

**NEW  
MEXICO  
REGISTER**



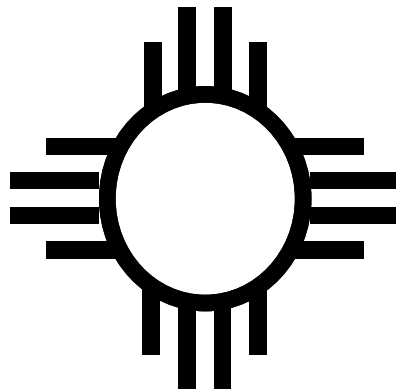
Volume XX  
Issue Number 8  
April 30, 2009



# **New Mexico Register**

**Volume XX, Issue Number 8**

**April 30, 2009**



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

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# New Mexico Register

Volume XX, Number 8

April 30, 2009

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#### Effective Date and Validity of Rule Filings

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

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on July 7, 2009 at 8:00 a.m. in Room 317 at the State Capital in Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 09-04 (R), proposed revisions to Air Quality Control Regulations 20.2.2 New Mexico Administrative Code (NMAC) (Definitions); 20.2.74 NMAC (Permits-Prevention of Significant Deterioration) and 20.2.79 NMAC (Permits- Nonattainment Areas).

The proponent of this regulatory adoption and revision is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from NMED regarding proposed revisions to 20.2.2 NMAC - *Definitions*; 20.2.74 - *Permits - Prevention of Significant Deterioration*; and 20.2.79 - *Permits - Nonattainment Areas* to comply with Implementation Rules adopted by the U.S. Environmental Protection Agency (EPA) for the 8-hour ozone and particulate matter 2.5 microns in size and less (PM2.5) National Ambient Air Quality Standards (NAAQS). Under Section 110(A)(2) of the Clean Air Act, states are required to update state implementation plans upon the promulgation of a new or revised NAAQS. The NMED will host an informational open house on the proposed revisions to 20.2.2, 20.2.74, and 20.2.79 NMAC at the NMED Air Quality Bureau Office, 1301 Siler Rd, Building B, Santa Fe, New Mexico 87507, from 2:00p.m.-6:00p.m. on May 21, 2009.

The proposed revised regulations may be reviewed during regular business hours at the NMED Air Quality Bureau office, 1301 Siler Road, Building B, Santa Fe, New Mexico. Full text of NMED's proposed revised regulations are available on NMED's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us), or by contacting Gail Cooke at (505) 476-4319 or [gail.cooke@state.nm.us](mailto:gail.cooke@state.nm.us).

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement

Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section, 74-2-6 NMSA 1978, and other applicable procedures.

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

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

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on June 22, 2009, and should reference the docket number, EIB 09-04 (R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Joyce Medina, Board Administrator  
Office of the Environmental Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr., Room N-2150 / 2153  
Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-2836

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process

should contact Judy Bentley by June 22, 2009 at the NMED, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC MEETING AND RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on the July 7, 2009 at 8:00 a.m. at the State Capitol Building, Room 317, 490 Old Santa Fe Trail, Santa Fe NM 87501. The purpose of the hearing is to consider the matter of EIB 09-03 (R) proposed revisions to Air Quality Control Regulations 20.2.77 NMAC (New Source Performance Standards), 20.2.78 NMAC (Emission Standards for Hazardous Air Pollutants) and 20.2.82 NMAC (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants).

The proponent of this regulatory adoption and revision is the New Mexico Environment Department ("NMED").

NMED proposes to revise 20.2.77 NMAC to incorporate by reference federal New Source Performance Standards. 20.2.78 NMAC to incorporate by reference federal National Emission Standards for Hazardous Air Pollutants. NMED proposes to revise 20.2.82 NMAC to incorporate by reference federal Maximum Achievable Control Technology Standards for Source Categories.

The proposed revised regulations may be reviewed during regular business hours at the NMED Air Quality Bureau office, 1301 Siler Rd. building B, Santa Fe, New Mexico 87507. Full text of NMED's proposed revised regulations are available on NMED's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us), or by contacting Adam Keaster at (505) 476-5559 or

adam.keaster@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures – Environmental Improvement Board), the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section, 74-2-6 NMSA 1978, and other applicable procedures.

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

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

Notices of intent for the hearing must be received in the Office of the Board no later than 5:00 pm on June 22, 2009, and should reference the docket number, EIB 09-03 (R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Joyce Medina, Board Administrator  
Office of the Environmental Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr., Room N-2150 / 2153  
Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-2836

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hear-

ing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by June 22, 2009 at the NMED, Human Resources Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

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

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## NEW MEXICO MASSAGE THERAPY BOARD

### LEGAL NOTICE

#### Public Rule Hearing and Regular Board Meeting

Notice is hereby given that the New Mexico Massage Therapy Board will convene a Rule Hearing to hear public testimony and comments regarding proposed amendments, repeals and/or replacements to the following rules:

Title 16, Chapter 7, Part 1	General Provisions
Title 16, Chapter 7, Part 2	Professional Conduct
Title 16, Chapter 7, Part 3	Fees
Title 16, Chapter 7, Part 4	Requirements for Licensure
Title 16, Chapter 7, Part 5	Requirements for Schools
Title 16, Chapter 7, Part 6	Requirements for Instructors
Title 16, Chapter 7, Part 7	Students
Title 16, Chapter 7, Part 10	Examinations
Title 16, Chapter 7, Part 11	Continuing Education
Title 16, Chapter 7, Part 12	License/Registration Renewal
Title 16, Chapter 7, Part 14	Complaints
Title 16, Chapter 7, Part 16	Parental Responsibility Act Compliance

The Rule Hearing will be held at the Regulation and Licensing Department, Rio Grande Conference Room, in the Toney Anaya Building, 2550 Cerrillos Road Santa Fe, New Mexico 87505 on Wednesday, June 3, 2009 beginning at 10:00 a.m.

Following the Rule Hearing the New Mexico Massage Therapy Board will convene a regular board meeting to consider adoption of the proposed amendments, repeals and/or replacements to the rules.

Persons desiring copies of the proposed amendments, repeals and/or replacement to the rules may write to the Board office at 2550 Cerrillos Road Santa Fe, New Mexico 87505, call (505) 476-4870 or download them from the board's web site at [www.rld.state.nm.us/massage](http://www.rld.state.nm.us/massage). Written comments that are submitted prior to the hearing must be submitted to the Board office no later than May 18, 2009. Persons wishing to present written comments at the hearing are asked to provide (8) copies of any comments or proposed changes. In addition, persons may present their comments orally at the hearing.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but 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) 476-4870 at least two weeks prior to the hearing or as soon as possible.

Jackie Holmes, Board Administrator  
PO Box 25101- Santa Fe, New Mexico 87504

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**NEW MEXICO OIL  
CONSERVATION  
COMMISSION**

**STATE OF NEW MEXICO  
ENERGY, MINERALS AND  
NATURAL RESOURCES  
DEPARTMENT  
OIL CONSERVATION DIVISION  
SANTA FE, NEW MEXICO**

The State of New Mexico, through its Oil Conservation Commission hereby gives notice pursuant to law and Commission rules of the following meeting and public hearing to be held at 9:00 A.M. on **May 27, 2009**, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, before the Oil Conservation Commission. The public can submit written comments on the proposed description of the Galisteo Basin not later than five business days prior to the hearing. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing please contact Commission Clerk Florene Davidson at (505) 476-3458 or through the New Mexico Relay Network (1-800-659-1779) by **May 7, 2009**. Public documents can be provided in various accessible forms. Please contact Ms. Davidson if a summary or other type of accessible form is needed. A preliminary agenda will be available to the public no later than two weeks prior to the meeting. A final agenda will be available no later than 24 hours preceding the meeting. Members of the public may obtain copies of the agenda by contacting Ms. Davidson at the phone number indicated above. Also, the agenda will be posted on the Oil Conservation Division website at [www.emnrd.state.nm.us](http://www.emnrd.state.nm.us).

**STATE OF NEW MEXICO TO:  
All named parties and persons  
having any right, title, interest  
or claim in the following cases  
and notice to the public.**

***CASE 14255: Reopened***  
**Application of the New Mexico Oil Conservation Division, through its Environmental Bureau Chief, for adoption of an amendment to 19.15.39 NMAC adding new sections to be codified at 19.15.39.9 and 19.15.39.10 NMAC addressing special provisions for Santa Fe County and the Galisteo Basin, Santa Fe, Sandoval and San Miguel Counties, New Mexico.** The Oil Conservation Commission is reopening the record in Case 14255 for the limited purpose of the parties submitting a proposed real property

description by section, township and range for that portion of the Galisteo Basin located within Santa Fe County. The Commission shall hear testimony from the parties and take public comment on the proposed real property description.

**Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 16th day of April 2009.**

**STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION**

**Mark E. Fesmire, P.E.  
Director, Oil Conservation Division  
S E A L**

**NEW MEXICO PUBLIC EDUCATION  
DEPARTMENT**

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

The Public Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on **Monday**, June 1, 2009 from 9:00 A.M. until 11:00 A.M. The purpose of the public hearing will be to obtain input on the following rule:

<b>Rule Number</b>	<b>Rule Name</b>	<b>Proposed Action</b>
6.80.4 NMAC	CHARTER SCHOOL APPLICATION AND APPEAL REQUIREMENTS	AMEND RULE

Interested individuals may testify at the public hearing or submit written comments to Charter Schools Division, Public Education Department, 5600 Eagle Rock Ave. N.E., Albuquerque, N.M., 87113, Tel.: (505) 222-4762; Fax: (505) 222-4769 ([don.duran@state.nm.us](mailto:don.duran@state.nm.us)) Written comments must be received no later than 5 p.m. on June 1, 2009. However, the submission of written comments as soon as possible is encouraged. Written comments shall suggest specific reasons for any suggested amendments or comments and include any proposed amendatory language.

Copies of the proposed rules may be accessed on the Department’s website (<http://ped.state.nm.us/>) or obtained from Michael C de Baca, Administrative Assistant, Charter Schools Division, Public Education Department, 5600 Eagle Rock Ave. N.E., Albuquerque, N.M., 87113, and Tel.: (505) 222-4762 [michael.cdebaca@state.nm.us](mailto:michael.cdebaca@state.nm.us). The proposed rule will be made available at least thirty days prior to the hearings.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Mr. C de Baca, as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO PUBLIC REGULATION COMMISSION  
INSURANCE DIVISION**

**BEFORE THE NEW MEXICO  
SUPERINTENDENT OF INSURANCE  
IN THE MATTER OF PROPOSED  
GENETIC INFORMATION AND  
REQUESTS OF SENIORS NOTICE OF  
PROPOSED RULEMAKING, HEARING AND  
PROCEDURAL ORDER**

**DOCKET NO. 09-00116-IN**

**NOTICE IS HEREBY GIVEN** that the New Mexico Superintendent of Insurance (“Superintendent”) pursuant to NMSA 1978, Section 59A-2-9, proposes to promulgate a rule entitled Genetic Information and Requests of Seniors. The Superintendent, being otherwise fully advised, **FINDS and CONCLUDES THAT:**

1. This new regulation is based on a model regulation passed by the NAIC in response to federal legislation requiring adoption of the standards included in the model.

2. Section 104 of the Genetic Nondiscrimination in Health Insurance Act of 2008 (GINA) requires states to adopt the federal standards on or before July 1, 2009.

3. This proposed rulemaking, hearing and procedural order, which is also governed and authorized by state law, at Section 59A-24-4 NMSA, is intended to bring the state of New Mexico into compliance with the federal genetic nondiscrimination standards regarding Medicare supplement plans, and to allow the superintendent of insurance to preserve regulatory authority over the Medicare supplemental policies of coverage for the protection of New Mexico seniors.

**COPIES OF PROPOSED RULEMAKING ARE AVAILABLE:**

a. by downloading from the Public Regulation Commission's website, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us), then clicking on "Proposed Rules," "Insurance," Docket No. 09-00116-IN, "Genetic Information and Requests of Seniors."

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 \$9.25 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.

**COMMENTS ON RULEMAKING:** The Superintendent requests written and oral comments from all interested persons and entities on the proposed rulemaking. 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, May 20, 2009 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 proposed rulemaking. 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 proposed rulemaking on or before June 5, 2009. An original and (2) two copies of written comments and suggested changes concerning the proposed rule, "Genetic Information and Requests of Seniors," must be mailed or delivered to: NM Public Regulation Commission – Docketing Division, ATTN: Mariano Romero, RE: Proposed Rulemaking "Genetic Information and Requests of Seniors" in Docket No. 09-00116-IN, Public Regulation Commission's Docketing Office, Room 406, PO Box 1269, Santa Fe, NM 87504-1269. Telephone: (505) 827-4368. If possible, please also e-mail a copy of written comments as an attachment in Microsoft Word format to [Melinda.Silver@state.nm.us](mailto:Melinda.Silver@state.nm.us), or call her at 505-827-6904 to notify her that comments were submitted to the Docketing Office. Comments will be available for public inspection during regular business hours in the Docketing Office, Room 406, P.E.R.A. Building, 1120 Paseo de Peralta, 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 formal process to adopt a rule, regulation, stan-

dard 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) 827-4368. 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 be addressed to Mr. Romero.

**DONE**, this 14th day of April, 2009.

**NEW MEXICO PUBLIC REGULATION COMMISSION  
INSURANCE DIVISION**

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 the New Mexico Racing Commission will hold a Regular Meeting and Rule Hearing on May 20, 2009. The hearing will be held during the Commission's regular business meeting, beginning at 8:30 a.m. with executive session. Public session will begin at 9:00 a.m. The meeting will be held at SunRay Park Racetrack, #39 Road 5568, Farmington, New Mexico.

The purpose of the Rule Hearing is to consider adoption of the proposed amendments and additions to the following Rules Governing Horse Racing in New Mexico No. 16.47.1.8 (regarding restrictions), 16.47.1.12 (regarding jockey eligibility), 15.2.4.8 (regarding claiming races), 15.2.5.13 (regarding toe grabs), 15.2.6.9 (regarding medications and prohibited substances), and 15.2.7.12 (regarding new wager). The comments submitted and discussion heard during the Rule Hearing will be considered and discussed by the Commission during the open meeting following the Rule Hearing. The Commission

will vote on the proposed rules during the meeting.

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: April 15, 2009

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
SECURITIES DIVISION**

NOTICE OF RULEMAKING

The Director of the Securities Division of the New Mexico Regulation and Licensing Department proposes to amend the following existing Division rule: 12.11.1 NMAC, General Provisions, to raise the licensing fee for sales representatives and investment adviser representatives to \$50.00.

Interested parties may access the proposed amendment on the Division's website at <http://www.rld.state.nm.us/Securities/index.html>. Copies may also be obtained by contacting the Division at (505) 476-4580. Written comments regarding the proposed new rule and amendments to rules should be directed to Marianne Woodard, Attorney, Securities Division, New Mexico Regulation and Licensing Department, 2550 Cerrillos Rd., Toney Anaya Bldg 3<sup>rd</sup> floor, Santa Fe, New Mexico 87505, or faxed to (505) 984-0617. Comments must be received by 5:00 p.m. on June 1, 2009.

**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 amend the following regulations:

**Property Code**

3.6.5.25 NMAC Section 7-36-18 NMSA 1978

*(Sales Ratio Study)*

3.6.5.27 NMAC Section 7-36-20 NMSA 1978

*(Special Method of Valuation - Land Used Primarily For Agricultural Purposes)*

3.6.5.34 NMAC Section 7-36-27 NMSA 1978

*(Special Method of Valuation - Pipelines, Tanks, Sales Meters, and Plants Used in the Processing, Gathering Transmission, Storage, Measurement or Distribution of Oil, Natural Gas, Carbon Dioxide or Liquid Hydrocarbons)*

3.6.6.12 NMAC Section 7-37-5 NMSA 1978

*(Veteran Exemption)*

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

**Property Code**

3.6.6.13 NMAC Section 7-37-5 NMSA 1978

*(Disabled Veteran Exemption)*

These proposals were placed on file in the Office of the Secretary on April 16, 2009. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about July 16, 2009.

A public hearing will be held on these proposals on Thursday, June 4, 2009, 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 proposal 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 June 4, 2009.

**3.6.5.25 SALES RATIO STUDY:**

A. The department sales ratio study is prepared on the basis of information provided in the assessors' sales ratio reports or sales data cards referred to in Parts 1 through 7 of Chapter 3.6 NMAC.

B. ~~[The sales ratio study compares the values of property determined for property taxation purposes by each county assessor for the year in which the study is prepared with values of the same property as established by sales prices of the same property sold during the year preceding the study. For example, the 1976 sales ratio study compares the values for property taxation purposes of property shown on the counties' 1976 tax schedule with sales of that property which occurred in 1975.]~~ The sales ratio shall compare the last assessed value of property prior to the sale of that property, not including any limitation on an increase in value pursuant to Section 7-36-21.2 NMSA 1978, to the sales price of the same property. For example, the 2009 sales ratio study compares the value of property determined by the county assessor for 2008, not including the limitation on increases in value pursuant to Section 7-36-21.2 NMSA 1978, to the sales price of the same property, which sold in 2008.

C. The sales ratio study shall compare the last assessed value of property prior to the sale of that property, including the limitation on an increase in value pursuant to Section 7-36-21.2 NMSA 1978, to the sales price of the same property. For example, the 2009 sales ratio study compares the value of property determined by the county assessor for 2008, including the limitation on increases in value pursuant to Section 7-36-21.2 NMSA 1978, to the sales price of the same property, which sold in 2008.

D. The sales ratio study shall compare the first assessed value of property after its sale, including the limitation on an increase in value pursuant to Section 7-36-21.2 NMSA 1978, to the sales price of the same property. For example, the 2009 sales ratio study compares the to the value of property determined by the county assessor for 2009, including the limitation on increases in value pursuant to Section 7-36-21.2 NMSA 1978, to the sales price of the same property, which sold in 2008.

