent with a copy of the complaint, or with notice of the filing of a complaint or any related investigation, prior to the issuance of a notice of contemplated action if the committee determines that disclosure may impair, impede or compromise the efficacy or integrity of the investigation.

H. If the complaint committee determines that further information is needed, it may issue investigative subpoenas pursuant to the Uniform Licensing Act; it may employ an investigator, experts, or other persons whose services are determined to be necessary to assist in the processing and investigation of the complaint. The complaint committee will have independent authority to employ such persons without prior approval of the board. The board administrator will determine budgetary availability and will contract for investigative services.

I. Upon completion of its review or investigation of a complaint, the complaint committee will present a summary of the case to the board for the purpose of enabling the board to decide whether to proceed with the case or to dismiss the case. The summary will be identified by complaint number without identifying the complainant(s) or respondent(s) by name. [16.20.11.11 NMAC - N, 1-12-08]

16.20.11.12 BOARD ACTION:

A. If the board determines that it lacks jurisdiction or that there is not sufficient evidence or cause to issue a notice of contemplated action, the case shall be closed.

B. The board's designee shall send a letter of the board's decision to both the complainant and respondent. The letter will state the board's actions and the reasons for its decision.

C. If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, the board may vote to issue a notice of contemplated action.

D. The board's designee shall forward a complete copy of the complaint committee's report, including exhibits to the attorney general's office for assignment of an administrative prosecutor.

E. The board may take any other action with regard to a complaint which is within its authority and which is within the law, including referring the complaint to the attorney general for injunctive proceedings, or referring the complaint to district attorneys for prosecution of persons alleged to be practicing physical therapy without a proper license or registration.

F. Any board member who believes that he/she is not capable of judging a particular complaint fairly on the basis of its own circumstances shall not participate in the decision to issue a notice of contemplated action and will not participate in the hearing, deliberation, or decision of the board.

G. Where the appearance of impropriety or any violation of the government conduct act may occur a board

member shall recuse himself/herself from any hearing, deliberation or decision of the board.

H. A member of the complaint committee will not participate in the decision whether to issue a notice of contemplated action, other than by making a recommendation to the board whether to issue a notice of contemplated action, and shall not participate in the hearing, deliberation, or decision of the board.

[16.20.11.12 NMAC - N, 1-12-08]

16.20.11.13 SETTLEMENT AGREEMENT:

A. The board may enter into a settlement with the licensee or registrant as a means of resolving the complaint.

B. Any proposed settlement agreement must be approved by the board, and must also be approved by the respondent, upon a knowing and intentional waiver by the respondent of his/her right to a hearing as provided by the Uniform Licensing Act.

C. The settlement agreement must be signed by either the licensee's attorney or the licensee must acknowledge that he or she has been advised to seek the advice of an attorney.

[16.20.11.13 NMAC - N, 1-12-08]

16.20.11.14 NOTICE OF CONTEMPLATED ACTION:

A. All disciplinary proceedings will be conducted in accordance with the Uniform licensing Act.

B. The board chair, or his/her designee, will serve as hearing officer for disciplinary proceedings for the purpose of administering pre-hearing procedural matters. The hearing officer will be fully authorized to make all necessary procedural decisions on behalf of the board, including, but not limited to, matters related to discovery, continuances, time extensions, amendment, pre-hearing conferences, and proposed findings of fact and conclusions of law.

C. The hearing officer may make such orders as he or she determines may be necessary to implement the authority conferred by Subsection B of 16.20.11.14 NMAC above, including but not limited to discovery schedules, pleading schedules, and briefing schedules.

D. No party will engage in ex-parte communications with the hearing officer or any member of the board in any matter in which a notice of contemplated action has been issued.

E. Licensees and registrants who have been found culpable and sanctioned by the board will be responsible for the payments of all costs of the disciplinary proceedings.

F. Any license or registra-

tion, including a wall certificate, issued by the board and subsequently suspended or revoked will be promptly returned to the board office, but no later than 30 days of receipt by the licensee or registrant of the board's order suspending or revoking the license.

[16.20.11.14 NMAC - N, 1-12-08]

HISTORY OF 16.20.11 NMAC: [RESERVED]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.1 NMAC Section 14, effective 1-12-08.

16.20.1.14 CODE OF ETHICS:

The New Mexico physical therapy board adopts the current American ~~[physical therapy association code of ethics adopted in June 1994]~~ physical therapy association code of ethics as per Section 61-12D-13L NMSA 1978.

[16.20.1.14 NMAC - N, 02-15-04; A, 1-12-08]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.3 NMAC Sections, 8, 9, 10, and 11, effective 1-12-08.

16.20.3.8 ISSUANCE OF

LICENSES: ~~[Full licensure may be issued by the board upon satisfaction of the following requirements.]~~ The board may issue a license to an applicant who fulfills the following requirements.

A. ~~[All items on the application form have been answered.]~~ Answers the application in full.

B. ~~[The application form~~

~~is notarized.]~~ Have the application form notarized.

C. ~~[A photograph taken within one (1) year prior to filing of an application has been furnished printed on photo quality paper.]~~ Include a passport photograph taken within one (1) year prior to filing the application.

D. ~~[The application fee has been paid in full.]~~ Pays the non-refundable application fee in full.

E. Provides the board [has] with documentation of graduation from an accredited educational program, evidenced by:

(1) ~~[official transcripts from colleges and/or universities; or]~~ official college and/or universities transcripts from a program approved by the commission on accreditation in physical therapy education (CAPTE);

~~[(2) notarized copy of a physical therapy certificate of diploma from a program approved by the commission on accreditation in physical therapy education (CAPTE); or~~

~~(3) a certificate of proficiency or a statement of official transcript that the curriculum has been completed as required in the act, Section 61-12-10, signed by the director of the program or the registrar of the school, in lieu of certificate of diploma.]~~

(2) if official transcripts are not available because of school closure, destroyed records, etc., the applicant must provide satisfactory evidence to the board of meeting the required physical therapy educational program by submitting a certificate of proficiency or a statement of official transcript that the curriculum has been completed as required by Section 61-12-10; the aforementioned documents must be signed by the director of the program or the registrar of the school; the board shall consider such documentation on a case-by-case basis:

(a) for applicants that graduated after January 1, 2002, documentation of graduation with a post-baccalaureate degree in physical therapy from an educational program accredited by CAPTE;

(b) for applicants that graduated prior to January 1, 2002, documentation of graduation with a baccalaureate degree in physical therapy or a certificate in physical therapy from an educational program accredited by CAPTE;

(c) for physical therapist assistant applicants, documentation of graduation from an accredited physical therapist assistant program accredited by CAPTE and approved by the board.

F. For foreign-educated applicants, an applicant must meet all requirements in, 16.20.9 NMAC, Education Criteria for Foreign-Educated Applicants.

G. Successful completion

of the national physical therapy licensure examination (NPTE) and the jurisprudence exam (as specified in 16.20.2.8 NMAC). If the applicant has previously taken the NPTE, the resulting scores shall be sent directly to the board from the testing contractor. Scores will not be accepted from individuals, other state boards, or organizations.

H. For applicants who have not practiced since his or her graduation from a physical therapy education program, or who have not practiced as a physical therapist or physical therapist assistant for a period of more than three (3) consecutive years, full licensure requires the following documentation.

(1) A completed application form as required by this section.

(2) Passing of the jurisprudence exam.

~~(2)~~ (3) Twenty (20) continuing education contact hours for each year the applicant was not practicing as a physical therapist or physical therapist assistant (coursework to be pre-approved by the board).

~~(3)~~ (4) The board may require the applicant to provide or demonstrate additional evidence of his or her competency to practice (e.g. passage of the national exam, APTA courses, university sponsored courses, supervision or mentorship).

I. ~~[Questions of felony convictions or professional misconduct have to be satisfactorily resolved.]~~ Questions of felony convictions or misdemeanor convictions involving moral turpitude directly related to employment in the profession have to be satisfactorily resolved. The board may require proof that the person has been sufficiently rehabilitated to warrant the public trust if the prior conviction does not relate to employment in the profession. Proof of sufficient rehabilitation may include, but not limited to: certified proof of completion of probation or parole supervision, payment of fees, community service or any other court ordered sanction.

J. A licensee requesting a name change must submit proof of name change, the original license, and a duplicate license fee.

[16.20.3.8 NMAC - Rp, 16.20.3.8 NMAC, 11-01-04; A, 03-02-06; A, 1-12-08]

16.20.3.9 REINSTATEMENT OF LICENSURE:

A. ~~[Reinstatement of]~~ To reinstate a New Mexico physical therapist or physical therapist assistant license that has lapsed for less than one year ~~[requires the following data:]~~ one must:

(1) ~~[Completion of]~~ complete the renewal form;

(2) ~~[Payment of]~~ pay the late fee;

(3) ~~[Payment of]~~ pay the current year renewal fee;

(4) submit proof of the required continuing education contact hours;

(5) submit a notarized statement by the therapist that they have not practiced physical therapy in the state of New Mexico while their physical therapy license was expired.

B. ~~[Reinstatement of]~~ To reinstate a New Mexico physical therapist or physical therapist assistant license that has lapsed ~~[in New Mexico]~~ for more than one (1) year, where there is evidence of continued practice with an unrestricted license in another state ~~[the following is required.]~~ one must:

(1) ~~[Completion of]~~ complete the ~~[reinstatement]~~ application;

(2) ~~[Payment of]~~ pay the ~~[reinstatement]~~ application fee;

(3) ~~[Payment of]~~ pay the ~~[current year renewal fee:]~~ jurisprudence exam fee;

~~[(4) Proof of twenty (20) continuing education hours for each year of the lapsed New Mexico license or proof of required continuing education hours in the current state practicing for each year your New Mexico license has expired (if no continuing education is required in the state you are practicing then the state of New Mexico rules apply).]~~

~~[(5)]~~ (4) submit verification of all ~~[current, valid unrestricted]~~ licenses from other U.S. jurisdictions; verifications may be ~~[received by]~~ sent to the board via regular mail, electronic mail, or facsimile; verifications must be signed and dated by an official of the agency licensing the applicant and include the following ~~[data:]~~:

(a) name and address of the applicant;

(b) license number and date of issuance;

(c) current status of the license;

(d) expiration date of the license;

(e) a statement ~~[of]~~ as to whether the applicant was denied a license by the agency;

(f) a statement ~~[of]~~ as to whether any disciplinary action is pending or has been taken against the applicant;

~~[(g) Receipt of verification of employment.]~~

~~[(6) Receipt of verification of previous employment as a physical therapist or physical therapist assistant.]~~

(5) verification of employment from the applicant's most recent physical therapy employer must be included and submitted on the board approved verification of employment form;

(6) pass the jurisprudence examination;

(7) the continuing education

requirement, whether one is enforced or not, in the state of practice during the period of lapse, will satisfy the New Mexico requirement.

C. To reinstate a New Mexico physical therapist or physical therapist assistant license that has lapsed for more than one year, where there is no evidence of continued practice with an unrestricted license in another state one must:

(1) complete the application;

(2) pay the application fee;

(3) pay the jurisprudence exam fee;

(4) submit verification of all licenses from other U.S jurisdictions; verifications may be sent to the board via regular mail, electronic mail, or facsimile; verifications must be signed and dated by an official of the agency licensing the applicant and include the following:

(a) name and address of the applicant;

(b) license number and date of issuance;

(c) current status of the license;

(d) expiration date of the license;

(e) a statement as to whether the applicant was denied a license by the agency;

(f) a statement as to whether any disciplinary action is pending or has been taken against the applicant;

(5) pass the jurisprudence examination;

(6) take continuing education hours in the amount of 20 ceu's for each year the New Mexico license had lapsed.

D. To reinstate a New Mexico physical therapist or physical therapist assistant license that has lapsed for more than three years, where there is no evidence of practice in another state one must:

(1) complete and submit a new application form satisfying all requirements for original licensure pursuant to 16.20.3.8 NMAC;

(2) pay the required late fees;

(3) the board may also require an additional course of study or continuing education, on a case-by-case basis, to ensure competence and fitness to practice.

[16.20.3.9 NMAC - Rp, 16.20.3.9 NMAC, 11-01-04; A, 03-02-06; A, 1-12-08]

16.20.3.10 LICENSURE BY ENDORSEMENT:

A. A license may be issued to a physical therapist or physical therapist assistant who provides verification of all licenses from other U.S. jurisdictions, and meets all the requirements in 16.20.3.8 NMAC. The board will accept verifications [may be received by the board] via regular mail, electronic mail, or facsimile. Verifications must be signed and dated by

an official of the agency licensing the applicant and must include the following ~~[data]~~:

- (1) name and address of the applicant;
- (2) license number and date of issuance;
- (3) current status of the license;
- (4) expiration date of the license;
- (5) national examination scores received directly from the reporting jurisdiction;
- (6) a statement ~~[of]~~ as to whether the applicant was denied a license by the agency;
- (7) a statement ~~[of]~~ as to whether any disciplinary action is pending or has been taken against the applicant.

B. A license may be issued to a foreign-educated physical therapist who has a valid unrestricted license from another U.S. jurisdiction provided that the applicant meets all of the requirements in 16.20.3.8 NMAC and 16.20.9 NMAC.

[16.20.3.10 NMAC - Rp, 16.20.3.10 NMAC, 11-01-04; A, 03-02-06; A, 1-12-08]

16.20.3.11 PROVISIONS FOR EMERGENCY LICENSURE:

A. Physical ~~[therapist's]~~ therapists and physical therapist assistants currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster upon:

(1) ~~[a completed application signed]~~ completing a signed and notarized [and] application accompanied by proof of identity, which may consist of a copy of a ~~[drivers] driver's~~ license, passport or other photo identification issued by a governmental entity;

(2) submitting documentation of graduation from an accredited (CAPTE) educational program, proof of successful completion of the national physical therapy examination (NPTE) and jurisprudence exam as specified in 16.20.3.8 NMAC, of these rules (verification may be obtained by email, online verification from the testing agency or university, mail or by fax);

(3) verification of licenses held in other states and verification of employment if applicable (verification may be ~~[obtained]~~ sent to the board by mail, fax or email, through online verification from the state of licensure);

(4) proof or documentation of residency and or employment in the area of the federal disaster.

B. The board may waive the following requirements for licensure:

- (1) application fee's prorated for four months;
- (2) the specific forms required

under 16.20.3.8 if the applicant is unable to obtain documentation from the federal declared disaster areas.

C. Nothing in this section shall constitute a waiver of the requirements for licensure contained in the board's rules and regulations.

D. Licenses issued under (this emergency provision) shall expire four months following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before February 1, following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

[16.20.3.11 NMAC - N/E, 11-16-2005; Repr, 03-02-06; A, 1-12-08]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.4 NMAC Section 8, effective 1-12-08.

16.20.4.8 T E M P O R A R Y LICENSURE FOR U.S. TRAINED APPLICANTS:

A. Upon receipt of an application form which evidences satisfactory completion of all application requirements for licensure as provided in Section 61-12-10 NMSA, of the Physical Therapy Act except passage of the NPTE, the registrar of the board may issue to the applicant a non-renewable temporary license to practice physical therapy in New Mexico.

B. ~~[The board may issue a temporary license for a period not to exceed 180 days or as recommended by the board.]~~ Under no circumstance will the non-renewable temporary license be valid for a period longer than one year.

C. Issuance of a temporary license may be denied if:

(1) the applicant has worked as a physical therapist or physical therapist assistant without a license in New Mexico;

(2) the applicant has violated the code of ethics of the American physical therapy association; or

(3) the applicant has failed the licensure examination in any state.

D. The holder of a temporary license MUST sit for the NPTE within 180 days after issuance of the temporary license. Failure to sit for the examination within 180 days, automatically voids the temporary license. Where the holder of the temporary license is a foreign national, the 180 days begin to run once the foreign national has entered the United States.

E. The holder of a temporary license may work only under the direct supervision of a New Mexico unrestricted licensed physical therapist who is on-site. The supervising physical therapist may NOT hold a temporary license. ~~[(refer to 16.20.6.7 NMAC-)]~~ (See 16.20.6.7 NMAC.) The supervising physical therapist shall be licensed in New Mexico with a minimum of six months experience in a clinical setting. ~~[(Refer to Subsection A of 16.20.6.7 NMAC-)]~~ (See Subsection A of 16.20.6.7 NMAC.) Prior to the issuance of an applicant's temporary license, the supervising physical therapist shall file with the board a written statement assuming full responsibility for the temporary licensee's professional activities. Filing is effective upon receipt by the board. This statement shall remain in effect until licensure of the temporary licensee, or until expiration of the temporary license.

F. The temporary licensee may not provide physical therapy services until the temporary license is received and is posted in a conspicuous place at the temporary licensee's principle place of practice.

G. No supervising physical therapist shall be responsible for the simultaneous supervision of more than two temporary licensees.

H. The supervising physical therapist shall co-sign all evaluations, progress notes, and discharge summaries written by the temporary licensee.

I. The temporary license shall state the name and address of the licensee's place of employment. Should the place of employment and/or the employer change during the period of temporary licensure, the temporary licensee MUST notify the board of any such change within five (5) work days of termination of employment. A supervisory form from the new employer will be required before a revised temporary license is issued. The board will issue a revised temporary license as per the fee schedule, for each issuance; however, the date of issue and expiration will remain the same as the first temporary license.

J. The supervisory form may be obtained from the board office.

[03-29-83; 02-19-88; 08-01-89; 09-03-92; 02-01-95; Rn & A, 16 NMAC 20.4, 10-15-97; 16.20.4.8 NMAC - Rn & A, 16 NMAC 20.4.8, 08-31-00; A, 03-02-06; A, 1-12-08]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.5 NMAC Section 8, effective 1-12-08.

16.20.5.8 SCHEDULE OF FEES:

The following fees shall be nonrefundable.

A. Application for Full Licensure:

- (1) physical therapist: \$110.00
- (2) physical therapist assistant: \$100.00

B. Request for Temporary License: \$25.00; revised temporary license: \$10.00

C. Jurisprudence Exam: \$10.00; applicants who fail to pass this exam will need to pay the fee for each subsequent exam taken.

D. National Physical Therapy Examination:

~~[(1) contact the board for the current fees set by the testing contractor for both physical therapists and physical therapist assistants;~~

~~[(2) board administrative fee for NPTE: \$25.00.] Contact the board for the current fees set by the testing contractor for both physical therapists and physical therapist assistants.~~

E. Annual Renewal:

(1) physical therapist: ~~[\$70.00]~~ \$80.00

(2) physical therapist assistant: ~~[\$50.00]~~ \$60.00

F. Penalty for Late Renewal:

(1) physical therapist: ~~[\$70.00]~~ \$80.00

(2) physical therapist assistant: ~~[\$50.00]~~ \$60.00

~~[G. Reinstatement Fee:~~

~~[(1) physical therapist: \$70.00~~

~~[(2) physical therapist assistant: \$50.00]~~

~~[H.]~~ G. Duplicate License: \$25.00; a duplicate license may be requested in the event of loss of the original license or name change.

~~[I.]~~ H. Mailing List (paper copy): \$200.00

~~[J.]~~ I. Electronic List: \$250.00

~~[K.]~~ J. Verification of Licensure by Endorsement: \$30.00

~~[L.]~~ K. Continuing Education Approval for Course Provider: \$45.00

~~[M.]~~ L. Copy Charge for Public Records (per page): ~~[\$1.00]~~ \$0.25

~~[N.]~~ M. Returned Check Charge (per check): \$25.00

~~[O.]~~ N. Other administrative fees.

O. Inactive status fees:

(1) initial inactive status fee: \$20.00

(2) annual inactive status fee: \$20.00

(3) reactivation fee for physical therapists: \$80.00

(4) reactivation fee for physical therapist assistants: \$60.00

[10-15-97; 16.20.5.8 NMAC - Rn & A, 16 NMAC 20.5.8, 08-31-00; A, 11-01-04; A, 03-02-06; A, 1-12-08]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.6 NMAC Sections, 7, and 8, effective 1-12-08.

16.20.6.7 DEFINITIONS:

~~[A. "Supervising physical therapist" means the licensed therapist designated on the supervisory form filed with the board.~~

~~B. "Referring physical therapist" means the licensed therapist who sets the plan of care for the patient which the physical therapist assistant is assisting] "Referring physical therapist" is the licensed therapist who sets the plan of care for the patient being treated by the physical therapist assistant.~~

[10-15-97; 16.20.6.7 NMAC - Rn, 16 NMAC 20.6.7, 08-31-00; A, 1-12-08]

16.20.6.8 PHYSICAL THERAPIST ASSISTANTS:

A. A physical therapist assistant may work only under the direction and supervision of a New Mexico physical therapist who is licensed pursuant to Section 61-12-10, ~~[and Subsection A and B] (A) and (B) of the Physical Therapy Act.~~

~~[The directing/supervising physical therapist, shall notify the board in writing of the commencement of the relationship, and] The referring physical therapist shall assume full responsibility for the professional activities of the assistant which are undertaken pursuant to his/her ~~[direction/supervision] direction or supervision. [The directing/supervising physical therapist shall provide the board with written notice of termination of the relationship within thirty (30) days.]~~~~

B. ~~[No]~~ A physical therapist may not be responsible for the direction and supervision of more than two full-time physical therapist assistants or two FTE's (full-time equivalency, totaling eighty (80) work hours per week) requiring supervision, including temporary physical therapists, temporary physical therapist assistants, or full-licensed physical therapist assistants.

C. A physical therapist may supervise more than two physical ther-

apist assistants provided combined FTE's do not exceed (80) hours per week.

~~[E.]~~ D. The direction and supervision of the physical therapist assistant shall include the following:

(1) the referring physical therapist is responsible for the patient's care;

(2) when physical therapy services are being provided, the [supervising] referring physical therapist must be on call and readily available [within a 100 mile radius or appoint another physical therapist in his/her absence] for consultation by phone, electronic mail or cellular phone when leaving the immediate area of his/her practice; [If the absence is for less than ten (10) work days, the supervising physical therapist must notify the board within five (5) work days in any of the following acceptable forms of communication: phone (physical therapist is responsible to document the name of the staff personnel they spoke with), written memo, or facsimile to the board office.]

(3) [A current written plan of care will be formulated for each patient by the referring physical therapist. The plan of care shall be revised following periodic reevaluations by the referring physical therapist, not to exceed 30 days.] the referring physical therapist will formulate a current written plan of care for each patient; the referring physical therapist will review the plan of care periodically, within thirty (30) days;

(4) [the physical therapist may assign responsibilities to the physical therapist assistant as defined in the accreditation handbook, the American physical therapy association January, 1985. Refer to standard VI, criterion B, subsection 2 pages 28 and 29;] the physical therapist assistant shall not:

(a) specify and/or perform definitive (decisive, conclusive, final) evaluative and assessment procedures; or

(b) ~~[alter a plan of care or goals.]~~ alter goals or a plan of care;

(5) the physical therapist assistant may sign daily notes without the ~~[co-signature of the physical therapist] physical therapist's co-signing; each daily treatment note in a patient's permanent record completed by a PTA must include the name of the referring physical therapist;~~

(6) the physical therapist assistant shall respond to acute changes in the patient's physiological state; the physical therapist assistant shall notify the ~~[supervising] referring physical therapist of those changes prior to the next treatment session. [03-29-83; 02-19-88; 08-01-89; 05-08-91; 09-03-92; 05-01-96; Rn & A, 16 NMAC 20.7, 10-15-97; 16.20.6.8 NMAC - Rn, 16 NMAC 20.6.8, 08-31-00; A, 03-02-06; A, 1-12-08]~~

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.7 NMAC Sections, 6, 7, 8, and 9, effective 1-12-08.

16.20.7.6 OBJECTIVE: The objective of Part 7 of Chapter 20 is to outline [supervision definitions and requirements] the definitions and requirements of supervision.

[10-15-97; 16.20.7.6 NMAC - Rn, 16 NMAC 20.7.6, 08-31-00; A, 1-12-08]

16.20.7.7 DEFINITIONS:

A. "On-site supervision" means that a physical therapist shall [be] continuously be on-site and actually present in the same building where the assistive personnel are performing services.

B. "Maintaining continued involvement" means that the supervising physical therapist or the physical therapist assistant shall personally contact the patient each treatment day to assess and monitor the patient's response to treatment. The licensed personnel shall sign all permanent records.

[10-15-97; 16.20.7.7 NMAC - Rn, 16 NMAC 20.7.7, 08-31-00; A, 1-12-08]

16.20.7.8 SUPERVISION OF LICENSED PERSONNEL:

A. [~~No~~] A physical therapist may not be responsible for the direction and supervision of more than two full-time [licensees, or two FTE's (full-time equivalency, two employees totaling 80 work hours per week) requiring supervision, including temporary physical therapists, temporary physical therapist assistants, or fully licensed physical therapist assistants.] physical therapist assistants, or two FTE's (full-time equivalency totaling eighty (80) work hours per week) requiring supervision, including temporary physical therapists, temporary physical therapist assistants, and licensed physical therapist assistants.

B. [~~A physical therapist that is supervising two (2) temporary licensees or physical therapist assistants or any combination of the two can not be a backup supervisor for another physical therapist.~~] A physical therapist may supervise two or more physical therapist assistants provided combined FTE's do not exceed more than eighty (80) hours per week.

[~~C. Should a physical therapist assistant or temporary licensee be supervised by physical therapists working part time, the split periods of supervision should be clarified on the supervisory form.~~

~~D. A physical therapist currently supervising a temporary licensee or physical therapist assistant, planning to~~

~~be away (vacation, leave of absence, continuing education) must arrange for another physical therapist to supervise the temporary licensee. If the absence is for less than ten (10) work days, the supervising physical therapist must notify the board within five (5) work days from the first day of absence in any of the following acceptable forms of communication: phone (physical therapist is responsible to document the name of the staff personnel they spoke with), written memo, or facsimile to the board office. For absences in excess of ten (10) work days, the supervising physical therapist must notify the board office in writing, that they are no longer responsible for supervision of a physical therapist assistant or temporary licensee.]~~

~~C. When supervising another licensee, a physical therapist planning an absence from work (vacation, leave of absence, continuing education) must arrange for another physical therapist to supervise the licensee in his place.~~

[~~E.~~] D. A physical therapist supervising a temporary licensee [or physical therapist assistant] must notify the New Mexico physical therapy licensing board, in writing, when they are no longer responsible for supervision of a [physical therapist assistant or] temporary licensee.

E. The referring physical therapist must hold documented conferences with the PTA regarding the patient. The PT is responsible for determining the frequency of the conferences consistent with accepted standards of practice.

[10-15-97; 16.20.7.8 NMAC - Rn, 16 NMAC 20.7.8, 08-31-00; A, 03-02-06; A, 1-12-08]

16.20.7.9 SUPERVISION OF UNLICENSED ASSISTIVE PERSONNEL:

[~~There shall be no more than two FTE's (full-time equivalency, two employees totaling 80 work hours per week) of unlicensed care giving assistive personnel per one FTE of licensed care giving personnel.~~] Each licensed FTE providing care-giving assistance may only supervise two unlicensed FTE's (full-time equivalency, totaling eighty (80) work hours per week) of care-giving assistive personnel. Each licensed FTE may supervise more than two unlicensed FTE's, provided combined FTE's do not exceed more than eighty (80) hours per week.

[10-15-97; 16.20.7.9 NMAC - Rn, 16 NMAC 20.7.9, 08-31-00; A, 1-12-08]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.8 NMAC Sections, 7, 8, and 9, effective 1-12-08.

16.20.8.7 DEFINITIONS:

[~~A. "Continuing professional education" means learning experiences which enhance and expand the skills, knowledge, and abilities of physical therapists and physical therapist assistants to enable them to remain current and render competent professional service to clients, the profession, and the public.~~

~~B. One (1) "contact hour" equals sixty (60) minutes.~~

~~C. "Lecture" means an educational talk given by a qualified individual.~~

~~D. "Panel" means the presentation of a number of views by several qualified individuals on a given subject.~~

~~E. "Workshop" means a series of meetings designed for intensive study, skill development, or discussion in a specific field of interest.~~

~~F. "Seminar" means directed study for a group for advanced study, work or discussion in a specific field of interest.~~

~~G. "Symposium" means a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various speakers.]~~

A. One (1) "contact hour" requires sixty (60) minutes.

B. "Lecture" means an educational talk given by a qualified individual.

C. "Continuing professional education" means learning experiences which enhance and expand the skills, knowledge, and abilities of physical therapists and physical therapist assistants to enable them to remain current and render competent professional service to clients, the profession, and the public.

D. "Fellowship" means a planned program designed to provide greater depth in a specialty or subspecialty area and requires a minimum of 1000 hours of instruction.

E. "Panel" means the presentation of a number of views by several qualified individuals on a given subject.

F. "Workshop" means a series of meetings designed for intensive study, skill development, or discussion in a specific field of interest.

G. "Seminar" means directed study for a group for advanced study, work or discussion in a specific field of interest.

H. "Symposium" means a

conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various speakers.

[10-15-97; 16.20.8.7 NMAC - Rn & A, 16 NMAC 20.8.7, 08-31-00; A, 1-12-08]

16.20.8.8 CONTINUING EDUCATION AND RENEWAL REQUIREMENTS:

A. Every licensed physical therapist and physical therapist assistant shall earn twenty (20) continuing education contact hours per year during each year of licensure. The first year during which 20 (twenty) contact hours must be earned is the year beginning on February 1 following license issuance and ending on the following January 31. Continuing education contact hours shall be prorated during the first year of licensure according to the month licensed as follows:

- (1) March: 18 contact hours
- (2) April: 17 contact hours
- (3) May: 15 contact hours
- (4) June: 13 contact hours
- (5) July: 12 contact hours
- (6) August: 10 contact hours
- (7) September: 8 contact hours
- (8) October: 6 contact hours
- (9) November: 5 contact hours
- (10) December: 3 contact hours.

B. Anyone licensed during the month of January will be issued a license through February 1 of the following year.

C. ~~[No license will be renewed in the absence of satisfactory evidence that the required continuing education contact hours as required by this section have been earned. Continuing education contact hours are required to be submitted with the renewal each year. The continuing education course completion certificates should NOT be sent to the board unless an audit notice as provided in this section is received.]~~ The licensee is responsible to retain all documentation of attendance for a minimum of three (3) years immediately preceding the current renewal.

D. The board office will mail a renewal notice to each licensee at least 30 days prior to the expiration date of the license.

E. Each licensee is responsible for submitting the required renewal fee ~~[and continuing education]~~ by the expiration date whether or not a renewal notice is received by the licensee and licensee shall not practice if license is expired.

F. All license renewals postmarked after February 1 will be subject to a late fee. (Refer to Part 6, Schedule of Fees.)

G. The board shall audit a percentage of renewal applications each

year to verify the continuing education requirement. The licensee should maintain a file that includes the continuing education course documentation up to three (3) years.

(1) If a NOTICE OF AUDIT letter is received with the annual renewal form, evidence of continuing education hours earned during the ~~[renewal year]~~ last three (3) years must be submitted to the board as requested and as required in the Physical Therapy Act and by this rule ~~(there has to be at least 60 hours within a three (3) year period).~~

(2) If the licensee is NOT AUDITED, the licensee will have to sign an affidavit attesting to the completion of the required hours of continuing education and all documentation of attendance and agendas should be retained by the licensee for a minimum of three (3) years immediately preceding the current renewal.

(3) The board reserves the right to audit continuing education attendance certificates whenever there is reasonable doubt the courses submitted, dates, or hours may be incorrect.

H. The board will allow a maximum of twenty (20) continuing education contact hours to be carried over into the next licensing year ~~[-beginning February 1, 2008 the board will no longer allow carry over hours].~~

I. Credit will be given for programs attended between the renewal due date (January 15) and the license expiration date (February 1) providing that the program was not submitted for credit for the prior year.

J. Licensees serving in the armed forces reserve or national guard.

(1) The license of a physical therapist or physical therapist assistant who do not earn the required continuing education contact hours as provided in this section due to his or her call to active duty in the armed forces reserves or the New Mexico national guard, will not lapse for failure to earn continuing education hours.

(2) A physical therapist or physical therapist assistant who was or is called to active duty in the armed forces reserves or New Mexico national guard are required to provide official documentation that the licensee is a member of the armed forces reserves or the national guard and was or is being called to active duty.

(3) Upon the physical therapist or physical therapist assistant's return to civilian status, the licensee shall pay the license renewal fee and resume earning continuing education contact hours prorated according to the licensee's months of service as required to maintain his or her licensure as a physical therapist or physical therapist assistant.

[10-15-97; 16.20.8.8 NMAC - Rn & A, 16

NMAC 20.8.8, 08-31-00; A, 02-15-04; A, 11-01-04; A, 03-02-06; A, 1-12-08]

16.20.8.9 APPROVAL OF CONTINUING EDUCATION CONTACT HOURS:

A. Programs must follow the criteria and guidelines established by the board as follows to receive continuing education credit on courses that have not received prior approval from the board:

(1) each program adheres to the board's American physical therapy association (APTA) definition for continuing professional education;

(2) each program addresses needs (problems and issues) faced by physical therapists and physical therapist assistants;

(3) each program has specific written learning outcomes (objectives) based on identified needs;

(4) each program is planned and conducted by qualified individuals;

(5) program content and instructional methods for each program are based on learning objectives; and

(6) participants demonstrate their attainment of the learning outcomes, (i.e., various methods can be used such as: questions, discussions, written oral exercises, problems, case studies, etc.); and

(7) the same program may be provided more than one time and at different locations within the calendar year in which the fee was paid without the payment of additional fees.

B. Prior approval of continuing education is not required; however, prior approval may be obtained upon request by the licensee.

~~[(1) An "application for continuing education approval" form must be completed and submitted to the board.~~

~~(2) The fee required for each program approved by the board is a nonrefundable fee of \$45.00. (Once the fee has been paid for a program, any number of physical therapists and physical therapists assistants may attend the program without paying additional fees.)~~

~~(3) The same program may be provided more than one time and at different locations within the calendar year in which the fee was paid without the payment of additional fees.~~

~~(4) Any \$45.00 fee is valid for the calendar year in which it is paid.~~

~~(5) It may be possible to obtain twenty (20) contact hours without having to pay the \$45.00 fee. A roster of approved courses is. Licensees are encouraged to contact the board before taking a course to see if it has already been approved for a particular calendar year. If the course was approved, the licensee need only attend the course and then submit the course comple-~~

~~tion documents with the renewal. If the course has not been approved, a \$45.00 fee must be submitted with the application for continuing education approval form for pre-approval.~~

~~(6) The application for continuing education approval is available online. Please provide all information requested because if an application form is incomplete, the approval process will be delayed. The board requires sixty (60) days from receipt of the application until notification of approval is returned.]~~

C. Programs approved by the APTA will be automatically accepted by the board. Prior approval is not required.

D. Credit screening procedures as follows:

(1) the board or its designee, must approve each request for continuing education credit;

(2) the party requesting approval will be informed of the board's determination within sixty (60) calendar days of receipt of the request; and

(3) an individual whose request has been denied may appear at the next board meeting following notice of denial to ask the board to reconsider its determination.

E. Final determination of values of continuing education will remain at the discretion of the board.

F. Programs considered appropriate for continuing education, include, but are not limited to those listed below.

(1) In the case of **university or college courses** taken for credit, provide the board with:

(a) name of course;
(b) number of course credit hours;
(c) inclusive dates of attendance;
(d) name of instructor and instructor's credentials;

(e) published course description from college or university;

(f) completed transcript or grade report with a passing grade of "C" or better;

(g) name of institution; and

(h) brief course summary demonstrating the course's relationship to physical therapy; (maximum twenty (20) contact hours are awarded for each 3 credit course).

(2) **Physician in-service programs** or regular physical therapy staff in-service programs, provide the board with:

(a) name of program;

(b) number of hours spent in program;

(c) inclusive dates of attendance;

(d) name of instructor or supervisor of program; documentation of instructor background and expertise;

(e) name of institution;

(f) brief course summary demonstrating the course's relationship to physical

therapy; (maximum allowed per year is four (4) contact hours).

(3) **Management courses:** (Maximum allowed per year is ten (10) contact hours.)

(4) **Published works**, includes abstracting for professional journal, awarded on an individual basis, provide the board the following:

(a) provide a copy of the publication written which will be returned to the licensee upon request; and

(b) publication must be published in the year for which the contact hours are requested; (maximum allowed per year is twenty (20) contact hours).

(5) **Preparation and/or presentation of a workshop/in-service**, awarded on a case by case basis for any one given presentation, by providing the board the following:

(a) proof of preparation may be an outline, copy of handouts, copy of overheads or transparencies, and

(b) a copy of the agenda showing name of licensee as presenter; (maximum allowed per year is ten (10) contact hours);

(c) contact hours for the presenter will be calculated at three (3) times the number of hours of audience participation (e.g., a two hour workshop equals 6 hours for the presenter).

(6) **Certificate courses for an advanced specialty**, provide the board a certificate of completion signed by the program sponsor. (Maximum allowed per year is twenty (20) contact hours.)

(7) **Video tapes, cassettes, or satellite programs**, provide the board the following:

(a) name of video;

(b) name of instructor;

(c) instructor's credentials;

(d) number of minutes;

(e) summary (subject of video, what was learned, and how it related to the physical therapy scope of practice or the licensee's position; and

(f) signature (the licensee's and a supervisor's); (maximum allowed per year is ten (10) contact hours).

(8) **Reading a book**, provide the board the following:

(a) name of book;

(b) author and author's credentials';

(c) number of pages;

(d) summary (subject of book, what was learned, and how it relates to the physical therapy scope of practice or the licensee's position; and

(e) signature (the licensee's and a supervisor's); (maximum allowed per book is two (2) contact hours); (maximum allowed per year is four (4) contact hours).

(9) **Conducting physical therapy research**, provide the board the follow-

ing:

(a) title and description of research project, including brief timeline;

(b) names of other persons involved in project (i.e., co-investigators or supervisors);

(c) a brief statement indicating how participation in the project is related to the licensee's present or future position in the field of physical therapy;

(d) a brief statement indicating how participation in the project is benefiting the applicant's therapy skills or research skills; and

(e) provide a copy of the research report (if project has been completed); (if report is incomplete), credit will be allowed by providing the listed information or by receipt of the college transcript; (the board will determine the number of contact hours allowed).

(10) **Home study courses**, provide the board a copy of the certificate of completion provided by the program provider.

(11) **Internet courses**, provide the board a copy of the certificate of completion provided by the program provider.

(12) **Alternative medicine seminars**, provide the board a letter from the licensee explaining how the course relates to the physical therapy scope of practice. The board will approve these courses on a case by case basis.

(13) **Courses where certificates of attendance are not issued**, provide the board the following:

(a) a canceled check for the course registration fee (submit copy of front and back of check);

(b) proof of transportation (i.e., copy of plane ticket and hotel receipt); and

(c) list of courses attended and hours attended (i.e., copy descriptions of courses and hours from program agenda).

(14) **Credit for supervising a student in clinical education**, provide the board with a copy of the cover and signature page (with student's name blacked out to maintain confidentiality) of the student evaluation completed by the licensee-supervisor. One (1) continuing education contact hour may be approved for each forty (40) contact hours of supervision in clinical education. The maximum number of continuing education contact hours approved for supervision in clinical education is ten (10) contact hours per year. A licensee may receive credit for clinical supervision under this provision only one time throughout the licensee's practice as a physical therapist or physical therapist assistant in the state of New Mexico.

(15) Residencies, Fellowships, and Examinations.

(a) Successful completion of a specialty examination may be submitted for

continuing education consideration. A list of the specialty examinations that qualify for continuing education will be maintained by the board. The maximum number of continuing education contact hours is thirty (30) per year.

(b) Successful completion of an American physical therapy association (APTA) credentialed residency or fellowship program may be submitted for continuing education consideration. The maximum number of continuing education contact hours is thirty (30) per year.

(c) Successful completion of an examination of the federation of state boards of physical therapy pertaining to continued competence may be submitted for continuing education consideration. The maximum number of continuing education contact hours is fifteen (15) per year.

G. **Ineligible activities** include, but are not limited to:

(1) orientation and in-service programs dealing with organizational structures, processes, or procedures;

(2) meetings for purposes of policy making;

(3) annual association, chapter, district, or organizational, and non-educational meetings;

(4) entertainment or recreational meetings or activities;

(5) committee meetings, holding of offices, serving as an organizational delegate;

(6) visiting exhibits;

(7) individual self-directed studies unless approved by APTA; and

(8) CPR education.

[10-15-97; 16.20.8.9 NMAC - Rn & A, 16 NMAC 20.8.9, 08-31-00; A, 02-15-04; A, 03-02-06; A, 1-12-08]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.9 NMAC Sections, 8, and 9, effective 1-12-08.

16.20.9.8 EQUIVALENT: The foreign-educated applicant must have graduated from a physical therapist education program that prepares the applicant to practice without restriction in the United States. This includes coursework in those elements of practice that are necessary for autonomous practice such as determining a patient's diagnosis for physical therapy and managing a patient's care within healthcare systems found in the United States. The coursework content should be substantially equivalent to coursework completed by graduates of accredited programs in the United States. [Substantial equivalency in coursework content as well as required

~~semester credits is determined by a board-sanctioned credentials review. The minimum number of semester hour credits required for a foreign-educated applicant is 120. Of this 120 semester hour credits, the applicant must submit evidence of no less than forty two (42) semester hour credits in college level general education and no less than sixty nine (69) semester hour credits in professional education using the course work evaluation tool, fourth edition, as approved by the board.] Substantially equivalent means the applicant has satisfied or exceeded the minimum number of credits required in general and professional education needed for a U.S. first professional degree in physical therapy. Substantial equivalency in coursework content, as well as, required semester credits is determined by a board-sanctioned credentials review using the appropriate coursework evaluation tool (CWT) adopted by the federation of state boards of physical therapy (FSBPT). The appropriate CWT means the latest edition CWT that applies to the time the foreign educated physical therapist graduated from his or her physical therapy program.~~

[03-29-83; 02-19-88; 01-28-93; 06-30-94; Rn, 16 NMAC 20.10, 12-15-97; 16.20.9.8 NMAC - Rn & A, 16 NMAC 20.9.8, 08-31-00; A, 02-15-04; A, 1-12-08]

16.20.9.9 C R E D E N T I A L E V A L U A T I O N: Foreign-educated applicants must submit a credential evaluation from an educational credentialing evaluation service that uses a course work evaluation tool approved by the board.

A. The minimum educational credentials of a foreign-educated physical therapist should be a degree in physical therapy with all credits being earned at an institution of higher learning.

~~(1) For applicants that graduated after December 31, 2002, the requirement is documentation of graduation with a post-baccalaureate degree in physical therapy.~~

~~(2) For applicants that graduated prior to December 31, 2002, the requirement is a minimum of documentation of graduation with a baccalaureate degree in physical therapy.]~~

B. The board will accept final credential reports only from the credentialing service and only if the credential evaluation has been prepared within one year prior to the application date.

C. The credentialing agency must identify and list those courses which would not transfer to the U.S. as a "C" or above or "pass" or "credit" in accordance with the most current version of the national association for foreign student affairs handbook on the placement of foreign graduate students. The agency must

omit any of these courses that are required physical therapy courses when evaluating the equivalency of the credentials to a U.S. degree in physical therapy.

D. Should the foreign-educated applicant's credential evaluation fail to demonstrate equivalency according to standards of accredited physical therapy programs in the United States, upon a request by the applicant for reconsideration, the board will reconsider whether the applicant has substantially met the requirements of [Section A,] 16.20.9.8 NMAC.

[03-29-83; 08-01-89; 05-08-91; 09-30-95; Rn & A, 16 NMAC 20.10.11, 12-15-97; 16.20.9.9 NMAC - Rn, 16 NMAC 20.9.9, 08-31-00; A, 02-15-04; A, 1-12-08]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

6.30.7 NMAC, Dual Credit, filed 8-2-2005 is repealed and replaced by 6.30.7 NMAC, Dual Credit, effective 01-01-08.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS
PART 7 DUAL CREDIT**

6.30.7.1 ISSUING AGENCY: New Mexico Public Education Department (PED)
[6.30.7.1 NMAC - Rp, 6.30.7.1 NMAC, 01/01/08]

6.30.7.2 SCOPE: This rule applies to public school districts, high school students who attend public school districts, and public postsecondary institutions in New Mexico. Districts and public postsecondary institutions are required to implement rules no later than the beginning of the 2008-2009 school year.
[6.30.7.2 NMAC - Rp, 6.30.7.2 NMAC, 01/01/08]

6.30.7.3 STATUTORY AUTHORITY: Section 22-2-1, 22-2-2, 9-24-8, 21-1-1.2 NMSA 1978.
[6.30.7.3 NMAC - Rp, 6.30.7.3 NMAC, 01/01/08]

6.30.7.4 DURATION: Permanent
[6.30.7.4 NMAC - Rp, 6.30.7.4 NMAC, 01/01/08]

6.30.7.5 EFFECTIVE DATE: January 1, 2008, unless a later date is cited at the end of a section.
[6.30.7.5 NMAC - Rp, 6.30.7.5 NMAC, 01/01/08]

6.30.7.6 OBJECTIVE: The purposes of dual credit are:

A. to increase educational opportunities for high school students, and
B. to increase the overall quality of instruction and learning available through secondary schools.
[6.30.7.6 NMAC - Rp, 6.30.7.6 NMAC, 01/01/08]

6.30.7.7 DEFINITIONS:

A. "ACT" is the academic competency test.

B. "Agreement" is the dual credit master agreement.

C. "Concurrent enrollment" [RESERVED]

D. "Core course" means courses required for high school graduation as defined in 22-13-1.1 NMSA, 1978, excluding electives.

E. "District" as defined in 6.30.2.9 NMAC means a public school district, including a charter school or charter school district, and a state supported educational institution.

F. "Dual credit council" is an advisory group consisting of staff of the public education department and higher education department that issues recommendations to the secretaries of the higher education and public education departments regarding dual credit issues outside of the scope of the agreement.

G. "Dual credit program" means a program that allows high school students to enroll in college-level courses offered by a public postsecondary institution that may be academic or career technical but not remedial or developmental, and simultaneously to earn credit toward high school graduation and a postsecondary degree or certificate.

H. "Early college" [RESERVED]

I. "Elective course" means courses defined and approved by local school boards.

J. "FERPA" is the Family Educational Rights and Privacy Act [20 U.S. Code 1232g].

K. "Form" is the dual credit request form.

L. "General fees" as defined in 5.7.18 NMAC means a fixed sum charged to students for items not covered by tuition and required of such a proportion of all students that the student who does not pay the charge is an exception. General fees include fees for matriculation, library services, student activities, student union servic-

es, student health services, debt service and athletics. An institution may charge fees in addition to general fees that are course-specific or that pertain to a smaller proportion of students.