[3/23/83, 12/29/94, 8/31/96; 3.6.5.25 NMAC - Rn, 3 NMAC 6.5.25, 4/30/01; A, XXX]

3.6.5.27 **SPECIAL METHOD OF VALUATION - LAND USED PRIMARILY FOR AGRICULTURAL PURPOSES**

**A. APPLICATION FORM FOR VALUATION AS AGRICULTURAL LAND:**

(1) Applications by owners of land for valuation pursuant to Section 7-36-20 NMSA 1978 must be on a form which has been approved by the director of the division. The form shall contain the following requirements for information to be provided:

(a) description of the land;

(b) the use of the land during the year preceding the year for which the application is made;

(c) whether the land was held for speculative land subdivision and sale or has been subdivided;

(d) whether the land was used for commercial purposes of a nonagricultural character;

(e) whether the land was used for recreational purposes and if so, how; and

(f) whether the land was leased and if so, who was the lessee, did he report livestock for valuation and what was the lessee's use of the property.

(2) The form, or a separate document, may also contain requirements for providing information as to the owner's farm income and farm expenses reported to the United States internal revenue service for federal income tax purposes.

**B. AGRICULTURAL PROPERTY - BURDEN OF DEMONSTRATING USE ON OWNER:**

(1) ~~When applying for classification of land as land used primarily for agricultural purposes,~~ To be eligible for the special method of valuation for land used primarily for agricultural purposes, the owner of the land bears the burden of demonstrating that the use of the land is primarily agricultural. This burden cannot be met without submitting objective evidence that:

(a) the plants, crops, trees, forest products, orchard crops, livestock, captive deer or elk, poultry or fish which were produced or which were attempted to be produced through use of the land were:

(i) produced for sale or ~~home consumption~~ subsistence in whole or in part; or

(ii) used by others for sale or resale; or

(iii) used, as feed, seed or breeding stock, to produce other such products which other products were to be held for sale or ~~home consumption~~ subsistence; or

(b) the use of the land met the requirements for payment or other compensation pursuant to a soil conservation pro-

gram under an agreement with an agency of the federal government; or

(c) the owner of the land was resting the land to maintain its capacity to produce such products in subsequent years.

(2) ~~The use of land for the lawful taking of game shall not disqualify land from a determination that it is used primarily for agricultural purposes. Any income to the landowner from the use of the landowner's land for the lawful taking of game will not be considered for purposes of determining whether land is used primarily for agricultural purposes.~~

(a) ~~The taking of game is lawful for purposes of this subsection if it complies with the requirements of NMSA 1978, Chapter 17.~~

(b) ~~The land is used for the lawful taking of game if the landowner actively participates in the lawful taking of game on the landowner's land or authorizes others to use the landowner's land for the lawful taking of game.~~

~~(2)~~ (3) A presumption exists that land is not used primarily for agricultural purposes if income from nonagricultural use of the land exceeds the income from agricultural use of the land.

~~(3)~~ (4) A homesite is not land used for agricultural purposes and is not to be valued as agricultural land pursuant to Section 7-36-20 NMSA 1978. A "homesite" as that term is used in ~~Section 3.6.5.27 NMAC~~ this section is the site used primarily as a residence, together with any appurtenant lands used for purposes related to residing on the site. It is more than the boundary of the foundation of an improvement used as a residence and includes land on which yards, swimming pools, tennis courts and similar nonagricultural facilities are located but does not include land on which agricultural facilities such as barns, pig pens, corrals, bunk houses, farm equipment sheds and outbuildings are located. ~~A homesite shall be presumed to be a minimum of one acre, unless the property owner establishes that a portion of the acre allocated to classification as homesite is actually used for agricultural purposes under the conditions of this section. A homesite can exceed one acre if nonagricultural facilities extend beyond one acre.~~

~~(4)~~ (5) Once land has been classified as land used primarily for agricultural purposes, no application for that classification is required for any succeeding year so long as the primary use of the land remains agricultural. The land will retain its status for property taxation purposes in every succeeding year as land used primarily for agricultural purposes ~~even if ownership changes~~.

~~(5)~~ (6) When use of the land changes such that it is no longer used primarily for agricultural purposes, the owner

of the land must report the change in use to the county assessor in which the land is located. A report by the owner that land classified as land used primarily for agricultural purposes in the preceding property tax year is not used primarily for agricultural purposes in the current property tax year rebuts the presumptions in Subsection A of Section 7-36-20 NMSA 1978. If subsequently use of the land again becomes primarily agricultural, the owner must apply for classification of the land as land used primarily for agricultural purposes.

~~(6)~~ (7) When the owner of the land has not reported that the use of the land is no longer primarily for agricultural purposes but the county assessor has evidence sufficient to rebut the presumptions in Subsection A of Section 7-36-20 NMSA 1978, the county assessor must change the classification of the land. In such a case the county assessor must also consider whether the penalty provided by Subsection H of Section 7-36-20 NMSA 1978 should be applied. The owner may protest the change in classification.

~~B.~~ C. **AGRICULTURAL LAND - MINIMUM SIZE:** Tracts or parcels of land of less than one (1) acre, other than tracts or parcels used for the production of orchard crops, poultry or fish, are not used primarily for agricultural purposes. Property used for grazing is only eligible for special valuation as land used primarily for agricultural purposes if the property meets the requirements of Paragraph (1) of Subsection B of this section, is stocked with livestock that are reported to the county assessor for valuation by either the property owner or the owner of the livestock, and contains the minimum number of acres capable of sustaining one animal unit as established in the order issued pursuant to Paragraph (5) of Subsection F of this section. Tracts or parcels of property smaller than the minimum number of acres capable of sustaining one animal unit may qualify as land used primarily for agricultural purposes as grazing land upon application to the county assessor. The county assessor shall consider the following in determining whether the property is eligible for special valuation as land used primarily for agricultural purposes as grazing land:

(1) whether the property owned or leased is of sufficient size and capacity to produce more than one-half of the feed required during the year for the livestock stocked on the property;

(2) the predominant use of the land has been continuous;

(3) the purchase price paid;

(4) whether an effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices;

(5) whether the property has been

divided, without regard to whether such division was made pursuant to county or municipality subdivision regulations;

(6) whether the property is eligible for landowner hunting permits issued by the department of game and fish;

(7) whether the property is contiguous to land used primarily for agricultural purposes owned by a member or members of the immediate family of the owner; "immediate family" means a spouse, children, parents, brothers and sisters, and

(8) such other factors as may from time to time become applicable.

~~[C.]~~ **D. AGRICULTURAL PRODUCTS DEFINED:** The phrase "agricultural products" as it is used in Section 7-36-20 NMSA 1978 and ~~[Parts 1 through 7 of Chapter 3.6 NMAC]~~ regulations under the Property Tax Code means plants, crops, trees, forest products, orchard crops, livestock, captive deer or elk, wool, mohair, hides, pelts, poultry, fish, dairy products and honey.

~~[D.]~~ **E. PRODUCTION CAPACITY OF AGRICULTURAL LAND - IMPLEMENTATION OF VALUATION METHOD:**

(1) The production capacity of agricultural land shall be determined by the income method of valuation based on the income derived or capable of being derived from the use of the land for agricultural purposes. If information about income amounts from the use of land for agricultural purposes is unavailable, then income shall be imputed to the land being valued on the basis of income amounts from the use of comparable agricultural lands for agricultural purposes. The comparability of the land used for purposes of imputing income shall be determined on the basis of class. ~~[The various methods of determining the class of agricultural land are described in Parts 1 through 7 of Chapter 3.6 NMAC.]~~ A determination of income from agricultural land is not required to be restricted to income from actual production of agricultural products on the agricultural land, since the basis for determination of value is on the land's capacity to produce agricultural products.

(2) "Income" as that term is used in ~~[Section 3.6.5.27 NMAC]~~ this section is generally the average for the preceding five tax years of:

(a) the amount reported for federal income tax purposes on Schedule F of the individual federal income tax return as net farm profit, excluding income and expenses not attributable to the agricultural land being valued; plus

(b) fees for rental of land or machinery less expenses relating thereto; plus

(c) the reasonable value of unpaid

labor of the operator or the farm family; less

(d) the expense of depreciation on farm buildings and machinery.

(3) In lieu of calculating income in the manner set forth in Paragraph (2) of Subsection B of ~~[Section 3.6.5.27 NMAC]~~ this section, income may be determined by either of the following methods.

(a) Income may be determined from reference services such as the New Mexico crop and livestock reporting service, the cooperative extension service, and the agriculture departments of state universities. If a source other than the reported federal farm income, referred to in Paragraph (2) of Subsection ~~[D]~~ E of ~~[Section 3.6.5.27 NMAC]~~ this section, is used, adjustments should be made to allow for costs allowable on the federal farm income tax return if such costs are not allowed in the income figure provided. Also, income from sources other than the federal farm income return are to be closely matched to the class of agricultural land being valued so that the income properly reflects income from the class of agricultural land being valued.