M. "Individualized education program" or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR Secs. 300.320 through 300.324.

N. "Postsecondary institution" refers to a public postsecondary educational institution operating in the state, including a community college, branch community college, technical vocational institute, and four-year educational institution.

[6.30.7.7 NMAC - Rp, 6.30.7.7 NMAC, 01/01/08]

6.30.7.8 UNIFORM MASTER AGREEMENT:

A. The agreement specifies the means by which the state will provide equal opportunities to all high school students who wish to participate in the dual credit program.

B. School districts, charter schools and postsecondary institutions providing dual credit programs shall complete the agreement and the school district shall submit the completed agreement to the public education department.

C. A completed agreement shall contain signatures from all parties and includes an appendix developed collaboratively by the school district or charter school, and postsecondary institution that specifies eligible dual credit courses.

D. School districts and charter schools may complete agreements with multiple postsecondary institutions.

E. A fully-executed copy of each agreement shall be submitted to the public education department within 10 days of approval.

F. The agreement:

(1) specifies eligible courses, academic quality of dual credit courses, student eligibility, course approval, course requirements, required content of the form, state reporting, liabilities of parties, and student appeals;

(2) states the roles, responsibilities, and liabilities of the school district or charter school, the postsecondary institution, student, and the student's family.

G. Duties and responsibilities of the postsecondary institution. The postsecondary institution shall:

(1) designate a representative to review and sign the completed form with the understanding that only forms endorsed by all parties shall constitute a dual credit approval request;

(2) determine, in collaboration

with the district or charter school, the required academic standing of each student eligible to participate in the dual credit program;

(3) collaborate with the district or charter school to reach agreement on admission and registration of eligible dual credit students for the stated semester;

(4) provide the form to eligible students and appropriate district or charter school staff online and in hard copy;

(5) provide information and orientation, in collaboration with the district or charter school, to the student and parent or guardian regarding the responsibilities of dual credit enrollment including academic rigor, time commitments, and behavioral expectations associated with taking college courses and the importance of satisfactorily completing the postsecondary institution credits attempted in order for dual credit to be awarded;

(6) inform students of course requirement information which includes course content, grading policy, attendance requirements, course completion requirements, performance standards, and other related course information;

(7) provide course placement evaluation and consider a high school college readiness assessment to verify a student's academic skill level and to ensure compliance with course prerequisites;

(8) employ a method of qualifying the student for dual credit that demonstrates that the student has the appropriate skills and maturity to benefit from the instruction requested;

(9) provide advisement to review the appropriateness of each student's enrollment in a course prior to registration in terms of academic readiness, age requirements, and programmatic issues;

(10) advise the parent or guardian of FERPA rules;

(11) provide the district or charter school, within the first thirty days of the academic term, access to each student's official schedule of classes as verification of registration;

(12) track progress of dual credit enrolled students on the issue of academic performance and provide reports, as needed, to the district or charter school;

(13) retain the official transcript or grade report of the dual credit student that records the term of enrollment, courses/credits attempted, courses/credits completed, grades and grade point average earned;

(14) release, at the request of the student, official postsecondary institution transcripts in accordance with the postsecondary institution's transcript request practices;

(15) provide final grades to the district or charter school for each dual cred-

it student;

(16) deliver final grades for all dual credit students to the district or charter school with sufficient time for high school teachers to submit their final grades; this schedule shall be defined by the parties in the agreement and shall address the time frame appropriate for determining student graduation from high school;

(17) waive all general fees for dual credit courses;

(18) be encouraged to waive tuition for high school students taking dual credit courses;

(19) formula funding calculations; [RESERVED]

(20) make every effort to adopt textbooks for at least three years;

(21) approve faculty for all dual credit courses;

(22) retain educational records in accordance with New Mexico statutes and record retention regulations as per 1.20.3 NMAC;

(23) have an appeals process pertaining to student enrollment in dual credit programs;

(24) comply with data collection and reporting provisions in 6.30.7.12 NMAC; and

(25) have the right to appeal to the dual credit council on issues related to implementing the dual credit program, agreement, and rules.

H. Duties and responsibilities of the school district or charter school. The district or charter school shall:

(1) designate a representative to collaborate with the postsecondary institution to reach agreement on admission and registration of eligible dual credit students for the stated semester;

(2) provide information and orientation to students about opportunities to participate in dual credit programs during student advisement, academic support, and formulation of annual next step plans;

(3) determine, in collaboration with the postsecondary institution, the required academic standing of each student eligible to participate in the dual credit program;

(4) provide the form to eligible students and school counselors or appropriate school official online and in hard copy;

(5) provide information and orientation, in collaboration with the postsecondary institution, to the student and student's family regarding the responsibilities of dual credit enrollment including academic rigor, time commitments, and behavioral expectations associated with taking college courses and the importance of satisfactorily completing the college credits attempted in order for dual credit to be awarded;

(6) employ a method of qualify-

ing the student for dual credit based on factors which may include academic performance review, use of next step plan, assessments, advisement and career guidance, and therefore recommend enrollment at the postsecondary institution with evidence that the student has the appropriate skills and maturity to benefit from the instruction requested;

(7) inform students of course requirement information which includes course content, grading policy, attendance requirements, course completion requirements, performance standards, and other related course information;

(8) notify the postsecondary institution if the student's official schedule of classes is in conflict with the school endorsed registration;

(9) provide appropriate accommodations and services for special education students while the students are enrolled in dual credit classes, including academic adjustments and auxiliary aids and services for eligible students across educational activities and settings (e.g. equipping school computers with screen-reading, voice recognition or other adaptive hardware or software and providing note-takers, recording devices, or sign language interpreters, or other adaptation as required by law);

(10) inform students in need of accommodations or other arrangements of the need to speak directly with the disabilities coordinator at the postsecondary institution;

(11) furnish an official high school transcript to the postsecondary institution if required by the postsecondary institution;

(12) work collaboratively with the postsecondary institution to submit a student's request for change in registration according to postsecondary institution policies and within officially published deadlines;

(13) make it clear to students that if they fail or withdraw from dual credit classes that they were intending to use to substitute for a high school requirement that they will have to make up those credits in order to graduate;

(14) record, unchanged, the grade given to the dual credit student by the postsecondary institution;

(15) pay the cost of the required textbooks and other course supplies for the postsecondary course the dual credit student is enrolled in through purchase arrangements with the bookstore at the postsecondary institution or other cost-efficient methods;

(16) collaborate with the postsecondary institution to offer dual credit courses at the high school site according to dis-

trict school or charter school site time blocks;

(17) retain educational records in accordance with New Mexico statutes and record retention regulations as per 1.20.3 NMAC;

(18) have an appeals process pertaining to student enrollment in dual credit programs;

(19) comply with data collection and reporting provisions in 6.30.7.12 NMAC; and

(20) have the right to appeal to the dual credit council on issues related to implementing the dual credit program, agreement, and rules.

I. Duties and responsibilities of the student. The student shall:

(1) qualify for dual credit courses by:

(a) being enrolled in a high school or charter school in one-half or more of the minimum course requirements approved by the New Mexico public education department for public school students;

(b) obtaining permission from the district or charter school representative or member of the individualized education program team, parent or guardian, and postsecondary institution representative prior to enrolling in a dual credit course; and

(c) meeting postsecondary institution requirements to enroll as a dual credit student;

(2) discuss potential dual credit courses with the appropriate district or charter school and postsecondary institution staff, including postsecondary institution admission and registration requirements, course requirements, credits to be attempted, credits to be awarded, scheduling under dual credit, and implications for failure to successfully complete the course;

(3) obtain course requirements for each course, including course prerequisites, course content, grading policy, attendance requirements, course completion requirements, performance standards, and other related course information;

(4) meet the prerequisites and requirements of the course(s) to be taken;

(5) complete the form available online or in hard copy from the district, charter school, or postsecondary institution;

(6) return the form with the specific course(s) requested, required signatures and, if applicable, a current high school transcript, and any assessment results to the district or charter school representative;

(7) obtain approval for enrolling in the dual credit program each semester by acquiring all necessary signatures on the form;

(8) register for courses during the postsecondary institution's standard regis-

tration periods;

(9) discuss any request for a change in registration (add, drop, withdrawal) and complete all necessary forms and procedures with appropriate district or charter school and postsecondary institution staff;

(10) comply with the district or charter school and postsecondary institution student code of conduct and other institutional policies;

(11) have rights and privileges that include:

(a) the rights and privileges equal to those extended to public secondary and postsecondary students, unless otherwise excluded by any section of this agreement;

(b) use of the postsecondary institution library, course related labs and other instructional facilities, use of the postsecondary institution programs and services such as counseling, tutoring, advising, and special services for the students with disabilities, and access to postsecondary institution personnel and resources as required; and

(c) the right to appeal, in writing to the district or charter school or postsecondary institution, as applicable, any decision pertaining to enrollment in the dual credit program;

(12) return the textbooks and unused course supplies to the district or charter school when the student completes the course or withdraws from the course;

(13) arrange transportation to the site of the dual credit course; depending upon the time and course location, the student may have access to transportation through the district or charter school if the dual credit course is offered during the school day;

(14) be responsible for course-specific (e.g. lab, computer) fees;

(15) allow educational records to be retained and disseminated in accordance with the requirements of the FERPA;

(16) sign the FERPA release form, along with student parent or guardian, if applicable, in order to participate in dual credit courses; and

(17) abide by regular operating institutional calendar and schedule of both the district or charter school and postsecondary institution; in instances in which the calendars are incongruent, the student is required to independently satisfy both calendar requirements and may consult with school counselors for assistance.

[6.30.7.8 NMAC - N, 01/01/08]

6.30.7.9 LIMITATIONS OF THE AGREEMENT.

A. The agreement may not be altered or modified by any party adhering to it, with the exception of the appendix.

B. School districts and

charter schools, in collaboration with postsecondary institutions, may modify the list of dual credit courses in the appendix of the agreement. Modifications shall be submitted to the higher education department and the public education department by the end of each semester.

C. The agreement shall automatically renew for additional fiscal years unless either party notifies the other party of their intent not to renew 60 days before the end of the fiscal year.

[6.30.7.9 NMAC - N, 01/01/08]

6.30.7.10 LIABILITIES OF PARTIES.

A. Dual credit status shall neither enhance nor diminish on-campus liabilities for the district or charter school or the postsecondary institution.

B. Management of risk and liabilities shall be in accordance with the district or charter school and the postsecondary institution policies and codes of conduct.

C. Personal liabilities for the student shall be equal to those of regular postsecondary institution students.

[6.30.7.10 NMAC - N, 01/01/08]

6.30.7.11 ELIGIBLE COURSES.

A. Types of courses.

(1) College courses that are academic or career technical (but not remedial or developmental) and that simultaneously earn credit toward high school graduation and a postsecondary degree or certificate shall be eligible for dual credit.

(2) Dual credit courses may be taken as elective high school credits.

(3) Dual credit courses may satisfy the requirements of high school core courses when the department standards and benchmarks are met and curriculum is aligned to meet postsecondary requirements.

(4) Dual credit courses may substitute high school core courses when the dual credit council determines there are exigent circumstances, for example there is limited high school capacity (staffing, space, scheduling) and the cabinet secretaries approve the dual credit council recommendation.

(5) Courses eligible for dual credit shall meet the rigor for postsecondary credit and be congruent with the college's normal offerings.

(6) Dual credit courses offered in high school settings shall conform to college academic standards.

(7) Course requirements for high school students enrolled in dual credit courses shall be equal to those of regular college students.

B. Identifying courses.

(1) The district or charter school in collaboration with the postsecondary institution shall determine a list of academic and career technical courses eligible for dual credit for inclusion into the appendix.

(2) The appendix shall contain the higher education common course number, if applicable, course subject and number, course title, and location of course delivery.

(3) The district or charter school shall annually submit the appendix to the higher education department and the public education department.

(4) The higher education department and the public education department shall post the appendix on their respective websites and update the appendix as needed.

C. Course delivery.

(1) Dual credit courses may be offered at high schools, postsecondary institutions, and off-campus centers as determined by the district or charter school in collaboration with the postsecondary institution offering the courses.

(2) Dual credit courses may be delivered during or outside of regular district or charter school hours.

(3) Postsecondary institutions may offer dual credit courses via distance learning (ITV, online, hybrid, correspondence) in accordance with 6.30.8 NMAC as this option becomes available and cost-effective. All dual credit course rules apply.

(4) Districts, charter schools, and postsecondary institutions participating in the cyber academy shall be subject to applicable rules pertaining to it.

D. Semesters dual credit may be taken; caps for dual credit; nature of high school credit earned.

(1) Students may enroll in dual credit courses during the fall and spring semesters. Students enrolled during these semesters are not responsible for the cost of textbooks or general fees. The student shall not be responsible for tuition if the postsecondary institution waives this cost.

(2) There is no state limit to the number of credits a student may earn through dual credit in an academic term.

(3) A 3:1 ratio of course work at the postsecondary to secondary level credit applies to elective courses when no comparable elective courses are offered at the high school. If the district and postsecondary institution offer comparable elective courses, the credit ratio shall be jointly proposed by the district and postsecondary institution to the dual credit council for review and approval. Students taking a 3-credit hour course offered at the postsecondary institution shall be equivalent to 1 unit at the district or charter school level. (3:1; 6-8:2, 1-2:1/2, etc.).

(4) Core course ratio
[RESERVED]

E. Dual credit council.

(1) The secretaries of the higher education department and public education department shall appoint individuals to a dual credit council consisting of six members.

(2) Council composition. The council shall consist of an equal number of higher education department and public education department staff. The higher education and public education department staff serve as council chairs in alternating years.

(3) The council shall issue recommendations to the department secretaries on issues not addressed in the agreement including determination of alignment of course content to determine the appropriate credit ratio.

(4) The council shall administer an appeals process for districts, charter schools, and postsecondary institutions.

(5) Districts and postsecondary institutions shall be allowed to continue current practices regarding core courses offered for dual credit until the council issues its recommendations or no later than the beginning of the 2009-2010 school year, the time that dual credit courses become a high school graduation requirement.

(6) The higher education department and public education department secretaries shall act jointly upon dual credit council recommendations.

[6.30.7.11 NMAC - N, 01/01/08]

6.30.7.12 DATA COLLECTION AND REPORTING.

A. Data collection.

(1) A completed form shall contain the high school student's name, student identification number, grade level, address, phone number, ACT high school code, high school name, postsecondary name, postsecondary course information (college course number, course title, day, time, location, semester, year, higher education credits, high school credits), a signed FERPA release form, required signatures, and, if applicable, date of birth.

(2) Each school district, charter school, and postsecondary institution shall use the completed form to capture dual credit student data.

(3) Each school district, charter school, and postsecondary institution shall devise procedures for capturing dual credit data from the form.

(4) If applicable, each postsecondary institution shall bear responsibility for obtaining each dual credit student's social security number to meet data reporting requirements.

(5) Each postsecondary institution shall capture the public school student identification number retrieved from the

completed form for each dual credit high school student.

(6) The public education department shall modify student transcripts to include the student identification number.

(7) The public education department shall capture the postsecondary institution course subject and number and course title from the appendix of each completed agreement.

B. Data reporting.

(1) For each completed form received, each school district or charter school shall indicate which courses a dual credit student takes within the public education department data system.

(2) Each postsecondary institution shall report dual credit student data to the higher education department.

(3) Each school district and charter school shall submit the dual credit report during the appropriate reporting period to the public education department that contains:

(a) the number of dual credit students enrolled in college courses; and

(b) the courses taken and grades earned of each dual credit student.

(4) Each postsecondary institution shall submit the dual credit report during the appropriate reporting period to the higher education department that contains:

(a) the number of dual credit students enrolled in college courses; and

(b) the courses taken and grades earned of each dual credit student.

(5) The higher education department and the public education department shall verify and reconcile the respective dual credit reports at the end of each academic year.

(6) The public education department shall report to the legislature the high school graduation rates for participating school districts/charter schools for dual credit students once the students graduate from high school.

(7) The higher education department shall report to the legislature on the New Mexico postsecondary institutions dual credit students ultimately attend.

(8) The higher education department and the public education department shall annually report to the legislature the estimated cost of providing the statewide dual credit program, including tuition, fees, textbooks, and course supplies.

[6.30.7.12 NMAC - N, 01/01/08]

6.30.7.13 NON PUBLIC SCHOOL STUDENTS.

A. A home school, private school, or tribal school student who meets the eligibility criteria may receive both high school and college credit, provided that the student pays the full cost of the college

courses.

B. Non public school students taking college courses for both high school and college credit shall be considered as being concurrently enrolled by the postsecondary institution for the purposes of data reporting.

[6.30.7.13 NMAC - N, 01/01/08]

HISTORY OF 6.30.7 NMAC:

History of Repealed Material:
6.30.7 NMAC, Dual Credit, filed 8/2/2005 - Repealed effective 01/01/08.

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

Notice of Repeal

1.17.216 NMAC, Judicial Records Retention and Disposition Schedule for the New Mexico Supreme Court, filed 12-7-2001, is hereby repealed and replaced with the new 1.17.216 NMAC, Judicial Records Retention and Disposition Schedule for the Supreme Court, effective January 7, 2008.

1.18.430 NMAC, Executive Records Retention and Disposition Schedules for the Public Regulation Commission, filed 11-15-2000, is hereby repealed and replaced with the new 1.18.430 NMAC, Executive Records Retention and Disposition Schedules for the Public Regulation Commission, effective January 7, 2008.

1.18.644 NMAC, Executive Records Retention and Disposition Schedules for the Division of Vocational Rehabilitation, filed 12-7-2001, is hereby repealed and replaced with the new 1.18.644 NMAC, Executive Records Retention and Disposition Schedules for the Division of Vocational Rehabilitation, effective January 7, 2008.

1.18.926 NMAC, Executive Records Retention and Disposition Schedule for the School for the Visually Handicapped, filed 6-21-2002, is hereby repealed and replaced with the new 1.18.926 NMAC, Executive Records Retention and Disposition Schedule for the School for the Blind and Visually Impaired, effective January 7, 2008.

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

December 5, 2007

Leo R. Lucero, Agency Analysis Bureau Chief
NM Commission of Public Records
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507

Mr. Lucero:

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

- * 1.17.216 NMAC JRRDS, New Mexico Supreme Court,
- * 1.18.430 NMAC ERRDS, Public Regulation Commission,
- * 1.18.644 NMAC ERRDS, Division of Vocational Rehabilitation, and
- * 1.18.926 NMAC ERRDS, School for the Blind and Visually Impaired.

A review of the rules shows that their impact is limited to the individual agency to which it pertain, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for it is approved.

Sincerely,

Sandra Jaramillo
State Records Administrator

SJ/lrl

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

SYNOPSIS

1.17.216 NMAC JRRDS, Supreme Court

1. Subject matter: 1.17.216 NMAC, Judicial Records Retention and Disposition Schedule for the Supreme Court. This rule is new and replaces 1.17.216 NMAC JRRDS, New Mexico Supreme Court an outdated version that was filed on 12/7/2001. This records retention and disposition schedule is a timetable for the management of specific records series for the Supreme Court. It describes each record series by record name, record function, record content, record filing system, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the office as

well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Supreme Court.

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

3. Interests of persons affected: Interests include the records produced and maintained by the Supreme Court.

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

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

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87507. Telephone number: (505) 476-7900.

7. Effective date of this rule: January 7, 2008.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.17.216 NMAC JRRDS, Supreme Court.

Alvin Garcia 12-4-07
Assistant Attorney General Date

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

SYNOPSIS

1.18.430 NMAC ERRDS, Public Regulation Commission

1. Subject matter: 1.18.430 NMAC, Executive Records Retention and Disposition Schedule for the Public Regulation Commission. This rule is new and replaces 1.18.430 NMAC ERRDS, Public Regulation Commission an outdated version that was filed on 11/15/2000. This records retention and disposition schedule is a timetable for the management of specific records series of the Public Regulation Commission. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Public Regulation Commission.

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

3. Interests of persons affected: Interests include the records produced and maintained by the Public Regulation Commission.

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

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they

do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: January 7, 2008.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.430 NMAC ERRDS, Public Regulation Commission.

Alvin Garcia 12-4-07
Assistant Attorney General Date

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.644 NMAC ERRDS, Division of Vocational Rehabilitation

1. Subject matter: 1.18.644 NMAC Executive Records Retention and Disposition Schedule for the Division of Vocational Rehabilitation. The retention and disposition requirements on this schedule are based on the legal and use requirements of the records and on their administrative, legal, fiscal and archival values. This records retention and disposition schedule was developed by the State Records Center and Archives (New Mexico Commission of Public Records), and approved by the State Records Administrator, the Director of the Division of Vocational Rehabilitation, and legal counsel for the Division of Vocational Rehabilitation.

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

3. Interests of persons affected: Interests include the records produced and maintained by the Division of Vocational Rehabilitation.

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

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

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7902.

7. Effective date of this rule: January 7, 2008.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.644 NMAC ERRDS, Division of Vocational Rehabilitation.

Alvin Garcia 12-4-07
Assistant Attorney General Date

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.926 NMAC ERRDS, School for the Blind and Visually Impaired

1. Subject matter: 1.18.926 NMAC, Executive Records Retention and Disposition Schedule for the School for the Blind and Visually Impaired. This rule is new and replaces 1.18.926 NMAC ERRDS, School for the Visually Handicapped an outdated version that was filed on 6/21/2002. This records retention and disposition schedule is a timetable for the management of specific records series for the School for the Blind and Visually Impaired. It describes each record series by record name, record function, record content, record filing system, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be main-

tained by the office as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the School for the Blind and Visually Impaired.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the School for the Blind and Visually Impaired. Persons and entities normally subject to the rules and regulations of the School for the Blind and Visually Impaired may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the School for the Blind and Visually Impaired.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the School for the Blind and Visually Impaired. Any person or entity outside the covered geographical area that conducts business with or through the School for the Blind and Visually Impaired may also be affected by this rule.

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

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87507. Telephone number: (505) 476-7900.

7. Effective date of this rule: January 7, 2008.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.926 NMAC JRRDS, School for the Blind and Visually Impaired.

Alvin Garcia 12-4-07
Assistant Attorney General Date

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.333 NMAC, Sections 230 and 234 effective 1/7/2008.

1.18.333.230 MVD VEHICLES SYSTEM:

A. Program: motor vehicle

B. Maintenance system: numerical by primary key

C. Description: system maintains, monitors, tracks and calculates data on information and history regarding vehicles registered in New Mexico. Data may include vehicle license numbers, vehicle identification numbers, insurance information, permit information, refunds, payments, etc.

D. Retention:

(1) Canceled vehicle license plate data: upon canceled plate purged from registration of vehicle to which the vehicle was assigned

(2) Driver and vehicle refund data: until annual audit report is released and cleared

(3) Mobile home title data: 50 years after date of change of ownership

(4) Vehicle or vessel title data: 25 years after date of change of ownership

(5) Vehicle or vessel registration data: three years after date of registration

(6) Parking placard data:

(a) Regular placard:
(i) Approved: eight years or until renewal of drivers license or identification card

(ii) Denied: seven years after date of denial

(b) Temporary placard:

(i) Approved: one year after date of expiration of placard

(ii) Denied: six months after date of denial

(7) Specialized plate data: one year after date of registration

(8) Salvage title data: 25 years after date of title issuance

(9) Nonrepairable certificate data: 25 years after date of certificate issuance

(10) Motor vehicle insurance data: two years after close of calendar year in which created

(11) MVD service contractor agreement data: six years after termination of agreement

(12) Dealer and dismantler data: five years after date of license issuance

E. Confidentiality: Portions of this record may be confidential

per 18 U.S.C. Section 2721, Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records, Section 66-2-7.1 NMSA 1978, Motor vehicle-related records; confidential.

F. Input: information used as input for *MVD vehicles system* may include 1.18.333.231 *applications for specialized plate*; 1.18.333.232 *NMAC certification of eligibility for parking placard*; 1.18.333.233 *canceled plates*; 1.18.333.234 *undeliverable vehicle titles; vehicle registration renewal notices; registrations and stickers returned by the United States postal service*; 1.18.333.235 *vehicle, mobile homes and vessel title transaction files*; 1.18.333.236 *salvage vehicle title files*; 1.18.333.237 *nonrepairable vehicle certification*; 1.18.333.239 *motor vehicle insurance file*; 1.18.333.240 *MVD service contractor operational files*; 1.18.333.241 *NMAC dealer's operational files*; 1.18.333.242 *NMAC dismantler's operational files*; etc.

G. Output: Because the *TRD-MVD system* is a date based system, regularly scheduled reports may be generated upon request or demand. When produced, these reports are forwarded to the requesting entity. Some of these reports include drivers, vehicles, licenses, registrations, fines, criminal information, assessments, abatements, audits, returns, filing extensions, agreements, refunds, warrants, disbursements, payments, warrants, etc.

[1.18.333.230 NMAC - Rp, 1.18.333.600 NMAC, 10/1/2007; A, 1/7/2008]

[Information from previous TRD-MVD System can be found in the following Sections 200, 230, 246 & 255]

1.18.333.234 VEHICLE, MOBILE HOMES, AND VESSEL TITLE TRANSACTION FILES:

A. Program: motor vehicle

B. Maintenance system: chronological by calendar year and date of transaction, then numerical by title number

C. Description: records of titles and registrations that were issued on vehicles, mobile homes and vessels. Portions of the file are input to the *MVD vehicles system*. File may include vehicle certificate of title, registration, mandatory financial responsibility affirmation, horseless carriage certification, request for sample license plate, government vehicles registration form, application for duplicate certificate of title, request for refund, etc.

D. Retention:

(1) Mobile homes: 50 years after date of change of ownership

(2) Vehicle or vessel title: 25

years after date of change of ownership

(3) Vehicle or vessel registration: three years after date of registration

~~**(4) Motor vehicle insurance data:** two years after close of calendar year in which created~~

~~**(5) MVD service contractor agreement data:** six years after termination of agreement~~

~~**(6) Dealer and dismantler data:** five years after date of issuance]~~

E. Confidentiality:

Portions of this record may be confidential per 18 U.S.C. Section 2721 (i.e., Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records), Section 66-2-7.1 NMSA 1978, Motor vehicle-related records; confidential. [1.18.333.234 NMAC - Rp, 1.18.333.634 NMAC, 10/1/2007; A, 1/7/2008]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.630 NMAC, Section 299 effective 1/7/2008.

1.18.630.299 INTERIM ASSISTANCE REIMBURSEMENT (IAR) FILE:

A. Program: restitution services

B. Maintenance system: chronological by federal fiscal year, then alphabetical by client surname, then numerical by social security number

C. Description: records that document reimbursement from the federal government or eligible recipients to HSD granted general assistance for (SSI) supplemental security income. File may include (IAR) interim assistance reimbursement application (i.e., client's name, address, SSN, program identifier number, etc.), (IAR) interim assistance reimbursement authorization for reimbursement form, notice of receipt of payment from (SSI) supplemental security income, copy of (SSI) supplemental security income check, (IAR) interim assistance reimbursement calculations, correspondence, etc.

D. Retention: 10 years after federal fiscal year in which final reimbursement is made

E. Confidentiality: Portions of record may be confidential per 5 USC, Section 552a (i.e., social security number), Section 14-6-1 NMSA 1978 (i.e., health information) and 45 CFR 205.50 (i.e., safeguarding information for the financial assistance programs).

[1.18.630. NMAC - N, 01/07/2008]

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

This is an amendment to 1.18.665 NMAC, Sections 2358 - 2363 effective 01/07/2008.

1.18.665.2358 CONSUMER INCIDENT FILES:

A. Program: incident management

B. Maintenance system: chrono-numerical by fiscal year and case number

C. Description: record of investigations by the department for alleged incidents of misconduct, abuse, neglect and exploitation of clients by health care facilities. Portions of file are input to the *incident management system*. File may contain *incident report form*, *case summary report*, *report of findings*, correspondence, memoranda, etc.

D. Retention: six years from the end of the fiscal year in which created

E. Confidentiality: Portion of this record are confidential per Section 14-6-1 NMSA 1978 (i.e. all health information that relates to and identifies specific individuals as patients is strictly confidential).

[1.18.665.2358 NMAC - N, 06/28/2004, A, 01/07/2008]

[If substantiated, a copy of the record is transferred to the proper prosecuting authority.]

1.18.665.2359 COMPLAINT SURVEY FILES:

A. Program: health care

B. Maintenance system: alpha-chronological by facility name and surveyed date

C. Description: record concerning the investigation into alleged facility misconduct, abuse or neglect against clients of health care facilities. Portions of file are input to the *incident management system*. File may contain *medicare, medicaid, CLIA complaint form* [HCFA-562]; *medicare, medicaid certification and transmittal form* [HCFA-1539]; *plan of correction* [HCFA-2567I], plan of correction approval form; correspondence; memoranda; etc.

D. Retention:

(1) **substantiated:** five years after date surveyed

(2) **unsubstantiated:** one year after date surveyed

E. Confidentiality: Portion of this record are confidential per Subsection M of Section 24-1-5 NMSA 1978 (i.e. unsubstantiated complaints of

health facilities under investigation).

[1.18.665.2359 NMAC - N, 06/28/2004, A, 01/07/2008]

[If substantiated, a copy of the record is transferred to the proper prosecuting authority.]

1.18.665.2360 INCIDENT MANAGEMENT SYSTEM:

A. Program: incident management

B. Maintenance system: numerical by primary key

C. Description: system that tracks all incidents and investigations of alleged agency misconduct for all community health programs. Data may include program name, information on incident, consumer name, medical information, information regarding investigation, mortality review information, etc.

D. Data retention: six years after date of resolution

E. Confidentiality: Portions of record may be confidential per 5 USC, Section 552a (i.e., social security number) and Section 14-6-1 NMSA 1978 (i.e., health information).

F. Input: information used as input for the *incident management system* may include portions from Section 1.18.665.2358 *consumer incident files*, 1.18.665.2359 *complaint survey files*.

G. Output: Because the *incident management system* is a data based system, ad hoc reports may be generated upon request or demand. When produced, these reports are forwarded to the requesting entity.

[1.18.665.2360 NMAC - N, 01/07/2008]

1.18.665.2361 FACILITY (ASPEN) COMPLAINT SYSTEM:

A. Program: incident management

B. Maintenance system: numerical by primary key

C. Description: system that tracks all complaint intake information for licensed healthcare facilities. Data may include incident information, investigator assignments, facility report data, referrals to appropriate agencies, etc.

D. Data retention: five years after date of compliant resolution

E. Confidentiality: Portions of record may be confidential per 5 USC, Section 552a (i.e., social security number) and Section 14-6-1 NMSA 1978 (i.e., health information).

F. Data input: information used as input for the *facility (aspen) complaint system* may include portions from Section 1.18.665.2362 *complaint intake information files*, etc.

G. Data output: Because

the facility (aspen) complaint system is a data based system, reports may be generated upon request or demand. When produced, these reports are forwarded to the requesting entity. Some of these reports include *complaint survey reports*, *intake information report*, etc.

[1.18.665.2361 NMAC - N, 01/07/2008]

1.18.665.2362 COMPLAINT INTAKE INFORMATION FILES:

A. Program: incident management

B. Maintenance system: alphabetical by facility name, then chronological by date of incident

C. Description: records concerning an incident that occurred at a licensed health care facility. Portions of the file are input to the *facility (aspen) complaint system*. File may include intake sheet (i.e., name of patient, social security number, medical information, type of incident, etc.), incident report, referral information, facility self report, facility self investigation, assignment of department investigator, adult protective services' summary reports, etc.

D. Retention: five years after date of compliant resolution

E. Confidentiality: Portions of record may be confidential per 5 USC, Section 552a (i.e., social security number) and Section 14-6-1 NMSA 1978 (i.e., health information).

[1.18.665.2362 NMAC - N, 01/07/2008]

1.18.665.2363 COMMUNITY MORTALITY REVIEW FILES:

A. Program: incident management

B. Maintenance system: chronological by incident management case number, then by date

C. Description: records concerning investigations of all deaths of developmentally disabled individuals participating in the selected waiver programs. File may include deceased medical records, medication administration records, emergency medical service health assessment, independent service plan health assessment, past physical history report, autopsy report, etc.

D. Retention: six years after date of final decision of review

E. Confidentiality: Portions of record may be confidential per 5 USC, Section 552a (i.e., social security number) and Section 14-6-1 NMSA 1978 (i.e., health information).

[1.18.665.2363 NMAC - N, 01/07/2008]

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

**TITLE 13 INSURANCE
CHAPTER 9 LIFE INSURANCE
AND ANNUITIES
PART 18 USE OF PRE-
FERRED RISK MORTALITY TABLES**

13.9.18.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission Insurance Division.
[13.9.18.1 NMAC - N, 12/31/07]

13.9.18.2 SCOPE: This rule
applies to all insurers issuing life insurance
policies.
[13.9.18.2 NMAC - N, 12/31/07]

**13.9.18.3 S T A T U T O R Y
AUTHORITY:** Sections 59A-2-9 and
59A-8-5 NMSA 1978.
[13.9.18.3 NMAC - N, 12/31/07]

13.9.18.4 D U R A T I O N :
Permanent.
[13.9.18.4 NMAC - N, 12/31/07]

13.9.18.5 EFFECTIVE DATE:
December 31, 2007 unless a later date is
cited at the end of a section.
[13.9.18.5 NMAC - N, 12/31/07]

13.9.18.6 OBJECTIVE: The
purpose of this regulation is to recognize,
permit and prescribe the use of mortality
tables that reflect differences in mortality
between preferred and standard lives in
determining minimum reserve liabilities.
[13.9.18.6 NMAC - N, 12/31/07]

13.9.18.7 DEFINITIONS:

A. **2001 CSO mortality table** means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American academy of actuaries CSO task force from the valuation basic mortality table developed by the society of actuaries individual life insurance valuation mortality task force, and adopted by the NAIC in December 2002. The 2001 CSO mortality table is included in the proceedings of the NAIC, second quarter 2002, and supplemented by the 2001 CSO preferred class structure mortality table defined in Subsection B of 13.9.18.7 NMAC. Unless the context indicates otherwise, the 2001 CSO mortality table includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birth-

day bases of the mortality tables. Mortality tables in the 2001 CSO mortality table include the following:

(1) **2001 CSO mortality table (F)** means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO mortality table;

(2) **2001 CSO mortality table (M)** means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO mortality table;

(3) **composite mortality tables** means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers;

(4) **smoker and nonsmoker mortality tables** means mortality tables with separate rates of mortality for smokers and nonsmokers.

B. **2001 CSO Preferred Class Structure Mortality Table** means mortality tables with separate rates of mortality for super preferred nonsmokers, preferred nonsmokers, residual standard nonsmokers, preferred smokers, and residual standard smoker splits of the 2001 CSO nonsmoker and smoker tables as adopted by the NAIC at the September, 2006 national meeting and published in the NAIC proceedings, third quarter 2006. Unless the context indicates otherwise, the 2001 CSO preferred class structure mortality table includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

C. **CSO** means commissioners standard ordinary.

D. **NAIC** means the national association of insurance commissioners.

E. **Statistical agent** means an entity with proven systems for protecting the confidentiality of individual insured and insurer information, demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.
[13.9.18.7 NMAC - N, 12/31/07]

13.9.18.8 2001 CSO PREFERRED CLASS STRUCTURE TABLE: At the election of the insurer, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this rule, the 2001 CSO preferred class structure mortality table may be substituted in place

of the 2001 CSO smoker or nonsmoker mortality table as the minimum valuation standard for policies issued on or after January 1, 2007. No such election shall be made until the company demonstrates at least 20 percent of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO preferred class structure mortality table used in place of a 2001 CSO mortality table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO mortality table only for purposes of reserve valuation pursuant to the requirements of 13.9.16 NMAC, Use Of 2001 Commissioners Standard Ordinary Mortality Table.
[13.9.18.8 NMAC - N, 12/31/07]

13.9.18.9 CONDITIONS:

A. For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the super preferred nonsmoker, preferred nonsmoker, and residual standard nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO mortality table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the residual standard nonsmoker table, the appointed actuary shall certify that:

(1) the present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class; and

(2) the present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

B. For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the preferred smoker and residual standard smoker tables to substitute for the smoker mortality table found in the 2001 CSO mortality table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the preferred smoker table, the appointed actuary shall certify that:

(1) the present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for

each class, is less than the present value of death benefits using the preferred smoker valuation basis table corresponding to the valuation table being used for that class; and

(2) the present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table.

C. Unless exempted by the superintendent, every authorized insurer using the 2001 CSO preferred class structure table shall annually file with the superintendent, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the superintendent, statistical reports showing mortality and such other information as the superintendent may deem necessary or expedient for the administration of the provisions of this rule. The form of the reports shall be established by the superintendent or the superintendent may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the superintendent.

[13.9.18.9 NMAC - N, 12/31/07]

HISTORY OF 13.9.18 NMAC:
[RESERVED]

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

This is an amendment to 13.8.4 NMAC, Sections 1, 5, 7 and 9. This action also adds a new Section 12 and renumbers and reformat 13 NMAC 8.4 to 13.8.4 NMAC in accordance with the current New Mexico Administrative Code (NMAC) requirements, effective December 31, 2007.

13.8.4.1 ISSUING AGENCY:

New Mexico ~~[State Corporation Commission Department of Insurance, Post Office Box 1269, Santa Fe, NM 87504-1269]~~ Public Regulation Commission Insurance Division.

[7/1/97; 13.8.4.1 NMAC - Rn & A, 13 NMAC 8.4.1, 12/31/07]

13.8.4.5 EFFECTIVE DATE:

February 1, 1980, unless a later date is cited at the end of a section ~~[or paragraph]~~.

[7/1/97; 13.8.4.5 NMAC - Rn & A, 13 NMAC 8.4.5, 12/31/07]

13.8.4.7 DEFINITIONS: The following words and terms shall have the following meanings unless the context otherwise requires:

A. "agent" means any person licensed by the superintendent to transact the insurer's business in this state;

B. "casualty insurance" has the meaning given in Section 59A-7-6 NMSA 1978;

C. "insurance binder" means any undertaking by an insurer, or its agent, to issue a policy of insurance to the insured;

D. "insured" means any person who has been issued a policy of insurance or insurance binder by an insurer;

E. "insurer" means any insurance company authorized to transact property and casualty insurance in this state, and any non-admitted insurance company providing property and casualty policies of insurance through a surplus line broker in this state;

F. "mail or mailing" means the deposit of a written notice to the insured in the U.S. mails, first-class postage prepaid, addressed to the insured at his last known address;

G. "marine and transportation insurance" has the meaning given in Section 59A-7-5 NMSA 1978;

H. "personal insurance" has the meaning given in Section 59A-17A-3 NMSA 1978;

~~[H] I.~~ "policy or policy of insurance" has the meaning given in Section 59A-18-2 NMSA 1978;

~~[I] J.~~ "policy term" means the stated time during which a policy is effective;

~~[J] K.~~ "property and casualty insurance", as used in this rule, includes property, casualty, vehicle, marine and transportation, wet marine and surety insurance;

~~[K] L.~~ "property insurance" has the meaning given in Section 59A-7-4 NMSA 1978;

~~[L] M.~~ "surety insurance" has the meaning given in Section 59A-7-8 NMSA 1978;

~~[M] N.~~ "vehicle insurance" has the meaning given in Section 59A-7-7 NMSA 1978; and

~~[N] O.~~ "wet marine insurance" has the meaning given in Section 59A-7-5 NMSA 1978;

[2/1/80, 7/1/97; 13.8.4.7 NMAC - Rn & A, 13 NMAC 8.4.7, 12/31/07]

13.8.4.9 NON-RENEWAL OF POLICIES:

If an insurer or an agent elects not to renew a policy of insurance, the insurer or agent making such election shall mail to the insured, not less than thirty (30) days prior to the expiration date of the policy, a written notice of non-renewal. This section shall not apply to the transfer of a policy upon its expiration to an affiliated

insurer.

[2/1/80, 7/1/97; 13.8.4.9 NMAC - Rn & A, 13 NMAC 8.4.9, 12/31/07]

13.8.4.12 NOTICE OF CHANGE IN INSURER If an insurer, upon expiration of a policy of insurance, transfers the policy to an affiliated insurer, the following notification requirements shall apply.

A. For personal insurance policies, the transferring insurer shall send the insured a written notice of change of insurer. Such notice shall be mailed to the insured not less than thirty (30) days prior to the expiration date of the policy and shall include the name and contact information of the insurer accepting the transferred policy, the reason for the transfer, the dollar amount of any increase or decrease in premium resulting from the transfer and any restrictions or changes in coverage terms or provisions resulting from the transfer.

B. For other than personal insurance policies, the transferring insurer shall provide written notice of change of insurer to the agent or the insured prior to the expiration date of the policy and shall include the name and contact information of the insurer accepting the transferred policy and the reason for the transfer.

[13.8.4.12 NMAC - N, 12/31/07]

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

This is an amendment to 13.18.2 NMAC, Sections 1 and 41 effective December 31, 2007. This action also renumbers and reformat 13 NMAC 18.2, Credit Life and Credit Health Insurance (filed 5/27/1997) to conform to the current NMAC requirements and is replaced by 13.18.2 NMAC, Credit Life and Credit Health Insurance, effective 12/31/2007:

13.18.2.1 ISSUING AGENCY:

New Mexico ~~[State Corporation Commission, Department of Insurance, Post Office Box 1269, Santa Fe, NM 87504-1269]~~ Public Regulation Commission Insurance Division.

[7/1/97; 13.18.2.1 NMAC - Rn & A, 13 NMAC 18.2.1, 12/31/07]

13.18.2.41 [POLICY AND] CLAIM RESERVES:

~~A. The policy reserve on all credit life insurance shall not be less than that based upon 130 percent of the appropriate mortality table and interest rate as required by the New Mexico insurance laws.~~

~~B. The policy reserve for~~

~~credit accident and health insurance shall not be less than the mean of the gross unearned premium calculated by the sum of the digits (Rule of 78) and the pro rata methods.]~~

[C] A. The insurer shall set up adequate liabilities for claims for credit life and credit accident and health insurance, in addition to the policy reserves already described. Such liabilities shall be based upon appropriate consideration for each of the following categories:

(1) the liability for claims which are known to be due and payable, but which have not yet been paid;

(2) the reserve for continuing disability benefits which have been reported and on which future payments will be due during the continuance of this disability;

(3) the liability for claims which have been insured but not yet reported, with benefits now due;

(4) the reserve for disability benefits which are incurred but not yet reported, and on which future payments will be due during the continuance of this disability.

[D] B. The company may rely upon credible experience developed by its own claim experience, industry wide experience, or any other available source which produces an adequate liability for claims.

[7/1/97; 9/1/98; 13.18.2.41 NMAC - Rn & A, 13 NMAC 18.2.41, 12/31/07]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.1 NMAC, Section 7, effective January 17, 2008.

16.63.1.7 DEFINITIONS:

A. Appropriate supervision:

(1) Supervision, for the purposes of licensure, shall be provided by an individual qualified by the board of social work examiners. For licensed masters social workers aspiring to achieve licensure at an independent level (LISW), supervision shall be provided by a licensed independent social worker (LISW). For those licensed independent social workers aspiring to add a specialty to their license, supervision shall be provided by a licensed independent social worker licensed in that specialty. The relationship between the supervisor and supervisee must be designed to promote the development of professional social work skills for the delivery of social work services. These skills include the integration of theory and practice, the development and application of intervention techniques, the development and constant improvement of social work standards and ethics, and the continued acquisition of professional

knowledge.

(2) Supervisors shall evaluate and oversee the manner in which the above skills development is reflected in the supervisee's practice. The supervisor's responsibility insures that the supervisee acquires the necessary skills required for advanced and professional social work practice.

(3) Applicant for licensure at the independent level must document 3,600 hours of licensed masters level social work experience which has been accumulated over no more than a [48] 60 month period. Applicants for licensure must document 90 hours of supervision during this 3,600 hour period. One (1) hour of supervision must be documented for every 40 hours worked. No more than 60% of the 90 hours of supervision may be group supervision. No more than 25% of the 90 hours of supervision may be non face-to-face. The supervised contact may include live video-teleconferencing which would be equal to face-face supervision. Teleconferencing can be included as supervision. Individual or group supervision will be accepted. Group supervision means supervision rendered to not more than four (4) individuals at one time. Applicants and supervisors will engage the process of supervision in accordance with the guidelines established by the board of social work examiners.

B. Licensed clinical social worker: an independent social worker with a clinical specialty is equivalent to a licensed clinical social worker (LCSW).

C. Qualified applicants:

(1) Means those programs having received accreditation by CSWE and those programs having candidacy status, conditional status, or under review status with CSWE.

(2) For those applicants who graduated from a institution of higher education before CSWE began to accredit programs (prior to 1974), the New Mexico board of social work examiners will require:

(a) a letter from the university's registrars office stating that the applicant's course of study culminated in a degree which was the equivalent of an emphasis or major in social work;

(b) demonstrated social work experience;

(c) documentation of social work licensure in a previous state; and

(d) concurrence among the majority of professional members of the board that the transcripts reflect sufficient coursework in social work.

D. CSWE (council on social work education) accreditation: means those programs having received accreditation by CSWE and those programs having candidacy status or under review status with CSWE.

[1/1/90, 5/15/91, 6/22/92, 1/5/95, 5/1/99;

16.63.1.7 NMAC - Rn, 16 NMAC 63.1.7, 06/19/02; A, 4/24/06; A, 1/17/08]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.3 NMAC, Sections 8, 10 and 11, effective January 17, 2008.

16.63.3.8 APPLICATION FOR LICENSURE: Applicants, other than those applying for licensure by credentials, must submit or cause to be submitted the following documentation to the board:

A. completed application;

B. two (2) personal character references;

C. one (1) 2" x 2" original photograph of the applicant taken within the preceding six (6) months affixed to the application;

D. license fee as provided in Part 8;

E. official transcripts directly from the university or college or by other means approved by the board verifying [the following:

~~(+) a bachelors or masters degree in social work; and~~

~~[(2) a three credit hour course in New Mexico cultures;]~~

F. verification of supervision must be received directly from the supervisor or by other means approved by the board;

G. if currently or previously licensed in another state you must submit verification of licensure, which must be sent directly to the board by the issuing jurisdiction; ~~and]~~

H. official exam scores; proof of passing the licensure exam must be received directly from the association of social work boards or from the jurisdiction in which the applicant is licensed;

I. verification the applicant has completed one of the following:

(1) a three credit hour course in New Mexico cultures listed on the applicants transcripts;

(2) a board approved course, workshop or seminar in New Mexico cultures;

(3) proof of previous passing the New Mexico cultural examination.