(b) The division by order may determine annual income from various classes of agricultural land based on the land's capacity to produce agricultural products ~~[This order, if made, shall consider determinations of other governmental agencies concerning the capacity of a particular class of agricultural land to produce agricultural products. Such an order is for the purpose of implementing the valuation method prescribed by Section 7-36-20 NMSA 1978 and assuring that land classes determined to have the same or similar production capacity are valued uniformly through out the state]~~, as provided in ~~Subsection E of this section.~~ This order or orders, if issued, would be issued before the last day of the tax year preceding the year in which the annual income amounts are to be used.

(4) The capitalization rate to be used in valuing land used primarily for agricultural purposes pursuant to ~~[Section 3.6.5.27 NMAC]~~ this section may be set by the division by order. This order, if made, will be issued before the last day of the tax year preceding the year in which the capitalization rate is to be used. The division shall review the capitalization rate used at least once every five tax years. In setting the capitalization rate, consideration is given to the current interest rates for government loans, federal land bank loans and production credit association loans.

(5) The capitalization rate is divided into the annual "income" per acre, except for grazing land, to arrive at the value per acre for property taxation purposes of the agricultural land being valued.

~~[(6) "Grazing land" as that phrase is used in Section 3.6.5.27 NMAC is agricultural land which is used for the grazing of livestock. The division by order determines annually the carrying capacity of each class of grazing land by determining the number of animal units per section that the grazing land will reasonably support. In determining this carrying capacity, the division considers five sheep or goats to be the equivalent of one animal unit and one cow to be one animal unit. Classes of grazing land by counties, areas within counties, or some natural division instead of individual sections or leases are established in the order. The division investigation prior to preparation of this order includes analysis of information obtained from livestock industry representatives, the bureau of land management, the soil conservation service, the forest service, agricultural departments of state universities and the state and federal departments of agriculture. The division takes into consideration drought or natural conditions which would tend to reduce the carrying capacity of grazing land. Economic conditions, such as the market price of livestock, are not taken into consideration in determining carrying capacity of grazing land. The order referred to in this paragraph is issued before the last day of the year preceding the tax year in which it is to be used.]~~

(7) The division, by order, determines the values per animal unit, which values reflect the net income derived or capable of being derived from the use of the land (or fractional interests in real property) used for grazing being valued for the tax year for grazing purposes. These animal unit values are applied uniformly throughout the state and are calculated in a manner so that the tax ratio is applied. This amount or these amounts shall be reviewed by the division at least once every five years. The order referred to in Paragraph (7) of Subsection ~~D~~ of Section 3.6.5.27 NMAC is to be issued before the last day of the tax year preceding the tax year in which it is to be used; however, this deadline may be extended by order of the director.]

~~[E.]~~ **F. [CLASSIFICATION] CLASSES OF AGRICULTURAL LAND:**

~~[(1) Subsection E of Section 3.6.5.27 NMAC contains methods for classifying agricultural land, excluding grazing land as defined in the Parts 1 through 7 of Chapter 3.6 NMAC.]~~

~~(2) Pursuant to Section 7-36-20 NMSA 1978, the division may issue an order dividing the land into specific agricultural land classes. If such an order is issued, it will be in accordance with the methods of classification contained in Subsection E of Section 3.6.5.27 NMAC. If such an order is~~

~~not issued for a particular county or part of a county, the county assessor shall follow Subsection E of Section 3-6-5-27 NMAC in classifying agricultural land in the county.]~~

(1) Pursuant to Section 7-36-20 NMSA 1978, the division shall annually issue an order establishing the carrying capacity of grazing land in accordance with the methods of classification contained in this subsection.

~~[(3)] (2) Agricultural land is classified as either:~~

~~(a) "irrigated agricultural land", which is all agricultural land receiving supplemental water to that provided by natural rainfall; or~~

~~(b) "dryland agricultural land", which is all agricultural land without a supplemental water supply; or~~

~~(c) "grazing land" which is all agricultural land which is used solely for the grazing of livestock as established in Subsections B and C above; land the bona fide and primary use of which is the production of captive deer or elk shall be valued as grazing.~~

~~[(4)] (3) All lands that were previously irrigated or dryland meeting the preceding classifications but which are now participating in any of the various crop retirement programs such as the soil bank or acreage set-aside program sponsored by the United States department of agriculture are still to be classified as irrigated or dryland until the program expires from the subject land and clear evidence is shown that a change in land use is occurring, unless there has been a sale of the water rights, the use of which permitted irrigation.~~

~~[(5)] (4) Irrigated and dryland agricultural land is classified using the following sources:~~

~~(a) The land capability classification of the soil conservation service which is a rating of land according to its ability to produce permanently and the requirements of management to sustain production. It consists of eight (8) different land capability classes. Classes I through IV are considered suitable for cultivation; Classes V through VIII are considered to be not suitable for cultivation. Classes II through VIII are further modified by four (4) subclasses that are used to signify the particular kind of limitation affecting the soil. In addition, there are nine (9) land capability units which are used to indicate a special kind of condition. This system is an interpretative rating that includes not only the physical factors of soil, but the availability of water and the effects of climate. It is designed primarily for soil management and conservation practices. Each land capability description carries with it specific recommendations for farming practices that were developed by actual farming experience to offset or allow for the existing production-limiting~~

~~factors of the soil.~~

~~(b) Natural land classification of soil by physiographic groups based on their general topographic, or slope, position.~~

~~(c) Classification by series and type which is the classification used in the cooperative survey of New Mexico state university and the United States department of agriculture and by the soil conservation service and which classify in a series-type grouping.~~

~~(d) Soil characteristics shown by the current New Mexico county assessor's agricultural manual.~~

~~(e) Weather data. The general weather pattern of an area is usually well known and presents no special problems. However, the possible presence of microclimatic zones should be considered. Weather data can be obtained from the national weather service, agriculture experiments stations, extension service and others connected with growing conditions.~~

~~(f) Cost and availability of water. Irrigation districts and other water suppliers boundaries can be obtained from the local conservancy district office or the New Mexico state engineer's office. The supply of water and its cost is to be considered. Electric utility companies often have information on pumping costs and related charges. District taxes, where they are charged, are to be ascertained as well as other water costs. Many areas are subject to charges related to reclamation and drainage; information on such charges must be obtained.~~

~~(g) Cropping information. Knowledge of crop production, yields, prices received, costs and cultural practices is essential to many appraisal situations.~~

(5) The minimum carrying capacity of grazing land will be established in an order of the division by the number of animal units per section (conventionally 640 acres) that the grazing land will support under accepted management practices. The assessor can allocate acreage per animal unit for land parcels that are less than 640 acres as long as the allocation is proportionate and meets the criteria of Subsection C "agricultural land-minimum size" herein. In establishing carrying capacity, the division shall adhere to the definition of livestock in Subsection C of Section 7-35-2 NMSA 1978, as well as utilize the animal unit equivalencies recognized by and information obtained from livestock industry representatives, the bureau of land management, the soil conservation service, the forest service, agricultural departments of state universities and the state and federal departments of agriculture shall be used, along with consideration drought or natural conditions which would tend to reduce the carrying capacity of grazing land. The division may establish in each county one or more

carrying capacities based on different natural conditions within the county. Economic conditions, such as the market price of livestock, are not taken into consideration in determining carrying capacity of grazing land. The order is issued before the last day of the year preceding the tax year in which it is to be used.

(6) The division, by order, shall determine the values per animal, which values reflect the net income derived or capable of being derived from the use of the land (or fractional interests in real property) used for grazing being valued for the tax year for grazing purposes. These animal values are applied uniformly throughout the state and are calculated in a manner so that the tax ratio is applied. This amount or these amounts shall be reviewed by the division prior to the issuance of the annual order. The annual order is to be issued before the last day of the tax year preceding the tax year in which it is to be used; however, this deadline may be extended by order of the director.

**[F.] G. IMPROVEMENTS ON AGRICULTURAL LAND - VALUATION:** All improvements, other than those specified in Subsection C of Section 7-36-15 NMSA 1978, on land used primarily for agricultural purposes shall be valued separately, using the methods described in Section 7-36-15 NMSA 1978 and regulations thereunder, and the value of these improvements shall be added to the value of the land.

**[G. APPLICATION FORM FOR VALUATION AS AGRICULTURAL LAND:]**

~~(1) Applications by owners of land for valuation pursuant to Section 7-36-20 NMSA 1978 must be on a form which has been approved by the director of the division. The form shall contain the following requirements for information to be provided:~~

~~(a) description of the land;~~  
~~(b) the use of the land during the year preceding the year for which the application is made;~~

~~(c) whether the land was held for speculative land subdivision and sale or has been subdivided;~~

~~(d) whether the land was used for commercial purposes of a nonagricultural character;~~

~~(e) whether the land was used for recreational purposes and if so, how; and~~

~~(f) whether the land was leased and if so, who was the lessee, did he own livestock and what was the lessee's use of the property.~~

~~(2) The form, or a separate document, may also contain requirements for providing information as to the owner's farm income and farm expenses reported to the United States internal revenue service~~

for federal income tax purposes.