[5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.3.8 NMAC - Rn, 16 NMAC 63.3.8, 06/19/02; A, 04/24/06; A, 11/30/06; A, 01/17/08]

16.63.3.10 INITIAL LICENSE/RENEWAL OF LICENSE:

A. Initial license

(1) Initial licenses issued between

January 1 and June 30 shall expire on July 1 of the next calendar year.

(2) Initial licenses issued between July 1 and December 31 shall expire on July 1 of the second calendar year following the date of issuance.

B. No license will be issued for longer than 24 months.

C. Renewal of license

(1) Each licensed social worker shall apply for license renewal and pay the ~~annual~~ renewal fee as set forth in Part 8.

(2) Licenses that expire July 1, 2007 will renew according to the following schedule:

(a) If the last digit of the license number ends in an even number the license will expire on July 1, 2008 and biennially thereafter. The renewal fee will be prorated.

(b) If the last digit of the license number ends in an odd number the license will expire on July 1, 2009 and biennially thereafter.

D. A 30-day grace period, running from July 1 - July 30, of the renewal year allows the social worker to submit a renewal without a renewal fee penalty. However the social worker's license shall be considered expired and the social worker will refrain from practicing.

E. From July 31 to September 29 of the renewal year the social worker may renew the license, however a penalty fee will be assessed (16.63.8.17 NMAC).

F. After September 29 the social worker's license will be considered revoked. If revoked for non-renewal, then the licensee will be required to pay previous penalties, complete a new application and pay another application fee. The applicant will also have to take an exam prescribed by the board.

[5/15/91, 6/22/92, 1/5/95; 5/1/99, 16.63.3.10 NMAC - Rn, 16 NMAC 63.3.10, 06/19/02; A, 04/24/06; A, 11/30/06; A, 01/17/08]

16.63.3.11 QUALIFIED APPLICANTS: As per 16.63.4.12 NMAC "Qualified applicants who fail to obtain the minimum required score may retake the (ASWB) exam an unlimited number of times. Applicants must pay the examination fee for each administration of the examination." Prior to the re-examination a new application must be submitted to the board by the applicant. A non-refundable application fee must accompany the new application. Qualifications for examination will be evaluated based on the most recent application. Initial applications are valid for a period of ~~six~~ twelve (12) months; additional applications shall be valid for a period not to exceed twelve (12) months from the date of initial submission.

[5/15/91, 6/22/92, 1/15/95, 5/1/99; 16.63.3.11 NMAC - Rn & A, 16 NMAC 63.3.11, 06/19/02; A, 4/24/06; A, 11/30/06; A, 01/17/08]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.6 NMAC, Sections 8 and 9, effective January 17, 2008.

16.63.6.8 QUALIFICATION FOR LICENSURE: Applicants for licensure by credentials must possess the following:

A. a current valid social work license issued by an appropriate examining board under the laws of any other state or territory of the United States or the District of Columbia or any sovereign nation at the level of licensure being sought for a minimum of five years;

B. a passing test score from the association of social work boards for licensure level sought;

C. a baccalaureate degree in social work from a CSWE accredited program, if applying for the LBSW;

D. a master's degree in social work from a CSWE accredited program, if applying for the LMSW or LISW;

~~E. successful completion of the New Mexico board of social work examiners cultural awareness examination;~~

E. Verification the applicant has completed one of the following:

(1) a three credit hour course in New Mexico cultures listed on the applicants transcripts;

(2) a board approved course, workshop or seminar in New Mexico cultures;

(3) proof of previous passing the New Mexico cultural examination;

F. have presented to the New Mexico board documentation as required by the New Mexico board that any other license granted to the applicant by any other state has not been suspended, revoked, voluntarily surrendered or otherwise restricted for any reason except non-renewal or for the failure to obtain the required continuing education credits.

[1/1/90, 5/15/91, 6/22/92, 5/1/99; 16.63.6.8 NMAC - Rn & A, 16 NMAC 63.6.8, 06/19/02; A, 11/30/06; A, 01/17/08]

16.63.6.9 APPLICATION FOR LICENSURE: Applicants for licensure by credentials; reciprocity must submit or cause to be submitted the following documentation to the board:

A. completed application;

B. two (2) personal character references;

C. a 2" x 2" photograph of the applicant taken within the preceding six months affixed to the application;

D. completed form titled "statement of registration, or certification of licensure in another state", to be submitted directly to the board from the conferring agency;

E. test scores from ASWB ~~[and the New Mexico cultural]~~ exam;

F. non-refundable license fee as set forth in **Part 7** to be assessed at the time of application.

[1/1/90, 5/15/91, 6/22/92, 5/1/99; 16.63.6.9 NMAC - Rn & A, 16 NMAC 63.6.9, 06/19/02; A, 11/30/06; A, 01/17/08]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.7 NMAC, Sections 8 and 9, effective January 17, 2008.

16.63.7.8 APPLICABILITY

A. When an applicant has submitted all documentation required for the license sought and the application is complete except that the applicant has not completed the licensure exam or the required ~~[three credit hour]~~ course in New Mexico cultures, the board may issue a provisional license to the applicant at the level sought.

B. The board will accept, in the absence of an official transcript, certification bearing official seal and attesting to completion of degree requirements from the registrar, mailed directly to the board from the conferring institution.

[1/1/90, 5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.7.8 NMAC - Rn, 16 NMAC 63.7.8, 06/19/02; A, 04/24/06; A, 11/30/06; A, 01/17/08]

16.63.7.9 DURATION: The provisional license shall be valid for ~~[6 months unless the applicant fails the national exam at which point the provisional license will become null and void]~~ twelve (12) months.

A. The provisional license shall become immediately invalid if the provisional licensee fails to submit an official transcript of certification.

B. During this ~~[6]~~ twelve (12) month period the provisional licensee must provide documentation that the individual has passed the national examination and provide documentation that verifies the individual has completed the required ~~[three credit hour]~~ course in New Mexico cultures.

C. Only one provisional

license will be issued for each level of licensure except in extenuating circumstances as defined in 16.63.7.10 NMAC.

[1/1/90, 5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.7.9 NMAC - Rn & A, 16 NMAC 63.7.9, 06/19/02; A, 04/24/06; A, 11/30/06; A, 01/17/08]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.8 NMAC, Section 17, effective January 17, 2008

16.63.8.17 LATE PENALTY FEE: [~~Annual~~] License renewal deadline is July 1. Penalty fee for late renewal license is seventy-five dollars (\$75.00).
[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.8.17 NMAC - Rn, 16 NMAC 63.8.17, 06/19/02; A, 01/17/08]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.9 NMAC, Sections 8 and 10, effective January 17, 2008

16.63.9.8 QUALIFICATION OF LICENSURE: Applicants for licensure as baccalaureate social worker must possess the following minimum qualifications:

A. be at least 18 years of age;

B. possess a bachelor's degree in social work from a program accredited by the council on social work education;

C. successfully pass the association of social work board examination ASWB;

D. documents completion of the required [~~three credit hour~~] course in New Mexico cultures.

[1/1/90, 5/15/91, 6/22/92; 16.63.9.8 NMAC - Rn & A, 16 NMAC 63.9.8, 06/19/02; A, 4/24/06; A, 11/30/06; A, 01/17/08]

16.63.9.10 RENEWAL OF LICENSE: Before July 1 of [~~each~~] the renewal year, each baccalaureate social worker shall apply for license renewal and shall pay [~~an annual~~] the renewal fee as set forth in Part 8.

[1/1/90, 5/15/91, 6/22/92, 5/1/99; 16.63.9.10 NMAC - Rn, 16 NMAC 63.9.10, 06/19/02; A, 01/17/08]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.10 NMAC, Sections 8 and 10, effective January 17, 2008.

16.63.10.8 QUALIFICATION FOR LICENSURE: Applicants for licensure as master social worker must:

A. be at least 18 years of age;

B. possess a master's degree in social work from a graduate program of social work accredited by the council on social work education;

C. successfully pass the association of social work board examination ASWB;

D. documents completion of the required [~~three credit hour~~] course in New Mexico cultures.

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.10.8 NMAC - Rn & A, 16 NMAC 63.10.8, 06/19/02; A, 4/24/06; A, 11/30/06; A, 01/17/08]

16.63.10.10 RENEWAL OF LICENSE: Before July 1 of [~~each~~] the renewal year, each master social worker shall apply for license renewal and shall pay [~~an annual~~] the renewal fee as set forth in Part 8.

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.10.10 NMAC - Rn, 16 NMAC 63.10.10, 06/19/02; A, 01/17/08]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.11 NMAC, Section 8 and 11, effective January 17, 2008

16.63.11.8 QUALIFICATION FOR LICENSURE: Applicants for licensure as independent social workers must:

A. be at least eighteen (18) years of age;

B. possess at least a master's degree in social work from a graduate program of social work accredited by the council on social work education;

C. complete not less than two years of post graduate social work experience (employed or volunteer), under appropriate supervision; as defined in 16.63.1.7 NMAC for the purposes of this part, 3600 hours of post graduate social work practice is required under appropriate supervision; applicants and supervisors will engage the process of supervision in accordance with the guidelines established by the

board of social work examiners;

D. documents completion of the required [~~three credit hour~~] course in New Mexico cultures; and

E. successfully pass the association of social work board examination, (ASWB) clinical or advanced, as determined by the board.

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95; 5/1/99, 16.63.11.8 NMAC - Rn & A, 16 NMAC 63.11.8, 06/19/02; A, 4/24/06; A, 11/30/06; A, 01/17/08]

16.63.11.11 RENEWAL OF LICENSE: Before July 1 of [~~each~~] the renewal year, each independent social worker shall apply for license renewal and shall pay [~~an annual~~] the renewal fee as set forth in Part 8.

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95; 5/1/99; 16.63.11.11 NMAC - Rn, 16 NMAC 63.11.11, 06/19/02; A, 01/17/08]

NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.12 NMAC, Sections 9, 10, 12, 13 and 14, effective January 17, 2008

16.63.12.9 CONTINUING EDUCATION CREDIT: Thirty (30) hours of continuing education will be required biennially. Six (6) of the thirty (30) hours must be in the subject area of cultural awareness. Proof of participation in or presentation of continuing education activity must be submitted with the license renewal request if the licensee is audited. All continuing education hours must be earned during the current two (2) year renewal period of July 1 thru June 30.

[5/15/91, 6/22/92, 5/1/99; 16.63.12.9 NMAC - Rn, 16 NMAC 63.12.9, 06/19/02; A, 4/24/06; A, 11/30/06; A, 01/17/08]

16.63.12.10 CONTINUING EDUCATION PARTICIPATION/FORMAL SOCIAL WORK EDUCATION: A three (3) hour college level course in social work or courses which are designed to enhance the skills relevant to the social worker's professional activity will be accepted as equivalent to [~~fifteen (15)~~] thirty (30) hours. The social worker shall submit transcripts directly to the board with renewal.

[5/15/91, 6/22/92, 5/1/99; 16.63.12.10 NMAC - Rn, 16 NMAC 63.12.10, 06/19/02; A, 01/17/08]

16.63.12.12 CONTINUING EDUCATION CREDIT CARRYOVER: All continuing education hours must be earned during the current two (2) year renewal

period of July 1 thru June 30; no carryover will be permitted.

[5/15/91, 6/22/92, 5/1/99; 16.63.12.12 NMAC - Rn, 16 NMAC 63.12.12, 06/19/02; A, 4/24/06; A, 01/17/08]

16.63.12.13 DOCUMENTATION OF PARTICIPATION: The board shall audit a percentage of renewal applications each [~~year~~] renewal period to verify the continuing education requirement. The licensee must maintain proof of continuing education courses taken for the past four (4) years.

A. If a notice of audit letter is received with the [~~annual~~] renewal form, evidence of continuing education hours earned during the renewal period must be submitted to the board as requested and as required in the Social Work Practice Act and by this rule.

B. If the licensee is not audited, all documentation of attendance and agendas must be retained by the licensee for a minimum of four (4) years immediately preceding the current renewal.

C. The board reserves the right to audit a licensee's continuing education records as it deems necessary.

[5/15/91, 6/22/92, 16.63.12.13 NMAC - Rn, 16 NMAC 63.12.13, 06/19/02; A, 4/24/06; A, 11/30/06; A, 01/17/08]

16.63.12.14 CONTINUING EDUCATION PROFESSIONAL DISCRETION: The social worker may choose up to [~~five (5)]~~ ten (10) hours per [~~year~~] renewal period which is self-directed. The social worker may select education programs, readings and audio or video-taped materials which are in the domain of social work. Preparation time, not to exceed the length of the presentation and time accumulated in presenting a social work seminar or workshop is included in this section. Documentation of discretionary continuing education hours will be in accordance with guidelines established by the board of social work examiners. Activities which include personal scope such as sports, hobbies, etc. are not acceptable for credit nor is personal therapy. The social worker seeking relicensure shall report continuing education hours directly to the board upon application for license renewal. Approval of credit under this section is within the board's discretion.

[5/15/91, 6/22/92, 5/1/99; 16.63.12.14 NMAC - Rn, 16 NMAC 63.12.14, 06/19/02; A, 01/17/08]

NEW MEXICO DEPARTMENT OF TRANSPORTATION

18.27.2 NMAC, Division 100 - General Provisions Standard Specifications for Highway and Bridge Construction (filed 09/01/2005) is hereby repealed effective 01/31/2008. This rule is replaced by 18.27.2 NMAC, Division 100 - General Provisions Standard Specifications for Highway and Bridge Construction effective 01/31/2008.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

TITLE 18 TRANSPORTATION AND HIGHWAYS CHAPTER 27 HIGHWAY CON- STRUCTION GENERAL PROVISIONS PART 2 DIVISION 100-GEN- ERAL PROVISIONS STANDARD SPECIFICATIONS FOR HIGHWAY AND BRIDGE CONSTRUCTION

18.27.2.1 ISSUING AGENCY: New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504-1149
[18.27.2.1 NMAC - Rp, 18.27.2.1 NMAC, 01/31/08]

18.27.2.2 SCOPE: All agencies, the general public and highway construction contractors.
[18.27.2.2. NMAC - Rp, 18.27.2.2 NMAC, 01/31/08]

18.27.2.3 STATUTORY AUTHORITY: NMSA 1978, Sections 67-3-43, 13-1-99, 13-1-170 and 13-1-174.
[18.27.2.3 NMAC - Rp, 18.27.2.3 NMAC, 01/31/08]

18.27.2.4 DURATION: Permanent.
[18.27.2.4 NMAC - Rp, 18.27.2.4 NMAC, 01/31/08]

18.27.2.5 EFFECTIVE DATE: January 31, 2008, unless a later date is cited at the end of a section. [18.27.2.5 NMAC - Rp, 18.27.2.5 NMAC, 01/31/08]

18.27.2.6 OBJECTIVE: The purpose of this regulation, Division 100-General Provisions Standard Specifications for Highway and Bridge Construction, is to implement and enforce Division 100 of the *New Mexico department of transportation 2007 standard specifications for highway and bridge construction book as replace-*

ment to the 2005 edition of the interim specifications for highway and bridge construction, and shall be controlling for all projects advertised and all contracts executed after the date this rule is promulgated by the New Mexico department of transportation and duly filed in the state records center.
[18.27.2.6 NMAC - Rp, 18.27.2.6 NMAC, 01/31/08]

18.27.2.7 DEFINITIONS: [RESERVED]
18.27.2.7 NMAC - Rp, 18.27.2.7 NMAC, 01/31/08]

[See Section 101, Abbreviations, Symbols and Definitions of Division 100-General Provisions of the *New Mexico department of transportation 2007 standard specifications for highway and bridge construction as replacement to the 2005 edition of the interim specifications for highway and bridge construction* for applicable definitions.]

18.27.2.8 ADOPTION OF THE NEW MEXICO DEPARTMENT OF TRANSPORTATION 2007 STANDARD SPECIFICATIONS FOR HIGHWAY AND BRIDGE CONSTRUCTION: This rule adopts by reference Division 100-General Provisions of the *New Mexico department of transportation 2007 standard specifications for highway and bridge construction as replacement to the 2005 edition of the interim specifications for highway and bridge construction*.
[18.27.2.8 NMAC - Rp, 18.27.2.8 NMAC, 01/31/08]

HISTORY OF 18.27.2 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records and Archives under: SHC 70-1, Standard Specifications for Road and Bridge construction, filed June 1, 1970; SHC 76-1, Standard Specifications for Road and Bridge Construction, filed July 7, 1976; SHC 84-2, Standard Specifications for Road and Bridge Construction, filed November 5, 1984; SHC Rule 85-3(L), New Mexico State Highway Department Construction contract Bidding Requirements and General Contract Provisions, filed July 26, 1985; SHC 86-2(L), New Mexico State Highway Department Construction Contract Bidding Requirements and General Contract Provisions, filed December 16, 1986; SHTD Rule 91-4, New Mexico State Highway and Transportation Department Construction Contract Bidding Requirements and General Contract Provisions, filed November 15, 1991; and SHTD Rule 94-1, Division 100- General Provisions Standard Specifications for Highway and Bridge Construction, filed

September 27, 1997.

History of Repealed Material:

18 NMAC 27.2, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction (filed 01/02/1998) and 18 NMAC 27.2, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction (filed 05/01/1998) both repealed February 14, 2000.

18 NMAC 27.2, Division 100 - General Provisions Standard Specifications for Highway and Bridge Construction (filed 02/02/2000) repealed 04/29/05.

18.27.2 NMAC, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction (filed 4/13/05) repealed 9/15/05.

18.27.2 NMAC, Division 100 General Provisions Interim Specifications for Highway and Bridge Construction (filed 9/01/05) repealed 01/31/08.

Other History:

SHTD Rule 94-1, Division 100 - General Provisions Standard Specifications for Highway and Bridge Construction (filed 09/27/97) replaced by 18 NMAC 27.2 (emergency), Division 100 General Provisions Standard Specifications for Highway and Bridge Construction, effective 01/15/98 and 18 NMAC 27.2, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction, effective 05/15/98.

18 NMAC 27.2 (emergency), Division 100 General Provisions Standard Specifications for Highway and Bridge Construction (filed 01/02/98) and 18 NMAC 27.2, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction (filed 05/01/98) both replaced by 18 NMAC 27.2, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction, effective 02/14/00.

18 NMAC 27.2., Division 100 General Provisions Standard Specifications for Highway and Bridge Construction (filed 02/02/00) replaced by 18 27.2 NMAC, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction, effective 04/29/05.

18.27.2 NMAC, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction (filed 4/13/05) replaced by 18.27.2, NMAC, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction effective 09/15/05.

18.27.2 NMAC, Division 100 General Provisions Interim Specifications for Highway and Bridge Construction (filed 9/15/05) replaced by 18.27.2, NMAC, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction effective 01/31/08.

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Workers' Compensation Administration is amending the mandatory forms attached to 11.4.4 NMAC, effective 12-31-07.

WORKER'S AUTHORIZATION FOR DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR WORKERS' COMPENSATION PURPOSES (HIPAA COMPLIANT FORM)

I, (Print Worker's Name) _____, hereby authorize the use or disclosure of my health information as described in this authorization.

1. **INFORMATION** _____ WCA No. _____

Date of Birth _____ Date of Injury _____ SSN _____

Address _____ Phone _____

Worker's representative, if any: _____ Phone _____

Address: _____

2. **RELEASE**

I authorize the Health Care Provider (HCP) or any member or employee of its office or association who has examined or treated me, as well as any hospital or treatment facility in which I have been a patient, to disclose and release complete and legible copies of any and all information concerning my physical or psychiatric condition, care and treatment, to my employer, _____, and/or its insurance carrier, _____, and/or their attorneys, and/or duly authorized representatives of the New Mexico Workers' Compensation Administration and its current medical cost containment contractor or their duly authorized agents. Copies of all documentation released pursuant to this authorization shall be sent to the agency requesting the information and to me or my representative as listed above.

Each person described in the section above who maintains or transmits health information shall maintain reasonable and appropriate administrative, technical, and physical safeguards—

(A) to ensure the integrity and confidentiality of the information;

(B) to protect against any reasonably anticipated—

(i) threats or hazards to the security or integrity of the information; and

(ii) unauthorized uses or disclosures of the information; and

3. I understand the following information will be released pursuant to a work-related/occupational injury or illness/workers' compensation claim: medical reports; clinical notes; nurses' notes; patient's history of injury; subjective and objective complaints; x-rays; test results; interpretation of x-rays or other tests (including a copy of the report); diagnosis and prognosis; hospital bills; bills for services the HCP has rendered; payments received; and any other relevant and material information in the HCP's possession. This Authorization also includes, if applicable, any hospital operational logs, emergency logs, tissues committee reports, psychiatric reports and records, physical therapy records, and all outpatient records. This release may also be used to request a Form Letter to HCP as approved by the Workers' Compensation Administration. I understand that I have the right to restrict the information that may be provided by signing this authorization to the extent provided by law.

CONDITIONS

4. I understand the purpose of this request is to determine the proper level of workers' compensation benefits and may include information regarding any of the following: to determine my occupational injury or illness status; to determine my eligibility for workers' compensation benefits; to determine my current and future medical status after occupational injury; to determine my current medical status and/or return-to-work capability.

5. Right to revoke: I understand I have the right to revoke this authorization at any time by notifying the company named in Paragraphs 1 and 2. I understand that the revocation is only effective after it is received and logged by that company and that any use or disclosure made prior to the revocation under this authorization will not be affected by the revocation. I further understand that my revocation of this authorization may affect my ability to receive occupational injury or workers' compensation benefits governed by this revocation.

6. I understand that after this information is disclosed, the recipient may continue to use it pursuant to my prior authorization, regardless of my subsequent revocation of this authorization. I further understand that different protections may be available pursuant to state and federal law.

7. I understand that information to be released pursuant to a work-related/occupational injury or illness/workers' compensation claim may also be released to WCA and its current medical cost containment contractor or their duly authorized agents.

8. I hereby expressly waive any privileges, regulations and/or rules of ethics that might otherwise prevent any hospital, health care provider or other person who has treated me or examined me in a professional capacity from releasing such records.

9. A photostatic or other copy of this Release, which contains my signature, shall be considered as effective and valid as the original, and shall be honored by those to whom it is sent or provided for a period of six (6) months from the date it was signed.

10. This Release does not authorize any personal or telephonic conferences or correspondence directly between any health care provider and a representative of my employer, its attorney or insurance carrier to discuss my case and is solely for the release of medical documentation as set forth herein. Brief communication for the limited purpose of obtaining medical records is permitted.

11. I understand I am entitled to a copy of this authorization and to any records provided hereunder. I am requesting a copy of this authorization o Yes o No - If Yes, I have received a copy _____ (initial)
I understand this authorization will expire within six (6) months of the date I signed it, unless I revoke it earlier, pursuant to Paragraph 5.

Signature of Employee _____ Date _____

Witness Signature (REQUIRED) _____

This form cannot be accepted without a witness signature.

Witness Name (Print or type) _____ Date _____

Personal Representative Section:

If a personal representative executes this form, that representative warrants that he or she has authorization to sign this form on the basis of (print detailed basis for representation): _____

Signature of Personal Representative _____ Date _____

STATE OF NEW MEXICO

WORKERS' COMPENSATION ADMINISTRATION

FORM LETTER TO HEALTH CARE PROVIDER

Instruction to the person submitting this form to the health care provider:

Along with this form, you must provide a copy of the WCA- approved medical release form that has been signed by the Worker within the last 6 months.

TO: HEALTH CARE PROVIDER

RE: Worker: _____ WCA No.: _____
DOB: ___/___/___ SSN: ___/___/___

Attached is a release of medical information by the Worker/Patient. The information requested in this letter is necessary to evaluate the

Worker's legal claims. By promptly completing these forms, you speed the process of evaluation, including whether medical bills should be paid by the insurance carrier. Please answer all questions which you believe to be pertinent. Your answers must be based upon reasonable medical probability.

1. Who referred Worker to you for treatment? _____
2. Date of Worker's most recent visit or treatment: _____
3. What is your diagnosis of the condition(s) for which you have treated the Worker?

4. In your opinion, are the conditions or complaints for which you have treated the Worker causally related to an on-the-job injury? Yes ___ No ___
Date of Injury: _____
5. Is the Worker suffering from a disease that, in your opinion, is related to employment? Yes ___ No ___
Date of occurrence: _____
6. Indicate the period of time the Worker has been unable to work: _____
7. Is Worker able to return to work?
Yes ___ If yes, same job? ___ Different job? ___
Any restrictions? _____
No ___ If no, when do you anticipate a return to work? _____
8. Has the Worker reached the date after which further recovery from, or lasting improvement to, an injury can no longer be reasonably anticipated, i.e., has the Worker reached maximum medical improvement (MMI)?
Yes ___ Date of MMI: _____
No ___ Anticipated date of MMI _____
9. If the Worker has reached MMI, please indicate your opinion as to the percentage of the Worker's anatomical or functional abnormality existing after the date of MMI:
a) Percentage of impairment, if any: _____
b) Whole body or body part: _____
c) Indicate which edition of AMA Guides used: _____
d) AMA Guide page number(s): _____
e) If there is no impairment by AMA guides is there a "loss of use?" _____
10. Has a Physical Capacities Assessment or Functional Capacity Evaluation been performed?
Yes ___ No ___
Was the evaluation performed by a licensed physical therapist or occupational therapist? Yes ___ No ___
11. Can the Worker:
a) Lift over 50 pounds occasionally or up to 50 pounds frequently? Yes ___ No ___
b) Lift up to 50 pounds occasionally or up to 25 pounds frequently? Yes ___ No ___
c) Lift up to 20 pounds occasionally or up to ten pounds frequently, and either walk or stand to a significant degree, or sit most of the time with a degree of pushing and pulling arm or leg controls or both? Yes ___ No ___
d) Lift up to ten pounds occasionally or up to five pounds frequently, and occasionally walk or stand to carry out job duties? Yes ___ No ___
Comments: _____
12. Please describe any other restrictions on Worker's activities not covered above:

13. Other remarks: _____

14. Have you made any referrals to other health care providers, hospitals or institutions? Yes ___ No ___
If yes, provide the name: _____
15. Please attach a copy of any unpaid bills.
The maximum allowable fee for this form is \$45.00. The fee for copying of medical records and reports for the first ten (10) pages is \$10.00, and \$.20 cents for each additional page.

I hereby [~~swear and~~] affirm that the foregoing responses or opinions are true and correct, to a reasonable medical probability[~~, on pain and penalty of perjury~~].

Date: _____

Signature of Physician

Printed Name of Physician

Address

City/State/Zip

() Telephone Number

~~[SEND COMPLETED FORM TO: Workers' Compensation Administration, P.O. Box 27198, Albuquerque, NM 87125-7198]~~

INSTRUCTIONS

Physician: Give one copy of the completed form to the Worker.

Send another copy of the completed form to:

Clerk of the Court
Workers' Compensation Administration
PO Box 27198
Albuquerque, New Mexico 87125-7198

~~[STATE OF NEW MEXICO]~~

WORKERS' COMPENSATION ADMINISTRATION

_____, WCA No.: _____
Worker,
*, _____, and
_____,
Employer/Insurer.

HEALTH CARE PROVIDER DISAGREEMENT FORM

OBJECTION TO NOTICE OF CHANGE

The Notice of Change was completed by: _____ Worker _____ Employer on the _____, 20____. The Notice of Change is objected to by the _____ Worker _____ Employer. A health care provider hearing is requested on this Objection to Notice of Change because: _____

Signature of filing party

1- Worker's Name: _____
SSN: _____
Date of Accident: _____
Mailing Address: _____
City/State/Zip: _____
Phone Number:() _____

2- Worker's Rep: _____
Address: _____
City/State/Zip: _____
Phone Number:() _____
Fax Number:() _____

3- Employer: _____
Address: _____
City/State/Zip: _____
Phone Number:() _____
Fax Number:() _____

4- Insurer: _____
Address: _____
City/State/Zip: _____
Phone Number:() _____
Fax Number:() _____

5- Employer's Rep.: _____
Address: _____
City/State/Zip: _____
Phone Number:() _____
Fax Number:() _____

[This form must be filed with the Clerk of the Workers' Compensation Administration]

STATE OF NEW MEXICO

WORKERS' COMPENSATION ADMINISTRATION

_____, WCA No.: _____
 Worker,
 v.
 _____, and
 _____,
 Employer/Insurer.

HEALTH CARE PROVIDER DISAGREEMENT FORM

REQUEST FOR CHANGE OF HEALTH CARE PROVIDER

A disagreement has arisen over the selection of a health care provider. The _____ Worker _____ Employer is requesting a change to _____

(Name of proposed health care provider)

The current health care provider's provision of medical care is unreasonable because:

Signature of filing party

1- Worker's Name: _____ 2- Worker's Rep: _____
 SSN: _____ Address: _____
 Date of Accident: _____ City/State/Zip: _____
 Mailing Address: _____ Phone Number:() _____
 City/State/Zip: _____ Fax Number:() _____
 Phone Number:() _____

3- Employer: _____ 4- Insurer: _____
 Address: _____ Address: _____
 City/State/Zip: _____ City/State/Zip: _____
 Phone Number:() _____ Phone Number:() _____
 Fax Number:() _____ Fax Number:() _____

5- Employer's Rep.: _____
 Address: _____
 City/State/Zip: _____
 Phone Number:() _____
 Fax Number:() _____

[This form must be filed with the Clerk of the Workers' Compensation Administration]

STATE OF NEW MEXICO

WORKERS' COMPENSATION ADMINISTRATION

_____, WCA No.: _____
 Worker,
 v.
 _____, and
 _____,
 Employer/Insurer.

Instructions:

Select EITHER the Objection to Notice of Change OR the Request for Change of Health Care Provider, whichever is right for your case. If you are filing an Objection of Notice to Change, it must be filed with the Court Clerk of the New Mexico Workers' Compensation Administration within 3 days of the day you received the Notice of Change.

OBJECTION TO NOTICE OF CHANGE

The Notice of Change of Health Care Provider was completed by: _____ Worker _____ Employer on (date) _____, 20____. The Notice of Change is objected to by the _____ Worker _____ Employer. A health care provider hearing is requested on this Objection to Notice of Change because:

REQUEST FOR CHANGE OF HEALTH CARE PROVIDER

A disagreement has arisen over the selection of a health care provider. The _____ Worker _____ Employer is requesting a change to _____.

(Name of proposed health care provider)

The current health care provider's provision of medical care is unreasonable because:

Signature of filing party

Date

1. Worker's Name: _____

Social Security Number: _____

Date of Accident: _____

Mailing Address: _____

City/State/Zip: _____

Telephone number: _____

2. Worker's Representative: : _____

Address: _____

City/State/Zip: : _____

Telephone Number: _____

Fax Number: _____

E-mail address: _____

3. Employer: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____

Fax Number: _____

E-mail address: _____

4. Insurer: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____

Fax Number: _____

E-mail address: _____

5. Employer's Representative: _____

Address: _____

City/State/Zip: _____

Telephone Number: _____

Fax Number: _____

E-mail address: _____

Is an interpreter needed for the hearing? _____ Yes _____ No

Instructions:

The form can be filed in person with the Clerk of the Workers' Compensation Administration at 2410 Centre S.E., Albuquerque, New Mexico 87106, by facsimile at (505) 841-6060 or contact a WCA ombudsman for assistance at 1-800-255-7965.

ATTENTION WORKER!

These instructions are for you if you have filed a workers' compensation complaint with the New Mexico Workers' Compensation Administration.

1. Take this questionnaire to your doctor. Tell the doctor this must be filled out.
2. Also get a copy of the WCA-approved medical release form. Sign the form and give it to the doctor along with this questionnaire.
3. Have the doctor RETURN the completed questionnaire to you. The doctor is also asked to mail one copy to the WCA.
4. The doctor will be paid for filling out the form by your insurer or self-insurance program.
5. If the doctor has questions about this form, the doctor can call an ombudsman at the WCA, or the doctor can get a copy of a book from the WCA called the "Health Care Provider's Guide to New Mexico Workers' Compensation." This is available from the WCA in print or on the WCA web site at www.workerscomp.state.nm.us.
6. To contact an ombudsman, the doctor can call the WCA HELP Line at 1-866-WORKOMP / 1-866-967-5667 or the nearest office of the WCA.
7. If you are represented by a lawyer, give the completed form to your lawyer.
8. If you are not represented by a lawyer, make three copies of the completed questionnaire, and:
 - * Send one copy to your workers' compensation insurance adjuster.
 - * Bring the original completed questionnaire to your mediation conference.
 - * Keep a copy for your own records.

THANK YOU.

WORKERS' COMPENSATION ADMINISTRATION

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.7 NMAC, Sections 7, 8, 9, 10, 11, and 12, effective 12-31-07.

11.4.7.7 DEFINITIONS: For the purposes of these rules, the following definitions apply to the provision of all services:

A. "ASA relative value guide" means a document published by the American society of anesthesiologists which includes basic relative unit values for each procedure code listed in the edition of the American medical association's *current procedural terminology* adopted in the director's annual order and unit values for anesthesia modifiers and qualifying circumstances. The current calendar year edition of the ASA relative value guide applies to these rules.

B. "Authorized health care provider (HCP)" means the health care provider selected in accordance with the act and the rules of the WCA.

C. "Average wholesale price (AWP)" means the average national price paid by pharmacies for pharmaceuti-

cal products, as determined and published at least monthly by any nationally recognized pricing guide.

D. "Balance billing" means submitting a bill to any party for the difference between the usual and customary charges and the maximum amount of reimbursement allowed for compensable health care services or items.

E. "Bill review" means the review of medical bills and/or associated medical records by a workers' compensation payer or its representative on behalf of the payer.

F. "By report (BR)" means a maximum ~~[fee]~~ amount for a service has not been established in the WCA ~~[schedule of maximum allowable payments]~~ statutory physicians' fee schedule.

G. "Business day" means any day on which the WCA is open for business.

H. "Caregiver" means any provider of health care services not defined and specified in NMSA 1978, Section 52-4-1.

I. "Case management" means the on-going coordination of health care services provided to an injured or disabled worker including, but not limited to:

(1) developing a treatment plan to

provide appropriate health care service to an injured or disabled worker;

(2) systematically monitoring the treatment rendered and the medical progress of the injured or disabled worker;

(3) assessing whether alternate health care services are appropriate and delivered in a cost-effective manner based upon acceptable medical standards;

(4) ensuring that the injured or disabled worker is following the prescribed health care plan; and,

(5) formulating a plan for the return to work.

J. "Complaint" means a written request for workers' compensation benefits or any relief under the act, filed on a mandatory form with the clerk of the WCA by a worker, employer, insurance carrier.

K. "Completion of form letter to health care provider" means all acts necessary to fully complete this form including, but not limited to, writing and/or dictating, transcription, research, and consultation but excluding the conduct of a physical examination or the taking of a medical history.

L. "Contractor" means any organization that has a legal services agreement currently in effect with the workers' compensation administration (WCA)

for the provision of utilization review or case management or peer review services.

~~[L-] M.~~ “[~~Physicians’~~ *Current procedural terminology* (“CPT”)]” means a systematic listing and coding of procedures and services performed by HCPs of the American medical association, adopted in the director’s annual order. Each procedure or service is identified with a numeric or alphanumeric code (CPT code). This was developed and copyrighted by the American medical association.

~~[M-] N.~~ “Deposition” means any deposition ordered by a judge under the act.

~~[N-] O.~~ “Diagnostic statistical manual for mental disorders (DSM)” means the current edition of the manual, which lists and describes the scientifically diagnosed mental disorders and is commonly referred to as “DSM”.

~~[O-] P.~~ “Director” means director of the workers’ compensation administration (WCA).

~~[P-] Q.~~ “Durable medical equipment (DME)” means supplies and equipment that are rented, leased, or permanently supplied to a patient and which have been prescribed to aid the recovery or improve the function of an injured or disabled worker.

~~[Q-] R.~~ “Descriptor” means the definition of a service that is represented in the ~~[schedule of maximum allowable payments]~~ *current procedural terminology issued by the American medical association.*

~~[R-] S.~~ “Employer” means, collectively: an employer subject to the act; a self-insured entity, group or pool; a workers’ compensation insurance carrier or its representative; or any authorized agent of an employer or insurance carrier, including any individual owner, chief executive officer or proprietor of any entity employing workers.

~~[S-] T.~~ “Failed appointment” means an appointment with a health care provider or caregiver for which the patient fails to show or arrives too late to be treated on the same day.

~~[T-] U.~~ “Forms” means a bill for services that is rendered by a health care provider, caregiver, or supplier submitted on one of the following forms as mandated in these rules:

(1) CMS-1500 (12-90) effective until June 1, 2007, CMS-1500 (08/05) effective June 1, 2007

(2) ~~[Form UB 92 effective until June 1, 2007, CMS 1450,]~~ UB04, effective June 1, 2007.

~~[U-] V.~~ “Freestanding ambulatory surgical center (FASC)” means a separate facility that is licensed by the New Mexico department of health as an ambulatory surgical center.

~~[W-] W.~~ “Health care provider (HCP)” means any person, entity, or facility authorized to furnish health care to an injured or disabled worker pursuant to NMSA 1978, Section 52-4-1, including any provider designated pursuant to NMSA 1978, Section 52-1-49, and may include a provider licensed in another state if approved by the director, as required by the act. The director has determined that certified registered nurse anesthetists (CRNAs) and certified nurse specialists (CNSs) who are licensed in the state of New Mexico are automatically approved as health care providers pursuant to NMSA 1978, Section 52-4-1(O).

~~[X-] X.~~ “Hospital” means any place currently licensed as a hospital by the department of health pursuant to NMSA 1978, Section 52-4-1(A), where services are rendered within a permanent structure erected upon the same contiguous geographic location as are all other facilities billed under the same name.

~~[Y-] Y.~~ “Implants, instrumentation and hardware” means:

(1) surgical implants are defined as any single-use item that is surgically inserted, deemed to be medically necessary and approved by the payer which the physician does not specify to be removed in less than six weeks, such as bone, cartilage, tendon or other anatomical material obtained from a source other than the patient; plates, screws, pins, cages; internal fixators; joint replacements; anchors; permanent neurostimulators; and pain pumps;

(2) disposable instrumentation includes ports, single-use temporary pain pumps, external fixators and temporary neurostimulators and other single-use items intended to be removed from the body in less than 6 weeks.

~~[Z-] Z.~~ “Independent medical examination (IME)” means a specifically requested evaluation of an injured or disabled worker’s medical condition performed by an HCP, other than the treating provider, as provided by NMSA 1978, Section 52-1-51.

~~[AA-] AA.~~ “International classification of diseases (ICD-9-CM)” means a set of numerical diagnostic codes, 9th revision, that is commonly referred to as ICD-9.

~~[AB-] BB.~~ “Materials supplied by health care provider (CPT Code 99070)” means supplies and materials over and above those usually included with the HCP’s or caregiver’s services and which are not governed by the durable medical equipment paragraph of these rules. Examples include sterile trays, unit doses of drugs, bandages, elastic wraps, initial casting, splinting and strapping materials, removable splints, slings, etc.

~~[AC-] CC.~~ “Maximum

allowable ~~[payment (MAP)]~~ amount” means the maximum amount ~~[payable]~~ reimbursed for any outpatient services, not including emergency department visits, outpatient surgery visits, or New Mexico gross receipts tax.

~~[BB-] DD.~~ “Maximum amount of reimbursement due” means the maximum payment for any service that is the lesser of the contract amount or the amount appropriately calculated by one of the following official methods:

(1) the assigned ratio discount method which is the hospital’s established usual and customary charge for compensable services multiplied by the assigned ratio, plus any applicable New Mexico gross receipts tax; or,

(2) the maximum allowable ~~[payment]~~ amount method which is the lesser of the usual and customary fee, the contract amount or the ~~[MAP]~~ amount prescribed by the statutory physicians’ fee schedule, plus any applicable New Mexico gross receipts tax; or,

(3) the pharmacy maximum allowable payment (Pharm MAP) which is the maximum payment that a pharmacy or authorized HCP may receive for any prescription drug, plus any applicable New Mexico gross receipts tax; or,

(4) the contract amount which is a contractually negotiated fee between the practitioner and the payer that does not exceed the ~~[MAP]~~ statutory physicians’ fee schedule or the assigned ratio for the service.

~~[CC-] EE.~~ “Medical records” means:

(1) all records, reports, letters, and bills produced or prepared by an HCP or caregiver relating to the care and treatment rendered to the worker;

(2) all other documents generally kept by the HCP or caregiver in the normal course of business relating to the worker, including, but not limited to, clinical, nurses’ and intake notes, notes evidencing the patient’s history of injury, subjective and objective complaints, diagnosis, prognosis and/or restrictions, reports of diagnostic testing, hospital records, logs and bills, physical therapy records, and bills for services rendered, but does not include any documents that would otherwise be inadmissible pursuant to NMSA 1978, Section 52-1-51(C).

~~[DD-] FF.~~ “NPI” means national provider identifier: a standard unique health identifier for health care providers (effective 6/01/2007).

~~[EE-] GG.~~ “New Mexico gross receipts tax (NMGR)” means the gross receipts tax or compensating tax as defined in Chapter 7, Article 9 of the New Mexico Statutes Annotated 1978

(the "Gross Receipts and Compensating Tax Act"). This tax is collected by the New Mexico taxation and revenue department.

~~[FF]~~ **HH.** "New patient" means a patient who is new to the HCP, group practice, or caregiver and/or whose medical and administrative records need to be established. A patient shall also be considered a new patient if seen for a new injury or disability or when a lapse of three (3) or more years from the most recent prior visit has occurred.

~~[GG]~~ **II.** "Outpatient hospital services" means any diagnostic test or procedure, therapeutic treatment/procedure, drugs, supplies, durable medical equipment, and/or other services and items provided to a worker not involving an inpatient stay, emergency department visit or outpatient surgery.

~~[HH]~~ **JJ.** "Outpatient surgery visit" means a visit, not involving an overnight stay (less than 24 hours), to a hospital owned and operated treatment center or a freestanding ambulatory surgery center.

~~[H]~~ **KK.** "Peer review" means an individual case by case review of services for medical necessity and appropriateness conducted by an HCP licensed in the same profession as the HCP whose services are being reviewed.

~~[JJ]~~ **LL.** "Peer review opinion" means referral by the WCA, or its contractor, if any, upon approval and agreement to pay by the payer, for peer review services to answer specific questions concerning issues arising in the course of the contractor's services.

~~[KK]~~ **MM.** "Physical impairment ratings (PIR)" means an evaluation performed by an MD, DO, or DC to determine the degree of anatomical or functional abnormality existing after an injured or disabled worker has reached maximum medical improvement. The impairment is assumed to be permanent and is expressed as a percent figure of either the body part or whole body, as appropriate, in accordance with the provisions of the Workers' Compensation Act and the most ~~[recent]~~ current edition of the American medical association's *guides to the evaluation of permanent impairment* (AMA guide).

~~[MM]~~ **NN.** "Practitioner" as used throughout this rule means any HCP, pharmacy, supplier, caregiver, or freestanding ambulatory surgical center — individually or in combination — as appropriate to the context of the paragraph in which it is used.

~~[NN]~~ **OO.** "Prescription drug" means any drug, generic or brand name, which requires a written order from an authorized HCP for dispensing by a licensed pharmacist or authorized HCP.

~~[OO]~~ **PP.** "Ratio report worksheet definitions":

(1) "Adjusted net revenues" means patient revenues plus other operating revenues minus authorized deductions indicated on the worksheet.

(2) "Adjusted operating expenses" means the sum of hospital operating expenses, as recorded on an accrual basis, including non-physician salaries and wages, non-physician employee benefits, non-physician professional fees, supplies, utilities, depreciation, amortization, interest paid, state and local taxes paid, administrative and facility overhead expenses and related organizational expenses. All income tax paid or due is excluded from adjusted operating expenses. Physician expenses, as defined in this section, are subtracted from operating expenses to derive adjusted operating expenses.

(3) "Contractual allowances" means gross patient charges at established rates minus the amounts received or to be received.

(4) "Generally accepted accounting principles (GAAP)" means accounting principles that encompass the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time as published by the governmental accounting standards board.

(5) "Medicaid/medicare contractual allowances" means gross patient charges at established rates minus the amounts received or to be received from the patient or the program under the agreement or contract between the participating hospital or freestanding ambulatory care center and the United States department of health and human services.

(6) "New hospital" means a hospital, as defined in NMSA 1978, Section 52-4-1, which has not completed its first full fiscal year.

(7) "Other allowances" means gross patient charges at the hospital's established usual and customary rates minus the amounts received or to be received under contractual agreements with non-governmental third party payers or courtesy discounts.

(8) "Other governmental contractual allowances" means unreimbursed charges for contractual allowances including, but not limited to, governmental entities like CHAMPUS and the veterans' administration.

(9) "Other operating revenues" means revenues received from patients for non-patient care. Grants, gifts, and investment income are not included.

(10) "Physician expenses" means salaries, benefits, contractual fees, educational expenses, and travel expenses paid to or on behalf of physicians by a hospital or freestanding ambulatory surgical center.

(11) "Physician professional fees" means fees for professional services provided

ed by a physician and billed by a hospital or freestanding ambulatory surgical center.

(12) "Related organizational expenses" means expenses applicable to services, facilities, and supplies furnished to the hospital or freestanding ambulatory surgical center by organizations related to the hospital or ambulatory surgical center by a common ownership or control.

~~[PP]~~ **QQ.** "Referral" means the sending of a patient by the authorized HCP to another practitioner for evaluation or treatment of the patient and it is a continuation of the care provided by the authorized HCP.

~~[QQ]~~ **RR.** "Rules of the WCA" means rules enacted by the WCA and cited as 11.4 NMAC.

(1) These rules are organized by title, chapter, part, section, paragraph, and subparagraph.

(2) For ease of use, these rules may be referred to in writing and speech by part, section, paragraph, and subparagraph.

~~[RR]~~ **SS.** "Services" means health care services, the scheduling of the date and time of the provision of those services, procedures, drugs, products or items provided to a worker by an HCP, pharmacy, supplier, caregiver, or freestanding ambulatory surgical center which are reasonable and necessary for the evaluation and treatment of a worker with an injury or occupational disease covered under the New Mexico Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law.

~~[SS]~~ **TT.** "Service component modifiers (radiology and pathology/laboratory)" means the designation of radiology and pathology or laboratory procedures that are divided into professional and technical components for billing purposes.