~~H. PRODUCTION OF CAPTIVE DEER OR ELK: Land the bona fide and primary use of which is the production of captive deer or elk shall be valued as grazing land under Subsection D of this section.~~

~~[+]~~ H. VALUATION OF CAPTIVE DEER AND ELK: The department shall establish the value of captive elk and deer under Section 7-36-21 NMSA 1978 and 3.6.5.28 NMAC. For purposes of the department's determination:

(1) captive deer shall be valued and taxed as sheep; and

(2) captive elk shall be valued and taxed as cattle.

~~J. LAWFUL TAKING OF GAME.~~

~~(1) The taking of game is lawful for purposes of this subsection if it complies with the requirements of NMSA 1978, Chapter 17.~~

~~(2) The use of land for the lawful taking of game shall not be considered in determining whether land is used primarily for agricultural purposes.~~

~~(3) Any income to the landowner from the use of the landowner's land for the lawful taking of game will not be considered for purposes of Subsection A of this section or otherwise in determining whether land is used primarily for agricultural purposes.~~

~~(4) Land is used for the lawful taking of game if the landowner actively participates in the lawful taking of game on the landowner's land or authorizes others to use the landowner's land for the lawful taking of game.~~

~~K. APPLICABILITY OF LAWS 2005, CHAPTER 231. Laws 2005, Chapter 231 and Subsections H, I and J of this section apply to the Property Tax Code deadlines and provisions that occur after April 6, 2005.~~

~~[3/23/83, 12/29/94, 8/31/96, 12/31/97; 3.6.5.27 NMAC - Rn & A, 3 NMAC 6.5.27, 4/30/01; A, 8/15/06; A, XXX]~~

3.6.5.34 **SPECIAL METHOD OF VALUATION - PIPELINES, TANKS, SALES METERS AND PLANTS USED IN THE PROCESSING, GATHERING TRANSMISSION, STORAGE, MEASUREMENT OR DISTRIBUTION OF OIL, NATURAL GAS, CARBON DIOXIDE OR LIQUID HYDROCARBONS**

**A. OIL & GAS PIPELINES - VALUATION METHOD:**

(1) All pipelines, tanks, sales meters and plants as defined in Section 7-36-27 NMSA 1978 which are used in the processing, gathering, transmission, storage, measurement or distribution of oil, nat-

ural gas, carbon dioxide, or liquid hydrocarbons are valued by the division or county assessors in accordance with the valuation methods found in Section 7-36-27 NMSA 1978 and Section 3.6.5.34 NMAC.

(2) PIPELINES, DIRECT CUSTOMER DISTRIBUTION PIPELINES, LARGE INDUSTRIAL SALES METERS, TANKS AND PLANTS.

(a) Pipelines, direct customer distribution pipelines, large industrial sales meters, tanks and plants are valued in accordance with the method described in Subsection D of Section 7-36-27 NMSA 1978.

(b) For purposes of calculating depreciation or related accumulated provision for depreciation, straight line depreciation over the useful life of the property, as determined by the federal energy regulatory commission, is used. Property that does not fall within the federal energy regulatory commission's reporting requirements is assumed to have a useful life of twenty-five (25) years, unless substantial evidence of another useful life is accepted by the division.

~~[(e)]~~ (3) For purposes of Subsection B of Section 7-36-27 NMSA 1978, "other justifiable factors" includes, but is not limited to, functional and economic obsolescence.

~~[(+)]~~ (a) Functional obsolescence is the loss in value that is due to functional inadequacies or deficiencies caused by factors within the property, but is not attributable to physical deterioration. Functional obsolescence may be claimed only if ordinary depreciation will not sufficiently restore the cost of property before its usefulness is over.

~~[(+)]~~ (b) Economic obsolescence is the loss in value that is caused by unfavorable economic influences or factors outside the property, but is not attributable to physical deterioration. Economic obsolescence may be claimed only if the property is affected by economic conditions that will result in its being abandoned prior to the end of its normally useful life.

~~[(+)]~~ (c) Requests for economic or functional obsolescence must be made at the time the annual report is filed. The request must be supported with sufficient documentation, and must be based on a situation present at least six (6) months prior to January 1 of the tax year. In addition to other information required pursuant to this section, an economic or functional obsolescence factor must be provided together with documentation to support and demonstrate how the factor was arrived at. Such documentation shall consist of objective evidence demonstrating functional or economic obsolescence such as compar-

isons to a documented industry standard, to a close competitor or to an engineer's or appraiser's valuation, or any other comparable objective evidence of functional or economic obsolescence. Failure to provide documentation or proof satisfactory to the director will result in denial of an obsolescence adjustment.

(d) A taxpayer must submit the following verifiable documentation with a request for obsolescence for a pipeline, customer distribution pipeline, large industrial sales meter, tank or plant as defined in Section 7-36-27 NMSA 1978:

(i) a report of audited or FASB writedowns;

(ii) partnership agreements and narrative explanations of the mechanism for distributing profits and maintenance responsibilities for the property;

(iii) for a functional obsolescence claim, an explanation of how scheduled depreciation will not sufficiently restore the cost of the property before its usefulness is over;

(iv) a report comparing the replacement cost new, less physical depreciation, with the value of the property as estimated under an income approach;

(v) a report comparing output, or cost of operation or capacity utilization of the property, to output, or cost of operation or capacity utilization of comparison property;

(vi) long term strategic plans for the property, including an analysis of market share, barriers to competitive entry and transportation alternatives; and

(vii) a report addressing the reasons the taxpayer has not sold or written off the property for which the obsolescence is claimed.

(e) In addition to the verifiable information required by Subparagraph (d) of this paragraph, a taxpayer must submit the following verifiable documentation with a request for obsolescence for a pipeline as defined in Section 7-36-27 NMSA 1978:

(i) reserve estimates and projections made at the time the pipeline was planned and prior to construction;

(ii) current reserve estimates and projections;

(iii) income projections for the pipeline, including assumptions as to throughput, rates and customers, at the time that the pipeline was planned and prior to construction;

(iv) income and expense statements of the pipeline for each of the last three most recent years, including assumptions as to throughput, rates and customers; provided that the statement shall conform to the taxpayer's annual reports,



FERC documents; or other audited sources:  
 (v) a statement of actual throughput for the past five years of operation; and  
 (vi) transportation contracts.

(f) In order to allocate value to the taxing jurisdiction wherein the property (valued in accordance with the method described in Subsection D of Section 7-36-27 NMSA 1978) is located the following formula is used, where:

- A = Pipe size in inches
- B = Miles of pipe
- C = Inch miles
- D = Total tangible property cost less depreciation (all sizes)
- E = \$ Per inch mile
- F = Inch miles of pipe in taxing jurisdiction
- G = \$ Value of pipe in taxing jurisdiction

(i)  $A \times B = C$

(ii)  $\frac{D}{\text{Total } C} = E$

(iii)  $E \times F = G$ ; or

(iv)  $G = (D / (A \times B)) \times F$

(4) SALES METERS.

(a) The value of sales meters, other than large industrial sales meters, is determined in accordance with the following schedule:

Sales Meters	SCHEDULE Value per meter
Type I	\$ 52.14
Type II	109.90
Type III	477.35

(b) In preparing the above schedule, all partial statutory exemptions have been considered. Therefore, no such exemptions are allowed in determining net taxable value by means of the above schedule. For purposes of the above schedule, the types of sales meters, other than large industrial sales meters, are:

(i) TYPE I - sales meters with a capacity of less than 250 cubic feet per hour at one-half inch differential. These generally include meters providing residential service.

(ii) TYPE II - sales meters with a capacity from 250 cubic feet to 950 cubic feet per hour at one-half inch differential. These generally include meters providing commercial or public authority service.

(iii) TYPE III - sales meters with a capacity greater than 950 cubic feet per hour at one-half inch differential and those meters providing industrial service with an installed cost including the associated regulator, appurtenances and

devices of less than two thousand five hundred dollars (\$2,500.00).

(5) CONSTRUCTION WORK IN PROGRESS.

(a) For those persons who maintain their records in accordance with a uniform system of accounts approved by the federal energy regulatory commission, the total amount entered into the construction work in progress account shall be reported to the assessing authority as construction work in progress.

(b) For other persons, the total of the balances of work orders for pipelines, plants, large industrial sales meters and tanks in the process of construction on the last day of the preceding calendar year, exclusive of land and land rights, is reported to the assessing authority. Construction work in progress is reported as follows:

(i) total construction work in progress;

(ii) fifty percent (50%) of the construction work in progress as the value for property taxation purposes; and

(iii) value of construction work in progress by taxing jurisdiction in which the construction is located.

(c) The value as stated in Item (iii) of Subparagraph (b) of this paragraph is the value reported. No deductions for depreciation or any other purposes apply. Exemptions have been considered. Therefore, the taxable value and the net taxable value are the same.

B. OIL & GAS PIPELINES - NONPIPELINE PROPERTY:

Pipelines, tanks, sales meters and plants which are not used in the conduct of the pipeline business or public utility business, and which are not necessary to the proper functioning of the pipeline business or public utility business, are not subject to valuation by the division and are valued by the county assessor of the county in which the property is located.

C. OIL & GAS PIPELINES - VALUATION OF NON-PIPELINE REAL PROPERTY:

Residential housing, office buildings, warehouses and other real property excluded from the definitions of property found in Subsection B of Section 7-36-27 NMSA 1978 but used in the conduct of the pipeline or public utility business are valued in accordance with the method stated in Section 7-36-15 NMSA 1978 and regulations thereunder. The term "pipeline" as defined in Paragraph (5) of Subsection B of Section 7-36-27 NMSA 1978 does not include rights of way, easements and other fractional interests in real property. Therefore, the value of those interests is not included in the valuation determined under [Section 3.6.5.27 NMAC] this section.

[3/23/83, 8/19/85, 12/29/94, 8/31/96; 3.6.5.34 NMAC - Rn & A, 3 NMAC 6.5.34,

4/30/01; A, XXX]

3.6.6.12 VETERAN EXEMPTION

A. [SPECIAL BENEFIT ASSESSMENTS AND CERTAIN TAXES - VETERAN EXEMPTION INAPPLICABLE:

The veteran's exemption is not effective against impositions or levies of taxes on specific classes of property outside the Property Tax Code and special benefit assessments authorized by laws outside the Property Tax Code, such as conservancy district assessments.] **PROPERTY TAXES AUTHORIZED BY LAWS OUTSIDE THE PROPERTY TAX CODE AND SPECIAL BENEFIT ASSESSMENTS:** The veteran exemption applies to property taxes imposed by laws other than the Property Tax Code, such as the ad valorem tax on taxable property within a hospital district Section 4-48A-16 NMSA 1978 (1987); the property tax on taxable property within a college district Section 21-2A-5 NMSA 1978 (1995); the property tax on all property subject to taxation within a flood control district Section 72-18-20 NMSA 1978 (1986); and, the general ad valorem tax on all property subject to taxation within a solid waste authority Section 74-10-27 NMSA 1978 (1993).

B. APPLICATION OF VETERAN EXEMPTION - GENERAL:

(1) Husband and wife. Where both husband and wife are veterans within the meaning of Subsection C of Section 7-37-5 NMSA 1978, they may between them hold exempt property to the extent of \$4,000.

(2) Military relationship.

(a) The veteran's exemption contained in Section 7-37-5 NMSA 1978 requires that claimant has been honorably discharged from membership in the armed forces of the United States. A person has been "honorably discharged" if he or she has been discharged and has not received either a dishonorable discharge or a discharge for misconduct.

(b) Any veteran who did not serve at least ninety (90) days at any time during any period in which the military forces were engaged in armed conflict is not entitled to the exemption.

(c) A veteran does not lose his or her right to a veteran's exemption by re-enlisting immediately after receiving his or her honorable discharge.

(3) Residency. Pursuant to Section 7-37-5 NMSA 1978, it is required that a person be a current New Mexico resident to qualify for the veteran's exemption.

(4) Veteran's interest in property.

(a) A veteran who qualifies under Section 7-37-5 NMSA 1978, who is a life tenant of real estate, is entitled to exemption on taxation on the property in which the vet-



eran is a life tenant.

(b) A veteran cannot claim exemption from taxation on land where the veteran holds no title to the land, either legal or equitable.

(c) If a veteran entitled to claim the exemption owns property on January 1, it remains exempt even though the veteran sells it during the year.

(d) In a joint tenancy in which one of the tenants is a veteran, if the share of a veteran's property is of the value of \$2,000 or more, the veteran's share is entitled to the full \$2,000 exemption.

(e) A veteran who has purchased property on an executory contract with legal title remaining in escrow pending the final payment under the purchase contract is the beneficial owner of the property and is the owner for purposes of taxation and may apply the exemption to the property.

(f) A veteran cannot claim exemption from taxation for his or her spouse's separate property or his or her spouse's portion of community property.

(g) A veteran cannot claim exemption from taxation when the veteran is one of the partners in a partnership, and the partnership owns the property on which the exemption is claimed.

(5) Surviving spouse.

(a) A resident unmarried surviving spouse of a veteran who died in service is entitled to the veteran's exemption.

(b) If a veteran's surviving spouse remarries and thereafter obtains a divorce from the subsequent spouse, he or she does not revert to the status of an unmarried surviving spouse entitled to claim the exemption.

(c) A surviving spouse of an eligible veteran is, if a subsequent marriage is annulled, entitled to the exemption because annulment restores him or her to the status he or she held before marriage.

(d) An unmarried surviving spouse of a deceased veteran who is also a veteran may receive a tax exemption as veteran and also as a surviving spouse of a veteran.

(e) An unmarried surviving spouse of a veteran who at the time of the veteran's death was legally separated from the veteran is entitled to the exemption.

#### C. APPLICATION OF VETERAN EXEMPTION - CERTAIN TAXES AND FEES OUTSIDE PROPERTY TAX CODE:

(1) Aircraft registration fees. The veteran's exemption may not be applied to aircraft registration fees.

(2) Cattle Industry Indemnity Act. The veterans exemption may not be applied to the levy authorized by the Cattle Industry Indemnity Act or to similar taxes or assessments against only livestock or the value of

livestock.

(3) Motor vehicle registration fees. Under Section 66-6-7 NMSA 1978, a veteran who has claimed any portion of the veteran's exemption on real or personal property for the year in which the veteran may be liable for the payment of a registration fee for a motor vehicle is not entitled to the reduction in rate for the motor vehicle registration fee. However, if the exemption for motor vehicle registration fees is taken prior to the claiming of the exemption on real and personal property, both exemptions may be claimed to the extent permitted by Section 7-37-5 NMSA 1978.

#### D. ARMED CONFLICTS PRIOR TO WORLD WAR I:

The following are recognized as armed conflicts prior to World War I:

(1) Spanish American War. A Spanish American War veteran, or his or her unmarried surviving spouse is entitled to the exemption provided by Section 7-37-5 NMSA 1978.

(2) Punitive Expedition into Mexico in 1916.

(a) Members of the first New Mexico infantry of the New Mexico national guard who served for ninety days or more in the Punitive Expedition into Mexico in 1916 are entitled to exemption under this statute.

(b) Members of national guards from other states whose outfits were simply engaged in border patrol service and were not officially assigned to the Punitive Expedition into Mexico in 1916 are not entitled to exemption under this statute.

(c) A veteran of the New Mexico national guard who served in the Punitive Expedition into Mexico in 1916, or his unmarried surviving spouse, is entitled to the veteran's exemption.

#### E. ACTIVITIES WHICH ARE NOT SERVICE IN THE ARMED FORCES:

(1) Medical laboratory technician. A medical laboratory technician, subject to orders of the war department, but not in uniform and not given a formal discharge when terminated from hospital service, is a civilian employee and not entitled to the veteran's exemption.

(2) Students army training corps. A claimant is not entitled to the veteran's exemption by reason of his participation in the students army training corps during World War I.

(3) Texas rangers. A Texas ranger who fought in the Indian wars or his or her unmarried surviving spouse is not entitled to veteran tax exemption.

[3/23/83, 12/29/94, 8/31/96; 3.6.6.12 NMAC - Rn & A, 3 NMAC 6.6.12, 4/30/01; A, XXX]

3.6.6.13

**DISABLED VETER-**

#### AN EXEMPTION

**A. Property taxes authorized by laws outside the Property Tax Code and special benefit assessments.** The disabled veteran exemption applies to property taxes imposed by laws other than the Property Tax Code, such as the ad valorem tax on taxable property within a hospital district Section 4-48A-16 NMSA 1978 (1987); the property tax on taxable property within a college district Section 21-2A-5 NMSA 1978 (1995); the property tax on all property subject to taxation within a flood control district Section 72-18-20 NMSA 1978 (1986); and, the general ad valorem tax on all property subject to taxation within a solid waste authority Section 74-10-27 NMSA 1978 (1993). The disabled veteran exemption is not effective against impositions of special benefit assessments authorized by laws outside the Property Tax Code, such as conservancy district assessments.

**B. Residency.** Section 7-37-5.1 NMSA 1978 requires that the property for which the exemption is claimed must be occupied by the disabled veteran (or his surviving spouse) as his or her principal place of residence. Therefore, a person claiming the disabled veteran exemption must be a current New Mexico resident to qualify for the exemption.

#### C. Surviving spouse.

(1) A surviving spouse of a disabled veteran may apply for the exemption even if the disabled veteran did not apply for the exemption during his or her lifetime if the surviving spouse meets the requirements of Subsection C of Section 7-37-5.1 NMSA 1978.

(2) After the disabled veteran's death, his or her resident unmarried surviving spouse is entitled to the disabled veteran exemption if he or she continuously occupies the property, on which the disabled veteran exemption was claimed, as the surviving spouse's principal place of residence.

(3) If a disabled veteran's surviving spouse remarries and thereafter obtains an annulment of the marriage or a divorce from the subsequent spouse, he or she does not revert to the status of an unmarried surviving spouse entitled to claim the disabled veteran exemption.

(4) An unmarried surviving spouse of a disabled veteran who at the time of the disabled veteran's death was legally separated from the veteran is not entitled to the disabled veteran exemption.