(1) "Professional component (modifier code "-26")" means that portion of a diagnostic or therapeutic procedure which consists of the physician's professional services (an examination of the patient, the performance or supervision of the procedure, and an interpretation and written report of the procedure findings) and must be coded with the modifier-26.

(2) "Technical component (modifier code "-27")" means that portion of a diagnostic or therapeutic procedure which includes the provision of personnel, materials, space, equipment, etc., necessary to perform the procedure must be coded with the modifier -27).

~~[TT]~~ **UU.** "Special report" means a practitioner's preparation of a written response to a request for information or records, requiring the creation of a new document or the previously unperformed analysis of existing data.

~~[UU]~~ **VV.** "Surgical modifiers" means:

(1) "bilateral procedure suffix code "-50"" used for the second procedure when performed during the same operative session;

(2) "multiple procedures suffix code "-51"" used when secondary or lesser surgical procedures are performed during the same operative session as the primary or major surgical procedure;

(3) "assistant surgeon suffix code "-80"" used to identify services performed by an assistant surgeon during a surgical procedure.

~~[XX]~~ **WW.**

"Unbundling" means coding and billing separately for procedures that do not warrant separate identification because they are an integral part of a service for which a corresponding CPT code exists.

~~[WW]~~ **XX.**

"Unlisted service or procedure" means a service performed by an HCP or caregiver which is not listed in the edition of the American medical association's ~~[physicians']~~ *current procedural terminology* referenced in the director's annual order or has not otherwise been designated by these rules.

~~[XX]~~ **YY.**

"Usual and customary fee" means the monetary fee that a practitioner normally charges for any given health care service. It shall be presumed that the charge billed by the practitioner is that practitioner's usual and customary charge for that service unless it exceeds the practitioner's charges to self-paying patients or non-governmental third party payers for the same services and procedures.

~~[YY]~~ **ZZ.**

"Utilization review" means the evaluation of the necessity, appropriateness, efficiency, and quality of health care services provided to an injured or disabled worker.

~~[ZZ]~~ **AAA.**

"Worker" means an injured or disabled employee. [4-1-91, 12-30-91, 12-31-91, 2-24-92, 10-30-92, 1-15-93, 3-18-94, 1-31-95, 8-1-96, 8-15-97, 10-01-98; 11.4.7.7 NMAC - Rn, 11 NMAC 4.7.7, 8-30-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 1-1-07; A, 12-31-07]

11.4.7.8 GENERAL PROVISIONS

A. These rules apply to all charges and payments for medical, other health care treatment, and related non-clinical services covered by the New Mexico Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law.

B. These rules shall be interpreted to the greatest extent possible in a manner consistent with all other rules promulgated by the workers' compensation administration (WCA). In the event of an

irreconcilable conflict between these rules and any other rules, the more specific set of rules shall control.

C. Nothing in these rules shall preclude the separate negotiation of fees between a practitioner and a payer within the ~~[MAP]~~ statutory physicians' fee schedule for any health care service as set forth in these rules.

D. These rules and the director's annual order adopting the ~~[schedule of maximum allowable payments]~~ statutory physicians' fee schedule utilize the edition of the ~~[Physicians']~~ *current procedural terminology* referenced in the director's annual order, issued pursuant to Paragraph (1)(c) of Subsection B, 11.4.7.9 NMAC. All references to specific CPT code provisions in these rules shall be modified to the extent required for consistency with the director's annual order.

E. A carrier who subcontracts the bill review services remains fully responsible for compliance with these rules.

F. Employers are responsible for timely good faith payment as defined in Subsection A of 11.4.7.11 NMAC for all reasonable and necessary health care services for work-related injuries and diseases.

G. Employers are required to inform a worker of the identity and source of their coverage for the injury or disablement.

H. The provision of services gives rise to an obligation of the employer to pay for those services. Accordingly, all services are controlled by the rules in effect on the date the services were provided.

I. Fees and payments for all physician professional services, regardless of where those services are provided, are reimbursed within the ~~[schedule of maximum allowable payments]~~ statutory physicians' fee schedule.

J. Diagnostic coding shall be consistent with the *international classification of diseases, 9th edition, clinical modification (ICD-9-CM)* or *diagnostic and statistical manual of mental disorders* guidelines as appropriate. [12-31-91, 1-15-93, 10-28-93, 3-14-94, 12-2-94, 8-1-96, 8-15-97, 10-01-98; 11.4.7.8 NMAC - Rn & A, 11 NMAC 4.7.8, 8-07-02; A, 10-25-02; A, 1-14-04; A, 12-31-07]

11.4.7.9 PROCEDURES FOR ESTABLISHING THE MAXIMUM AMOUNT OF REIMBURSEMENT DUE

A. All hospitals shall be reimbursed at the hospital ratio itemized in the official WCA listing that becomes effective on ~~[December 31, 2006]~~ December 31, 2007, for all services rendered from

~~[December 31, 2006, through December 31, 2007]~~ December 31, 2007, to December 31, 2008, except as provided in Subsection B of this temporary rule. Any new hospital shall be assigned a ratio of 67%.

(1) The assigned ratio is applied toward all charges for compensable services provided during a hospital inpatient stay, emergency department visit and outpatient hospital surgery.

(2) This ratio does not include procedures that are performed in support of surgery, even if performed on the same day and at the same surgical site as the surgery.

(3) Appeal of assigned ratio by hospitals:

(a) A written appeal may be filed with the director within thirty (30) days of the assignment of the ratio. The administration will review the appeal and respond with a written determination. The administration may require the hospital to provide additional information prior to a determination.

(b) If the hospital is not satisfied with the administration's written determination, within ten (10) calendar days of the date of the determination, the hospital may request that a formal hearing be set and conducted by the director. The director's rulings in all such formal hearings shall be final.

B. The following services and items will be reimbursed as specified; ~~commencing with services provided on or after 12:01 A.M. December 31, 2006~~:

(1) Implants, ~~and~~ hardware and instrumentation implanted or installed during surgery in the setting of a hospital shall be reimbursed at invoice cost times 1.25 plus shipping and handling for the implant or hardware and NMGR.

(2) The professional and technical charges for radiology and pathology/laboratory services provided in a hospital shall be paid at rates equivalent to those set forth in the most current version of the ~~[MAP]~~ statutory physicians' fee schedule. The hospital shall provide a detailed billing breakdown of the professional and technical components of the services provided, and shall be paid pursuant to the procedures set forth at Paragraph (7) of Subsection G of 11.4.7.9 NMAC of these rules.

C. All hospitals shall provide to the WCA:

(1) the most recent full year filing of their HCFA/CMS 2552 G-2 worksheet prepared on behalf of the organization, by ~~[February 1, 2007]~~ February 1, 2008;

(2) any hospital may specifically designate this worksheet as proprietary and confidential; any worksheet specifically designated as proprietary and confidential in good faith shall be deemed confidential pursuant to NMSA 1978, Section 52-5-21 and the rules promulgated pursuant to that

provision.

(3) Failure to comply may result in fines and penalties.

D. All provisions of 11.4.7 NMAC contrary to the provisions set forth in this temporary rule are deemed void and inoperative during the effective period of this rule.

E. Method of payment for FASCs:

(1) All FASCs will provide global billing by CPT code on a CMS-1500 and shall be paid by the assigned centers for medicare and medicaid services (CMS) ambulatory payment classification (APC) base payment rate times 1.3 effective for services from ~~[December 31, 2006, to December 31, 2007]~~ December 31, 2007, to December 31, 2008. See <http://www.cms.hhs.gov/HospitalOutpatientPPS/AU>, under Addendum B, October 2007. No adjusted conversion factors or index values are to be applied. Payment will be made in accordance with the APC base payment rate assigned for that service ~~[in the quarter in which services were rendered]~~ in Addendum B dated October 2007. Absent an assigned APC base payment rate, services shall be paid BR.

(a) Bilateral procedure “-50”

(i) When performed during the same operative session, the first or major procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of billed charges or the APC base payment rate times 1.3.

(ii) The second procedure shall be coded with the same CPT code plus the “-50” modifier code and shall be paid at no more than 50% of the APC base payment rate times 1.3.

(b) Multiple procedures “-51”

(i) The primary or major surgical procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of the billed charges or the APC base payment rate times 1.3.

(ii) The second and third procedure shall be coded with the respective CPT code plus the “-51” modifier code and shall be paid at 50% of the APC base payment rate times 1.3.

(iii) The fourth and subsequent procedures will be paid BR.

(2) Implants, ~~and~~ hardware and instrumentation implanted or installed during surgery in the setting of a FASC shall be reimbursed at invoice cost times 1.25 plus shipping and handling for the implant or hardware and NMGRT.

(3) The professional and technical charges for radiology and pathology/laboratory services provided in a FASC shall be paid at rates equivalent to those set forth in the most current version of the ~~[MAP] statu-~~

tory physicians’ fee schedule. The FASC shall provide a detailed billing breakdown of the professional and technical components of the services provided, and shall be paid pursuant to the procedures set forth at Paragraph (7) of Subsection G of 11.4.7.9 NMAC of these rules.

F. Subsections A-E of 11.4.7.9 NMAC, inclusive, shall be repealed effective 11:59 P.M. ~~[December 31, 2007]~~ December 31, 2008, and shall be of no force or effect with respect to any services provided thereafter.

G. Maximum allowable ~~[payment]~~ amount method

(1) Basic provisions

(a) These rules apply to all charges for medical and other health care treatment provided on an outpatient basis, including procedures that are performed in support of ambulatory surgery, even on the same day and at the same site as the surgery.

(b) The ~~[MAP]~~ statutory physicians’ fee schedule is procedure-specific and provider-neutral. Any code listed in the edition of the ~~[physicians]~~ current procedural terminology adopted in the director’s annual order may be used to designate the services rendered by any qualified practitioner within the parameters set by that practitioner’s licensing regulatory agencies combined with applicable state laws, rules, and regulations.

(c) For purposes of NMSA 1978, Section 52-4-5(A) (1990), the director shall issue an order not less than once per annum setting the ~~[schedule of maximum allowable payments]~~ statutory physicians’ fee schedule for medical services. The order shall contain the revised fee schedule, a brief description of the technique used for derivation of the fee schedule and a reasonable identification of the data upon which the fee schedule was based. The fee schedule shall be released to the public not less than 30 days prior to the date upon which it is adopted and public comments will be accepted during the 30 days immediately following release. After consideration of the public comments the director shall issue a final order adopting a fee schedule, which shall state the date upon which it is effective. The final fee schedule order shall be available at the WCA clerk’s office not less than ten days prior to its effective date.

(2) Evaluation and management (E/M) services:

(a) The definition for “new patient” is unique to New Mexico, differing from the definition presented in the ~~[physicians’]~~ current procedural terminology. (See Subsection ~~[EE]~~ HH of 11.4.7.7 NMAC)

(b) E/M CPT codes shall not be pro-rated.

(3) Independent medical examinations

(a) All IMEs and their fees must be authorized by the claims payer prior to the IME scheduling and service, regardless of which party initiates the request for an IME. In the event of an IME ordered by a judge, the judge will set the fee.

(b) In the event a worker fails to provide 48 hours’ notice of cancellation of an IME appointment, the HCP may be reimbursed either 60% of the pre-approved fee or up to 60% of the HCP’s usual and customary fee if a fee was not pre-approved. “Missed IME” should be written next to the code.

(4) Physical impairment ratings

(a) All PIRs and their fees shall be authorized by the claims payer prior to their scheduling and performance regardless of which party initiated the request for a PIR. The PIR is inclusive of any evaluation and management code.

(b) Impairment ratings performed for primary and secondary mental impairments shall be billed using CPT code 90899 (unlisted psychiatric service/procedure) and shall conform to the guidelines, whenever possible, presented in the most ~~[recent]~~ current edition of the AMA guides to the evaluation of permanent impairment.

(c) A PIR is frequently performed as an inherent component of an IME. Whenever this occurs, the PIR may not be unbundled from the IME. The HCP may only bill for the IME at the appropriate level.

(d) In the event that a PIR with a specific HCP is ordered by a judge and the HCP and claims payer are unable to agree on a fee for the PIR, the judge may set the fee or take other action to resolve the fee dispute.

(5) Physical medicine and rehabilitation services

(a) It shall be the responsibility of the physical medicine/rehabilitation provider to notify the claims payer of a referral prior to commencing treatment.

(b) The appropriate CPT code must be used for billing by practitioners.

(c) Services provided by caregivers (e.g., technicians, exercise physiologists) must be pre-authorized and paid pursuant to Paragraph (13) of Subsection G of 11.4.7.9 NMAC.

(d) In the event a worker fails to provide 48 hours notice of cancellation of an FCE appointment, the practitioner may be reimbursed up to 60% of the ~~[MAP]~~ statutory physicians’ fee schedule for a four-hour appointment.

(6) Materials supplied under CPT code 99070

(a) Supplies and materials must be itemized.

(b) Supplies and materials are reimbursed at the practitioner’s invoice cost plus 25%, plus tax, shipping and handling

charges.

(c) A copy of the invoice shall be provided either at the time of billing or upon the payer's request.

(7) Service component modifiers — radiology and pathology/laboratory

(a) Use of the technical and professional component modifier codes is required for the billing of all radiology and pathology/laboratory procedures. The CPT code followed by "TC" is the appropriate billing code for the technical component.

(b) The dollar value listed [as the MAP] in the statutory physicians' fee schedule for a specific radiology or pathology/laboratory procedure represents the combined maximum allowable [payment] amount for both the technical and professional components of that procedure:

(i) The entity billing for the technical component shall be paid at no more than 60% of the [MAP] statutory physicians' fee schedule for the procedure when the service is provided on an inpatient or outpatient basis.

(ii) The entity billing for the professional component shall be paid at no more than 40% of the [MAP] statutory physicians' fee schedule for the billed procedure, whether the service was provided on an inpatient or an outpatient basis.

(8) Surgical modifiers

(a) Bilateral procedure "-50"

(i) When performed during the same operative session, the first or major procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of billed charges or the [MAP] statutory physicians' fee schedule.

(ii) The second procedure shall be coded with the same CPT code plus the "-50" modifier code and shall be paid at no more than 50% of the [MAP] statutory physicians' fee schedule.

(b) Multiple procedures "-51"

(i) The primary or major surgical procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of the billed charges or the [MAP] statutory physicians' fee schedule.

(ii) The second and third procedure shall be coded with the respective CPT code plus the "-51" modifier code and shall be paid at 50% of the [MAP] statutory physicians' fee schedule.

(iii) The fourth and subsequent procedures will be paid BR.

(c) Assistant surgeon "-80"

(i) The attending surgeon shall bill using the appropriate CPT code(s) and modifiers, if applicable, for the procedure(s) performed and shall be paid at the lesser of the billed charges or the [MAP] statutory physicians' fee schedule, subject

to the percentages for modifiers in this section.

(ii) The assistant surgeon shall bill using the appropriate CPT codes(s) plus the modifier for the procedures performed and shall be paid at no more than 25% of the [MAP] statutory physicians' fee schedule.

(9) Unlisted services or procedures are billable and payable on a BR basis.

(10) Performance of BR services.

(a) The fee for the performance of any BR service is negotiated between the practitioner and the payer prior to delivery of the service. Payers should ensure that a CPT code with an established [MAP] fee schedule amount is not available.

(b) Performance of any BR service requires that the practitioner submit a written report with the billing to the payer.

(i) The report shall substantiate the rationale for not using an established CPT code.

(ii) The report shall include pertinent information regarding the nature, extent, and special circumstances requiring the performance of that service and an explanation of the time, effort, personnel, and equipment necessary to provide the service.

(iii) Information provided in the medical record(s) may be submitted in lieu of a separate report if that information satisfies the requirements of Paragraph (1) of Subsection D of 11.4.7.10 NMAC.

(iv) No separate charge is allowed for the report.

(v) In the event a dispute arises regarding the reasonableness of the fee for a BR service, the practitioner shall make a prima facie showing that the fee is reasonable. In that event, the burden of proof shall shift to the payer to show why the proposed fee is not reasonable.

(vi) Any disputes shall be submitted pursuant to Section 13 of this rule.

(11) Special reports shall be billed with CPT code "99080" and the descriptor "special report". The form letter to health care provider is a special report. The [MAP] allowable amount is \$45.

(12) The use of global fees is encouraged, however global fee shall not be used unless payer and provider agree. Agreement for use of a global fee may be sought and obtained before, during or after provision of services. All services not covered by the global fee shall be coded and paid separately, to the extent substantiated by medical records. Agreement to use a global fee creates a presumption that the HCP will be allowed to continue care throughout the global fee period.

(13) Caregiver services are subject to the payer's pre-authorization prior to the scheduling and performance of any service. All services provided by caregivers are paid BR.

(14) Durable medical equipment (DME) shall be pre-authorized by the payer. However, reasonable and necessary prosthetic/orthotics training and/or adjusting is excluded from the cost of the DME and may be billed separately.

(a) Rental of DME shall not exceed 90 days unless it is determined by the payer to be more cost efficient to do so.

(b) Rental fees shall not exceed the cost of purchase established in the Subparagraph, below. Rental fees paid for the first 30 days of rent may be applied against the purchase price. Subsequent rental fees may not be applied against the purchase price. The decision to purchase should be made within the first 30 days of rental.

(c) Purchases of DME are paid at the practitioner's invoice cost plus 25% plus taxes, shipping and handling charges.

(d) A copy of the invoice shall be provided either at the time of billing or upon the payer's request.

(15) Prorating

(a) The prorating of the practitioner's fees for time spent providing a service, as documented in the provider's treatment notes, is not prohibited by these rules; provided however, that EOB — 13 is sent to the practitioner. (See item (iii) of Subparagraph (e) of Paragraph (4) of Subsection C of 11.4.7.11 NMAC).

(b) The practitioner's fees should not be prorated to exclude time spent in pre- and post-treatment activity, such as equipment setup, cleaning, disassembly, etc., if it is directly incidental to the treatment provided and is adequately documented.

(16) Referrals

(a) If a referral is made within the initial sixty (60) day care period as identified by NMSA 1978, Section 52-1-49(B), the period is not enlarged by the referral.

(i) When referring the care of a patient to another provider, the referring provider shall submit complete medical records for that patient, upon request of the referral provider, at no charge to the patient, referral provider or payer.

(ii) When transferring the care of a patient to another provider, the transferring provider shall submit complete medical records for that patient to the subsequent provider at no charge to the patient, subsequent provider or payer.

(b) If, subsequent to the completion of a consultation, a referral is made to the consultant for the assumption of responsibility for the management of a portion or all of the patient's condition(s), the follow-

ing procedures apply:

(i) Follow up consultation codes shall not be used.

(ii) Evaluation and management codes shall be used.

(iii) Only established patient codes shall be used.

(c) If a practitioner who has been requested to examine a patient assumes responsibility immediately for primary provision of the patient's care, it shall be considered a referral and not a consultation.

(i) Consultation codes shall not be used.

(ii) Evaluation and management codes shall be used.

(iii) For the first visit only, a new patient code may be used.

(iv) HCPs and caregivers may negotiate with the payer, prior to performing the service, regarding the use of consultation codes in appropriate circumstances.

(17) Physical therapy

(a) New Mexico specific codes are no longer in use. Please consult the fee schedule currently in use for specific codes. Evaluation and management codes are not appropriate for this purpose.

(b) Physical therapy bills may include all codes which are reasonable and necessary for the evaluation and treatment of a worker in a single day.

(c) An initial failed appointment, without providing 48 hours' notice to the physical therapist, may be billed at 60% of the [MAP] statutory physicians' fee schedule.

(18) Failed appointments

(a) An initial failed appointment, when the new patient fails to provide 48 hours notice to the HCP, may be billed at the level of a new outpatient/expanded problem focused H&E/low to moderate severity/straightforward medical decision making/evaluation and management service, using CPT code 99202 and annotated as "FAILED INITIAL APPOINTMENT/NEW PATIENT"

(b) A failed appointment by an established patient may not be billed.

(19) Facility fees

(a) Charges for the use of a room for other than an emergency room visit or operating and recovery rooms for inpatient or outpatient hospital surgery are prohibited by these rules.

(b) For instances of outpatient services, where two or more HCPs combine in delivery of the service, the maximum total payment is based on the [MAP] statutory physicians' fee schedule for the specific service. The HCPs may allocate the payment among themselves.

(20) Charges for copies of radiographic film (X-rays) may be billed to the requestor by the X-ray facility following by

report (BR) procedures.

(21) Second medical opinions requested by a party are deemed medically reasonable and necessary for payment purposes.

H. Pharmacy maximum allowable payment (Pharm MAP) is based upon the maximum payment that a pharmacy or authorized HCP is allowed to receive for any prescription drug, not including NMGRT.

(1) Basic provisions

(a) Pharmacies and authorized HCPs must include patient identification and information. No specific form is required.

(i) Pharmacies shall not dispense more than a 30-day supply of medication unless authorized by the payer.

(ii) Only generic equivalent medications shall be dispensed unless a generic does not exist and unless specifically ordered by the HCP.

(iii) Compounded medication prepared by pharmacists shall be paid on a by report (BR) basis.

(b) Any medications dispensed and administered in excess of a 24-hour supply to a registered emergency room patient shall be paid according to the [MAP] hospital ratio.

(c) Health care provider dispensed medications shall not exceed a 10 day supply for new prescriptions only. The payment for health care provider dispensed medications shall not exceed the cost of a generic equivalent.

(d) Any bill that is submitted without an NDC number will be paid at the lowest AWP available for the month in which the drugs were dispensed.

(e) The HCP formula for billing generic and brand name prescription drugs is:

$(\$)AWP \times .90$ with no dispensing fee included.

(2) Average wholesale price (AWP)

(a) Any nationally recognized monthly or weekly publication that lists the AWP may be used to determine the AWP.

(b) The date that shall be used to determine the AWP and calculation of the Pharm MAP shall be the date on which the drugs were dispensed, regardless of AWP changes during the month.

(c) Use of a prorated calculation of AWP will often be necessary in the formulas. For each drug dispensed, the prorated AWP shall be based on the AWP for the "100s ea" quantity of the specific strength of the drug, as listed in a nationally recognized publication, with the following exceptions:

(i) If an AWP listed in the publication is based on the exact quantity of the drug dispensed, e.g., #15, #60, 15

ml, 3.5 gm, etc., the AWP for the exact quantity shall be used with no prorating calculation made.

(ii) If the drug is dispensed as a quantity based on volume (grams, ounces, milliliters, etc.) rather than single units ("ea"), the prorated AWP shall be calculated in accordance with the highest quantity (volume) listed for the specific strength of drug.

(iii) In cases of a conflict between referenced publications, the lower price shall prevail.

(3) The formula for billing generic and brand name prescription drugs is:

$Pharm\ MAP(\$) = (\$)AWP \times .90 + \$5.00.$

I. Qualification of out of state health care providers

(1) An HCP that is not licensed in the state of New Mexico must be approved by the director to qualify as an HCP under the act.

(2) No party shall have recourse to the billing and payment dispute resolution provisions of these rules with respect to the services of an HCP who is not licensed in New Mexico or approved by the director.

(3) The director's approval may be obtained by submitting a written motion and order, supported by an original affidavit of the HCP seeking approval, on forms acceptable to the director. Nothing in this rule shall prevent the director from entering into agreements with any party or HCP to provide for simplified and expeditious qualification of HCPs in individual cases, provided, however, that all such agreements shall be considered public records.