**D. Continuously occupies principal place of residence.** Subsection B of Section 7-37-5.1 NMSA 1978 provides for an exemption from property tax of a disabled veteran's principal place of residence when it is occupied by the disabled veteran.

Subsection C of Section 7-37-5.1 NMSA 1978 allows the surviving spouse of a disabled veteran to claim the exemption is the surviving spouse continues to occupy the property continuously as the surviving spouse's principal place of residence. "Principal place of residence" means the dwelling owned and occupied by the disabled veteran and so much of the land surrounding it, not to exceed five acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multidwelling or a multipurpose building and a part of the land upon which it is built. "Occupy the property continuously" means that the individual is physically present in the residence for a total of 185 days or more in aggregate during the prior year and is domiciled in New Mexico as of January 1 of the property tax year for which the exemption is claimed. The definition of "domicile" in Subsections C and D of 3.3.1.9 NMAC is incorporated herein by reference. [3.6.6.13 NMAC - N, XXX]

## 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 amend the following regulations:

#### Motor Vehicle Code

18.19.1.9 NMAC Section 66-2-16 NMSA 1978

#### (Optional Service Fee)

18.19.5.12 NMAC Section 66-5-9 NMSA 1978

#### (Proof of Identification Number, Identity and Residency)

These proposals were placed on file in the Office of the Secretary on April 16, 2009. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about July 16, 2009.

A public hearing will be held on these proposals on Friday, June 12, 2009, at 9:30 a.m. in the Bid Room on the first floor of the Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposal 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 June 12, 2009.

18.19.1.9 **OPTIONAL SERVICE FEE:** Pursuant to Subsection E of Section 66-2-16 NMSA 1978, the following fees for optional services will be charged.

A. In addition to the fee imposed under Subsection C of Section 66-3-6 NMSA 1978, a fee of fifty cents (\$0.50) will be charged for issuance of the security version of the temporary retail-sale permit.

B. A fee of five dollars (\$5.00) will be charged for furnishing pleading forms for the district court action to restore a driver's privilege under Section 66-8-112 NMSA 1978.

C. The secretary may impose additional fees, not to exceed ten dollars (\$10.00) per transaction, to recover the expenses associated with providing optional services for the convenience of the motoring public. These fees will only be charged to persons taking advantage of the service.

[3/15/96, 10/31/97; 18.19.1.9 NMAC - Rn & A, 18 NMAC 19.1.9, 9/14/00; A, XXX]

18.19.5.12 **PROOF OF IDENTIFICATION NUMBER, IDENTITY AND RESIDENCY:**

A. Applicants for a New Mexico identification card, driving permit, provisional driver's license or driver's license, other than a commercial driver's license, must provide documentary proof of their identification number, identity and residency.

B. A person applying for a driver's license or identification card that was lost can use a New Mexico enhanced driver's license photo from the motor vehicle division (MVD) database as proof of identity and identification number, subject to MVD's ability to verify the applicant's social security number or other identification number used to obtain the driver's license or identification card, as sufficient proof to issue a replacement driver's license or identification card.

C. Any applicant eligible for a social security number must produce their social security card in order to provide evidence of the identification number. An applicant who cannot provide the social security card must provide two of the following documents:

(1) a United States, state, or local government-issued medical card through which the social security number can be verified;

(2) a statement from a federally regulated financial institution through

which the social security number can be verified; or

(3) any document in Subsection F of this section, as long as the document can be used to verify the social security number and is not used for proof of both identification number and identity.

D. In order to prove identification number, a foreign national who is unable to obtain a social security number must produce ~~[documentary proof of a matricula consular card issued after February 1, 2005, by the Mexican consulate in Albuquerque or El Paso or an individual tax identification number (ITIN)]~~ documentary proof of a matricula consular card issued after February 1, 2005, by the Mexican consulate in Albuquerque or El Paso or a valid passport issued by their country of citizenship. A foreign national may produce an individual tax identification number (ITIN) so long as it is accompanied by a matricula consular card or a valid passport. The applicant's ITIN card or the applicant's letter from the IRS issuing the ITIN is sufficient proof of the ITIN. [Foreign nationals ineligible for a matricula consular card issued after February 1, 2005, by the Mexican consulate in Albuquerque or El Paso or an ITIN must present as proof of identification number, a valid passport issued by their country of citizenship.]

E. Applicants must produce one of the following documents as proof of identity:

(1) original birth certificate issued by a state or territory of the United States;

(2) certified copy of birth certificate issued by a state or territory of the United States;

(3) an original or certified copy of a foreign birth certificate with a notarized English translation;

(4) original official copy of an FS545 or FS1350 form certifying birth abroad and translated into English;

(5) affidavit of Indian birth;

(6) N560 certificate of citizenship;

(7) N550 certificate of naturalization;

(8) a valid permanent resident card issued by the United States government;

(9) a valid I-551 resident alien card issued since 1997;

(10) a court order for name change, gender change, adoption or divorce, as long as it includes the legal name, date of birth and court seal;

(11) a marriage certificate issued by a state or a territory of the United States; or

(12) any document contained in Subsection F of this section, as long as the document is not used for proof of both identification number and identity.

F. Applicants can use the following documents to provide documentary proof of their identification number or documentary proof of their identity but the document cannot be used for proof of both their identification number and identity:

(1) a state issued driver's license, a driver's license issued by a territory of the United States, or by jurisdiction of Canada, as long as it has a photograph and has not been expired more than one ~~[month]~~ year;

(2) a state government-issued photo identification card, or a photo identification card issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one ~~[month]~~ year; however, the MVD photo identification document card issued by MVD pursuant to Subsection J of this section may not be used to satisfy this proof of identification number requirement;

(3) a state government-issued photo learner's permit, or a photo learner's permit issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one ~~[month]~~ year;

(4) a matricula consular card issued after February 1, 2005, by the Mexican consulate in Albuquerque or El Paso;

(5) a valid passport issued by country of citizenship;

(6) an American Indian or Alaskan proof of Indian blood, certificate of degree of Indian blood, federal Indian census card or tribal membership card;

(7) a photo identification card issued by the United States military, United States coast guard or New Mexico national guard;

(8) an identification document issued by the United States veterans administration, so long as it is accompanied by a United States veterans administration medical center ID card;

(9) a valid United States active duty/retiree/reservist military identification card (DOD ID DD-2); or

(10) a United States, state, or local government-issued photo ID, issued based on name, social security number and date of birth.

G. Applicants ~~[fifteen]~~ eighteen years of age or older must provide two of the following documents, showing a New Mexico address for the applicant, as proof that the applicant lives in New Mexico:

(1) a real property rental agreement or purchase agreement;

(2) a utility bill, such as water, gas, electric, waste, telephone, cable or satellite bill, but not a bill for a cell phone;

(3) an insurance bill;

(4) a bank statement;

(5) an employment pay stub that contains the applicant's name and address;

(6) a local property tax statement or mortgage documents;

(7) proof of a minor child enrolled in a New Mexico public, private, or tribal school;

(8) a current, valid motor vehicle registration;

(9) original documents from a New Mexico community organization attesting to the fact that the applicant is a New Mexico resident;

(10) original documents from a city, county, state, tribal or federal government organization attesting to the fact that the applicant; is a New Mexico resident;

(11) a New Mexico medical assistance card; or

(12) a New Mexico public assistance card.

H. Applicants less than ~~[fifteen]~~ eighteen years of age applying for an identification card must provide one of the following documents, showing a New Mexico address for the applicant, as proof that the applicant lives in New Mexico:

(1) proof that the child is enrolled in a New Mexico public, private, or tribal school;

(2) a bank statement;

(3) an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico driver's license, the parent/guardian's New Mexico identification card, or two proofs of New Mexico residency of the parent/guardian;

(4) original documents from a New Mexico community organization attesting to the fact that the applicant is a New Mexico resident;

(5) original documents from a city, county, state, tribal or federal government organization attesting to the fact that the applicant is a New Mexico resident;

(6) documents from membership in a New Mexico religious organization; or

(7) documents from membership in a New Mexico sports organization.

I. MVD may require foreign nationals or first-time applicants from another state, to provide a certified copy of their driving record with an English language translation, if applicable, from the jurisdiction where the applicant is currently or was previously licensed.

J. Applicants who are unable to meet the requirements for a New Mexico identification card, driving permit, provisional driver's license, or driver's license, may apply for an MVD photo identification document card. The MVD photo identification document card issued by

MVD does not necessarily meet federal identification requirements. This card will be clearly identified on the card as a restricted card that cannot be used for certain purposes. The identification document cannot be used to apply for a New Mexico identification card, driving permit, provisional driver's license or driver's license. An applicant for the MVD photo identification document card must provide two documentary proofs of their identity and one documentary proof of residency.