(4) The director's approval of a health care provider in a particular case, pursuant to the provisions of Section 52-4-1, will be deemed given when an out of state health care provider provides services to that injured worker and the employer/insurer pays for those services. The approval obtained by this method will not apply to the provision of health care by that provider to any other worker, except by obtaining separate approval as provided in these rules. [01-24-91, 4-1-91, 12-30-91, 12-31-91, 1-18-92, 10-30-92, 1-15-93, 10-28-93, 2-23-94, 3-14-94, 12-2-94, 1-31-95, 8-1-96, 9-1-96, 8-15-97, 4-30-98, 10-01-98, 6-30-99; 11.4.7.9 NMAC - Rn & A, 11.4.7.9 NMAC, 8-07-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 12-30-05; A, 12-31-06; A, 1-1-07; A, 12-31-07]

11.4.7.10 BILLING PROVISIONS AND PROCEDURES

A. Basic provisions

(1) Balance billing is prohibited.

(2) Unbundling is prohibited.

(a) If a service that is ordinarily a component of a larger service is performed alone for a specific purpose it may be con-

sidered a separate procedure for coding, billing, and payment purposes.

(b) Documentation in the medical records must justify the reasonableness and necessity for providing such services alone.

(3) The patient/worker shall not be billed for health care services provided by an authorized HCP as treatment for a valid workers' compensation claim except as provided in Subparagraphs (a) or (b) of Paragraph (2) of Subsection A of 11.4.7.13 NMAC.

(4) All reasonable and necessary services provided to a patient/worker with a valid workers' compensation claim shall be paid by the employer or the employer's representative on behalf of the employer.

(5) If a service has been pre-authorized or is provided pursuant to a treatment plan that has been pre-authorized by an agent of the payer, it shall be rebuttably presumed that the service provided was reasonable and necessary. The presumption may be overcome by competent evidence that the payer, in the exercise of due diligence, did not know that the compensability of the claim was in doubt at the time that the authorization was given.

(6) Timeliness

(a) Initial billing of outpatient services by practitioners, other than hospitals and FASC's, shall be postmarked no later than 30 calendar days from the date of service.

(b) Initial billing of outpatient services by hospitals and FASCs shall be postmarked within 30 days from the end of the month in which services were rendered.

(c) Initial billing of inpatient services shall be issued no later than 60 calendar days from the date of discharge.

(d) Failure of the practitioner to submit the initial billing within the time limits provided by these rules shall constitute a violation of these rules but does not absolve the employer of financial responsibility for the bill.

B. Billing forms have been adopted from the US department of health and human services' health care financing administration.

(1) Billing for services calculated according to the ratio discount method must be on a UB-92 (effective until 6/1/07), UB04 (effective 6/1/07), CMS-1450. This includes inpatient services, emergency room services and hospital outpatient surgery.

(2) Billing for services calculated according to the [MAP] statutory physicians' fee schedule and provided by hospitals may be on form [UB-92 (effective until 6/1/07);] UB04 (effective 6/1/07), CMS-1450 or form CMS-1500. FASCs shall bill for services on a CMS-1500.

(3) Billings for all outpatient

services calculated according to the [MAP] statutory physicians' fee schedule must be on form CMS-1500.

(4) Pharmacies and authorized HCPs must include patient identification and appropriate information. Billings for pharmaceuticals requires no specific form.

(5) Completion of forms

(a) "WORKERS' COMPENSATION" or "WORK COMP" shall be clearly printed or stamped at the top of the billing form. Any subsequent billing for the same service(s) must be clearly labeled "TRACER" or "TRACER BILL" at the top of the billing form and may be a copy of the original bill.

(b) Entry of the applicable CPT code and a descriptor are mandatory for each procedure billed, regardless of which form or itemized statement is utilized.

(c) FORM CMS-1500 (12/90) information required for completion is self-explanatory with the following exceptions:

(i) Sections 6, 9, 11a-d, 12, 13, 17a, 19, 22, 23, 24h-k, and 27 are not applicable.

(ii) Section 1. Check "Other".

(iii) Section 1a. Enter patient's social security number.

(iv) Section 4. Enter employer's name.

(v) Section 7. Enter employer's address and telephone number.

(vi) Section 11. Name of workers' compensation insurance carrier or self-insured employer or third party administrator.

(vii) Section 21. Enter ICD-9-CM or DSM code and descriptor for each diagnosis.

(viii) Section 24d. Entry of a specific CPT code, any applicable modifier and the descriptor is mandatory for each procedure/service billed.

(ix) Section 26. Optional

(x) Section 28. Multiple page bills should show the cumulative total in Section 28 of each consecutively numbered page, with the combined total for all pages on the last page.

(xi) Section 29. This section may be used to indicate any agreed upon discount amount or rate.

(xii) Section 30. This section may be used to indicate the amount due after applying any discounts. Otherwise, leave it blank.

(xiii) Anesthesiologists and laboratories may omit Sections 14, 15, and 16.

[(d) Form CMS-1450 (UB-92) must be completed by health care facilities (effective until 6/1/2007):

(i) Locators that are

optional on the UB-92 are 8, 9, 10, 11, 31, 33, 34, 35, 36, 37, 38, 48, 49, 51, 52, 53, 54, 55, 57, 59, 64, 79, and 84.

(ii) The following locators on the UB-92 must be completed by the health care facilities: 1, 2, 3, 4, 5, 6, 7, 12, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 30, 32, 42, 43, 44, 47, 50, 56, 58, 60, 65, 67, 76, 78, 80.

(iii) Locator 1. Practitioner name, address, and telephone number.

(iv) Locator 2. Site of service name and address.

(v) Locator 3. Account number or invoice number.

(vi) Locator 4. Enter Code 111, 115, 117, 121, 125, 127, 851, 855, or 857 for inpatient; 131, 135, 137 for outpatient and for emergency room; 831 for FASC. (Note: if Locator 42 contains an entry beginning with "45", then the service was emergency room, not outpatient.)

(vii) Locator 5. Hospital federal tax identification number.

(viii) Locator 6. Statement coverage dates must be provided.

(ix) Locator 7. Covered days—the days during the billing period applicable to the cost report.

(x) Locator 12. Injured worker's name.

(xi) Locator 14. Injured worker's birth date.

(xii) Locator 17. Date of admission to hospital or facility.

(xiii) Locator 19. Type of admission.; code values: 1 = emergency, 2 = urgent, 3 = elective, 5 = trauma center, 9 = information unavailable.

(xiv) Locator 20. Source of admission code values: 1 = physician referral, 2 = clinic referral, 3 = HMO referral, 4 = hospital transfer, 6 = transfer from HCF, 7 = ER, 8 = law enforcement, 9 = unavailable, A = transfer from (CAH).

(xv) Locator 22. Patient status: code values (01-76).

(xvi) Locator 23. Health care provider medical record number.

(xvii) Locators 24-30. Use condition code 02 for employment related injury.

(xviii) Locator 42. Revenue codes for services billed. (Note: revenue code (0001) must be provided in column 42 for total charges.)

(xix) Locator 43. Lists and describes each medical service and item being billed corresponding to revenue code applicable.

(xx) Locator 44. Accommodation rate for applicable services provided.

(xxi) Locator 47.

~~Billed charges. Information based on service provided (revenue code). (note: last revenue code in column 42 must be 0001 for non-electronic filers.)~~

~~(xxii) Locator 50.~~

~~Insurance carrier, self insurer or TPA (claims administrator).~~

~~(xxiii) Locator 56.~~

~~DRG (diagnosis related group). Code used by Medicare to group medical services provided by inpatient hospital services. Required for type of bill = 111, 115, 117, 121, 125, 127, or inpatient for CAH codes 851, 855 and 857.~~

~~(xxiv) Locator 58.~~

~~Insured's name patient's name or employer's name.~~

~~(xxv) Locator 60. SSN~~

~~of injured worker or worker's identification number.~~

~~(xxvi) Locator 65.~~

~~Employer's Name.~~

~~(xxvii) Locator 67.~~

~~Principle diagnosis code must be based on ICD-9-CM. Code must include all five digits.~~

~~(xxviii) Locator 68-75.~~

~~Other diagnosis codes are based on ICD-9-CM. These codes are sent to payer if available.~~

~~(xxix) Locator 78. The~~

~~health care facilities current workers' compensation ratio.~~

~~(xxx) Locator 80.~~

~~Principle procedure code and date: The HCP enters the ICD-9-CM code for the inpatient principle procedure. The principle procedure is the procedure performed for definitive treatment rather than for diagnostic or exploratory purposes, which is necessary to take care of a complication. The code should relate closely to the principle diagnosis. A date should also be provided.]~~

~~[(e)] (d) Form CMS-1450 (UB-04) must be completed by health care facilities (effective 6/1/2007):~~

~~(i) The following locators on the UB-04 must be completed by the health care facilities: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 15, [16], 17, 18 - 28, 29, 31, 37, 42, 43, 44, 46, 47, 50, 56, 58, 60, 63, 65, 67, 72, 73, 74, [76, 77].~~

~~(ii) Locator 1. Practitioner name, complete address and telephone number.~~

~~(iii) Locator 2. Paid to service provider - name and address.~~

~~(iv) Locator 3. Patient control number, medical record number~~

~~(v) Locator 4. Enter code 111, 115, 117, 121, 125, 127, 851, 855, or 857 for inpatient; 131, 135, 137 for outpatient and for emergency room; 831 for FASC. (Note: if locator 42 contains an entry beginning with "45", then the service was emergency room, not outpatient.)~~

~~(vi) Locator 5. Hospital~~

~~federal tax identification number.~~

~~(vii) Locator 6.~~

~~Statement coverage dates must be provided.~~

~~(viii) Locator 7. (NM Specific) Covered days - the days during the billing period applicable to the cost report.~~

~~(ix) Locator 8a. Injured worker's I.D. 8b-injured worker's name~~

~~(x) Locator 10. Injured worker's birthdate.~~

~~(xi) Locator 11. Gender~~

~~(xii) Locator 12. Date of admission to hospital or facility.~~

~~(xiii) Locator 14. Type of admission, code values: 1=emergency, 2=urgent, 3=elective, 5=trauma center, 9=information unavailable.~~

~~(xiv) Locator 15.~~

~~Source of admission code values: 1=physician referral, 2=clinic referral, 3=HMO referral, 4 = hospital transfer, 6 = transfer from HCF, 7 = ER, 8 = law enforcement, 9 = unavailable, A = transfer from (CAH).~~

~~(xv) Locator 17. Patient status: code values (01-76).~~

~~(xvi) Locators 18-28. Use condition code 02 for employment related injury, wo for UMWA.~~

~~(xvii) Locator 29. Accident and state abbreviation.~~

~~(xviii) Locator 31. Date of work-related occurrence. Note: code = 04, 03, 02, 05, 06 or 07.~~

~~(xix) Locator 37. New Mexico specific (WCA) DRG code (diagnosis related group) code used by medicare to group medical services provided by inpatient hospital services. Required for type of bill = 111, 115, 117, 121, 125, 127, or inpatient for CAH codes 851, 855, and 857.~~

~~(xx) Locator 42. Revenue codes for services billed. (Note: revenue code (0001) must be provided in column 42 for total charges.)~~

~~(xxi) Locator 43. Lists and describes each medical service and item being billed corresponding to revenue code applicable.~~

~~(xxii) Locator 44. Accommodation rate for applicable services provided.~~

~~(xxiii) Locator 46. Units of service (mandatory for accommodation rate).~~

~~(xxiv) Locator 47. Billed charges. Information based on service provided (revenue code). (note: last revenue code in column 42 must be 0001)~~

~~(xxv) Locator 50. Insurance carrier, self-insurer or TPA (claims administrator).~~

~~(xxvi) Locator 56. National provider identifier of hospital facility.~~

~~(xxvii) Locator 58.~~

~~Insured's name or employer's name.~~

~~(xxviii) Locator 60. SSN of injured worker or worker's identification number.~~

~~(xxix) Locator 63. WCA authorization number~~

~~(xxx) Locator 65. Employer's name.~~

~~(xxxi) Locator 67. Principle diagnosis code must be based on ICD-9-CM. Code must include all five digits.~~

~~(xxxii) Locator 67a-h. Other diagnosis codes are based on ICD-9-CM. These codes are sent to payer if available.~~

~~(xxxiii) Locator 72. External cause of injury code.~~

~~(xxxiv) Locator 73. (N.M. WCA Specific) The health care facilities, current workers' compensation ratio.~~

~~(xxxv) Locator 74. and 74 (a-e) Principle procedure code and date: The HCP enters the ICD-9-CM code for the inpatient principle procedure. The principle procedure is the procedure performed for definitive treatment rather than for diagnostic or exploratory purposes, which is necessary to take care of a complication. The code should relate closely to the principle diagnosis. A date should also be provided.~~

~~(6) The health care facility is required to submit all requested data to the payer. Failure to do so could result in fines and penalties imposed by the WCA. All payers are required to notify the economic research bureau of unreported data fields within 10 days of payment of any inpatient bill.~~

~~C. New Mexico gross receipts tax (NMGR): Practitioners whose corporate tax status requires them to pay NMGR shall bill for NMGR in one of the following ways:~~

~~(1) Indicate via a printed or stamped statement adjacent to the combined "total charges" that the individual charges and total charges include NMGR at the specific percentage applicable to the practitioner.~~

~~(2) Make no mention of NMGR, in which case the bill shall be paid at the lesser of the [MAP] statutory physicians' fee schedule or the billed amount.~~

~~(3) Itemize the actual amount of the NMGR below the combined "total charges" amount for all billed services and items, indicating the specific tax rate (percent) applicable to the municipality or county location of the practitioner; and, add this amount to the combined "total charges" to derive a "total amount billed".~~

~~D. Medical records
(1) Initial bills for every visit shall be accompanied by appropriate office notes (medical records) which clearly substantiate the service(s) being billed and are legible.~~

(2) No charge shall be made to any party to the claim for the initial copy of required information. Second copies provided shall be charged and paid pursuant to Subsection A of 11.4.7.15 NMAC.

(3) A charge may be made to the requesting party to the claim for second and subsequent copies of any medical records.

(4) No charge shall be made for provision of medical records to the WCA's utilization review/case management/peer review contractor for required information.

(5) Records for hospitals and FASCs shall have a copy of the admission history and physical examination report and discharge summary, hospital emergency department medical records, ambulatory surgical center medical records or outpatient surgery records.

[4-1-91, 12-31-91, 11-18-92, 1-15-93, 10-28-93, 3-14-94, 12-2-94, 11-18-94, 12-31-94, 8-1-96, 10-01-98; 11.4.7.10 NMAC - Rn, 11 NMAC 4.7.10, 8-30-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 12-30-05; A, 12-31-06; A, 1-1-07; A, 12-31-07]

11.4.7.11 PAYMENT PROVISIONS AND PROCEDURES

A. Payment due

(1) Full payment is due within 30 days of receipt of a bill for services unless payment is pending in accordance with the criteria for contesting bills set out below and an appropriate explanation of benefits has been given by the payer.

(2) Bills may be paid individually or batched for a combined payment; however, each service, date of service and the amount of payment applicable to each procedure must be appropriately identified.

B. Criteria for contesting health care services bills

(1) All bills shall be paid in full unless one or more of the following criteria are met.

- (a) denial of compensability;
- (b) services are deemed not to be reasonable and necessary;
- (c) incomplete billing information or support documentation;
- (d) inaccurate billing or billing errors;
- (e) reduction specifically authorized by this rule.

(2) These criteria are the only permissible reasons for contesting workers' compensation bills submitted by practitioners.

(3) Payment for non-contested portions shall be timely.

C. Payer's explanation of benefits (EOB) for contested bills

(1) Whenever a payer contests a bill or the payment for services is denied, delayed, reduced or otherwise differs from the amount billed, the payer shall provide

the practitioner with a written EOB.

(2) Only the EOBs listed below may be used. Failure of the payer to indicate the appropriate EOB(s) constitutes an independent violation of these rules.

(3) An EOB shall be attached and shall be clearly related to each payment disposition by procedure and date of service.

(4) Standard EOBs: The following EOBs are grouped in accordance with the criteria for contesting health care services bills.

(a) EOB-01 Claim not compensable. The compensability of this workers' compensation claim has been denied by the employer or payer.

(b) EOB-02 Services not reasonable and necessary. This service/procedure/item is not considered reasonable or necessary for the compensable problem.

(c) EOB-03 Incomplete billing information or support documentation. The information/documentation listed was not included with the bill. The charge(s) will be evaluated upon its receipt. Forward expeditiously.

(d) Inaccurate billing/billing errors:

(i) EOB-04 This code is invalid. It is not in the edition of the American medical association's *current procedural terminology* adopted in the director's annual order or this rule. Please code properly and resubmit.

(ii) EOB-05 This procedure was billed more than once on the same date. (Indicate payment disposition.)

(iii) EOB-06 An identical bill for this claimant and date of service was previously submitted and (paid, reduced, or denied).

(iv) EOB-07 The code for this service has been changed to agree with the CPT code for this procedure in the governing version of the [MAP] statutory physicians' fee schedule.

(v) EOB-08 The billed service is not substantiated by the medical notes.

(vi) EOB-09 This procedure does not warrant separate identification as it is normally an integral part of procedure code number ___ that was billed on (date).

(vii) EOB-10 A new patient charge was made for this service without meeting the definition of new patient in these rules. Payment is commensurate with the established patient designation.

(e) Reduction specifically authorized by this rule:

(i) EOB-11 This procedure/service was not provided by an authorized HCP as specified in NMSA 1978, Section 52-4-1.

(ii) EOB-12 Payment has been reduced commensurate with the level of service documented in the medical records (including procedures with surgical modifiers).

(iii) EOB-13 Payment has been prorated for this procedure.

(iv) EOB-14 Payment has been reduced to the [MAP] statutory physicians' fee schedule, assigned hospital ratio, FASC amount, Pharm MAP or the contracted or negotiated amount for this procedure or service.

(v) EOB-15 This service was provided by a caregiver without an agreed upon fee.

(vi) EOB-16 Professional fee at 40% of the [MAP] statutory physicians' fee schedule, technical fee at 60% of the [MAP] statutory physicians' fee schedule, or billed amount, whichever is less.

(vii) EOB-17 Medical records shall accompany each bill at no charge.

[12-31-91, 1-15-93, 8-1-96, 10-01-98; 11.4.7.11 NMAC - Rn, 11.4.7.11 NMAC, 8-30-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 12-31-07]

11.4.7.12 ANESTHESIA

A. The [MAP] maximum allowable amount for the CPT code series 00100-01999 (which is specific to the field of anesthesia), shall be determined by including a monetary conversion factor of \$44.94 which shall be multiplied by the basic unit values, time units, and any physical status and/or qualifying circumstances modifiers to determine the maximum allowable [payment] amount. The units need to be separate in this equation.

B. The "basic unit value" assigned to each procedure in the CPT code series 00100-01999 in the *ASA relative value guide* adopted by the director in his annual order shall be used when billing.

C. "Time units" shall be recorded and billed in 15-minute increments and fractions of units rounded to the nearest fraction (1/15th) of a unit. For example, 19 minutes is billed as follows:

19 minutes = 1 unit (15 minutes)
+ 4/15 of a unit (4 minutes)
1 unit = \$44.94
4 minutes = \$44.94 / 15 = \$2.99
\$2.99 x 4 = \$11.96
19 minutes = \$44.94 + \$11.96 = \$56.90

D. Physical status modifiers may be used in billing, as appropriate, and shall adhere to the coding and unit value assignments in the *ASA relative value guide* adopted by the director in his annual order.

E. Qualifying circum-

stances modifiers may be used in billing, as appropriate, and shall adhere to the coding and unit value assignments in the *ASA relative value guide* adopted by the director in his annual order.

[1-15-93, 8-1-96, 8-15-97, 10-01-98, 6-30-99; 11.4.7.12 NMAC - Rn, 11NMAC 4.7.12, 8-30-02, A, 10-25-02; A, 1-14-05; A, 12-31-07]

End of Adopted Rules Section

This page intentionally left blank.

Other Material Related to Administrative Law

NEW MEXICO COMMISSION OF PUBLIC RECORDS

Commission of Public Records
New Mexico State Records Center &
Archives
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507

NOTICE OF REGULAR MEETING

The New Mexico Historical Records Advisory Board has scheduled a regular meeting for Friday, January 18, 2008 from 9:00 a.m. to 12:00 noon. The meeting will be held in the Commission Room of the New Mexico State Records Center and Archives, which is an accessible facility, at 1209 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Randy Forrester at 505-476-7936 of the State Records Center and Archives at least one week prior to the meeting. Public documents, including the agenda and minutes will be available 24 hours before the meeting.

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Director's Response to Public Comment

The proposed changes to Part 7 of the WCA Rules and WCA mandatory forms were released for public comment from November 16, 2007 through December 7, 2007.

Forms, generally: Two were comments that were generally supportive of the changes to the mandatory forms.

Healthcare Provider Disagreement Form: There was one suggestion that the Healthcare Provider Disagreement Form contain a checkbox indicating that an interpreter is necessary at the hearing. This suggestion will be implemented. A suggestion was received that the title "Request for Change of Health Care Provider" should be centered to be consistent with other WCA forms. This change will be implemented.

Form Letter to Health Care Provider ("FLTHCP"): One commenter suggested that the Form Letter to Healthcare Provider

("FLTHCP") initial Instructions require that Worker provide the form to his doctor. That change will not be implemented. The same commenter suggested that in paragraph number 8, language should be added to clarify that MMI means maximum medical improvement and that paragraph number 9 should be changed to read "AMA Guide page number" and make the numerical references in paragraph 11 consistent. These suggestions will be implemented. Another commenter believes changes to the FLTHCP would increase the administrative burden on physicians and should not be changed. One comment suggested that question number 7 in the FLTHCP requires information from the worker that is too subjective without additional information, such as a job description or related information. The question "is worker able to return to work?" is not a part of the amendments to the form. It is one of the crucial questions contained in the FLTHCP and the changes to question 7 are to determine whether worker can return to the same job or a different job. The WCA received a suggestion that a distribution list be provided to the worker with a copy to the payor in the event that a case has not been filed with the WCA. The commenter did not demonstrate what purpose a distribution list would serve or what information the distribution list should contain. This suggestion will not be implemented.

Medical Authorization: Several comments were received that supported the proposed changes. These changes will be implemented.

Part 7: One commenter observed that the dates contained in 11.4.7.9.A and in 11.4.7.9.E were not consistent. The language in 11.4.7.9.A will be changed to read "December 31, 2007, to December 31, 2008. Comment was received concerning the locator requirements for the UB-92 and the UB-04 forms. The instructions concerning the UB-92 will be deleted because they are no longer being used. There was comment that some of the locators enumerated in 11.4.7.10.B(5)(d)(i), specifically 16, 76 and 77, did not have associated instructions listed. Those locators have been deleted. Another locator, 29, had instructions but was not listed in 11.4.7.10.B(5)(d)(i). This locator was added to the list contained in that rule. Another suggestion was received that the definition of "maximum allowable amount" should read "means the maximum amount reimbursed" instead of "maximum amount payable". This suggestion was

well-received and will be implemented. The public record of this rulemaking shall incorporate this Response to Public Comment and the formal record of the rule-making proceedings shall close upon execution of this document.

Glenn R. Smith
Director
N.M. Workers' Compensation
Administration
December 17, 2007

End of Other Related Material Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2008

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

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