(1) Applicants must produce two forms of documentation with their name and date of birth or with their name and social security number. Two documents with name and date of birth or two documents with name and social security number are acceptable. Any two of the following documents containing the name and date of birth or name and social security number are acceptable to prove identity:

(a) a state issued driver's license, a driver's license issued by a territory of the United States, or a license issued by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(b) a state issued identification card, an identification card issued by a territory of the United States, or an identification card issued by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(c) a state issued photo learner's permit, a photo learner's permit issued by a territory of the United States, or a photo learner's permit issued by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(d) an original or certified copy of the birth certificate issued by a United States state or territory of the United States;

(e) an affidavit of Indian birth;

(f) a current passport issued by the United States;

(g) a valid passport issued by country of citizenship;

(h) an I-94 form presented without a passport if it contains the applicant's photo;

(i) American Indian or Alaskan proof of Indian blood, certificate of degree of Indian blood, federal Indian census card or tribal membership card or physical address certification letter from the pueblo's governor's office or planning department;

(j) N550 United States certificate of naturalization;

(k) a certificate of citizenship (N560);

(l) a resident alien card (I-551, AR-3, AR3A, AR-103) that contains the applicant's photo;

(m) FS545 or FS1350 United States certificate of birth abroad;

(n) a military identification card that includes the applicant's photo;

(o) a United States veterans administration card that includes the applicant's photo, so long as it is accompanied by a United States veterans administration medical center identification card;

(p) a medical card that includes the applicant's photo;

(q) a military dependent identification card that includes the applicant's photo;

(r) a government-issued photo identification card;

(s) a matricula consular card issued after February 1, 2005, by the Mexican consulate in Albuquerque or El Paso;

(t) a New Mexico corrections department photo identification card with name, date of birth and documentation that the card has not expired within the past year;

(u) an infant baptismal certificate;

(v) a social security card;

(w) a bank card, debit card, or credit card that contains the applicant's photo;

(x) a high school, GED, college, trade school, or university transcript, certificate, or diploma;

(y) an employee identification badge that contains the applicant's photo;

(z) a medical insurance card or documentation of medical insurance coverage or eligibility that contains an identification number;

(aa) military discharge/separation papers (DD-214);

(bb) selective service card;

(cc) proof of eligibility for and receipt of welfare benefits;

(dd) medical records;

(ee) documentation from a federal, state, or local correctional facility; or

(ff) a social security administration benefits award letter containing the social security number.

(2) Applicants must provide one or more of the following documents, showing a New Mexico address for the applicant, as proof that the applicant lives in New Mexico:

(a) a real property rental agreement or purchase agreement;

(b) a utility bill, such as a gas, electric, waste, water, cable, satellite bill, or telephone bill but not a bill for a cell phone;

(c) an insurance bill, such as automobile, home or health;

(d) a federally regulated financial institution document, such as a bank statement, excluding checks;

(e) an employment pay stub with name and address;

(f) a local property tax statement with name and address;

(g) proof of a minor child enrolled in a New Mexico public, private, or tribal school;

(h) a current, valid motor vehicle registration;

(i) original documents from a New Mexico community organization attesting to the fact that the applicant is a New Mexico resident;

(j) original documents from a city, county, state, tribal, or federal government or social service organization attesting to the fact that the applicant is a New Mexico resident;

(k) a matricula consular card issued after February 1, 2005, by the Mexican consulate in Albuquerque or El Paso;

(l) documentation of eligibility and proof that the applicant is currently receiving services from a 501(c)(3) organization, as defined by the Internal Revenue Code; or

(m) other documents as approved by the MVD director.

K. This version of 18.19.5.12 NMAC is effective on October 1, 2007.

[18.19.5.12 NMAC - N, 6/29/01; A, 6/14/02; A, 6/30/03; A, 10/1/07; A, XXX]

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

5.5.51 NMAC, Development Employment Funding for Film and Multimedia Production Companies, filed 5-28-2008 is repealed effective 4-30-2009 and replaced by 5.5.51 NMAC, Development Employment Funding for Film and Multimedia Production Companies, effective 4-30-2009.

5.5.52 NMAC, Development Pre-Employment Training for Film and Multimedia Production Companies, filed 5-28-2008 is repealed effective 4-30-2009 and replaced by 5.5.52 NMAC, Development Pre-Employment Training for Film and Multimedia Production Companies, effective 4-30-2009.

### NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

#### TITLE 5 POST-SECONDARY EDUCATION CHAPTER 5 POST-SECONDARY EDUCATIONAL PROGRAMS PART 51 DEVELOPMENT EMPLOYMENT FUNDING FOR FILM AND MULTIMEDIA PRODUCTION COMPANIES

**5.5.51.1 ISSUING AGENCY:** New Mexico Economic Development Department  
[5.5.51.1 NMAC - Rp, 5.5.51.1 NMAC, 4-30-2009]

**5.5.51.2 SCOPE:** Film and multimedia production companies and New Mexico residents in film and multimedia crew professions.  
[5.5.51.2 NMAC - Rp, 5.5.51.2 NMAC, 4-30-2009]

**5.5.51.3 STATUTORY AUTHORITY:** Section 21-19-7.1 NMSA 1978, established in 2003, directs the industrial training board, also referred to as the job training incentive program (JTIP) board, to consult with the New Mexico film division of the economic development department to create and adopt rules for development funding for film and multimedia production companies. The program is administered by the New Mexico film division of the economic development department and the training reimbursement of fifty percent (50%) of salaries (wages) of qualified participants shall be made by the

New Mexico film division without further action or approval of the industrial training board.

[5.5.51.3 NMAC - Rp, 5.5.51.3 NMAC, 4-30-2009]

**5.5.51.4 DURATION:** Permanent.

[5.5.51.4 NMAC - Rp, 5.5.51.4 NMAC, 4-30-2009]

**5.5.51.5 EFFECTIVE DATE:** April 30, 2009, unless a later date is cited at the end of a section.

[5.5.51.5 NMAC - Rp, 5.5.51.5 NMAC, 4-30-2009]

**5.5.51.6 OBJECTIVE:** The object of this rule is to establish standards for an on-the-job development training program for film and multimedia production companies and New Mexican crew members. This program entitled the film crew advancement program (FCAP) is one program of the job training incentive program for film and multimedia production companies. It is intended to assist the development of New Mexico's economy by providing reimbursement funds to film and multimedia production companies for the training of New Mexico residents working primarily in below-the-line job positions for the preparation of continual employment in the industry. FCAP also serves as an incentive for production companies to create job opportunities for New Mexican film and television crew professionals. To the extent possible, training will be customized to meet the particular production's needs, provide New Mexican residents with improved economic status through employment, and provide measurable growth to economic base of New Mexico.

[5.5.51.6 NMAC - Rp, 5.5.51.6 NMAC, 4-30-2009]

**5.5.51.7 DEFINITIONS:** For use in this part, the following definitions apply.

**A. "Above-the-line"** is a film and television industry term derived from where the money is budgeted for creative talent, writers, directors and producers. This term means job positions that are associated with the creative or financial control of a film or multimedia project, generally not the technical aspects.

**B. "Below-the-line"** is a film and television industry term derived from where the money is budgeted for technical crew that shall work on a film or multimedia project as well as for costs related to the studio, equipment, travel, and location. In regards to job positions, this term means

technical crew that does not have direct creative or financial control of the project nor receive residuals.

**C. "Company"** means the contractor for FCAP and is either a temporary film or multimedia production company that was created to produce (one) film or multimedia product or a film or multimedia production company that is permanently based in New Mexico with full-time employees and creates film or television products.

**D. "Craft"** means the specialized area or department in which a film technician works.

**E. "Crew"** means the employees hired by a company to complete a film or multimedia project(s).

**F. "Deal memo"** means the film industry contract that defines the exact terms of a crew member's employment including but not limited to position title and pay rate.

**G. "FCAP"** means film crew advancement program.

**H. "Film or television credit"** for this program means work on a film or television production for more than one week which was not a student film, internship, unpaid position, documentary, commercial, nor on a project where the budget was under one million dollars and the company did not participate in this program.

**I. "Film technician"** means a crew member working in a below-the-line job position who often is a member of an international alliance of theater and stage employee (IATSE) film union or guild.

**J. "General safety certified"** means a crew member has completed a class or course that meets OSHA standards for general safety associated with working on a film and multimedia project.

**K. "JTIP"** means job training incentive program.

**L. "Non-union"** means the job position is not in the contractual jurisdiction of a film union or film guild.

**M. "Mentor"** means the go-to person for questions and direction or the supervisor of a program participant and has a stronger skill set in relation to the job position in which that participant was hired.

**N. "NM"** means New Mexican.

**O. "Open hours"** means a trainee that qualified for FCAP during a production did not use all 1040 hours available. Hours that remain are considered "open" and may be used for that job position on another production upon qualification.

**P. "Payroll report"** means the report generated from a payroll company hired by the production company to act as the crew's payment agent for the film and multimedia project.

**Q. "Principal photography"** means the cameras have started filming and the majority of preparation for a film and multimedia project has been completed; call sheets are now issued to crew members and production reports are completed daily.

**R. "Production"** means the film or multimedia project preparation, principal photography and set break down periods while creating a film or television project.

**S. "Resident"** means an individual who is domiciled in New Mexico. This domicile is the individual's permanent home; it is a place to which the individual intends to return after any temporary absence. An individual shall have only one domicile. A change in domicile is established only by establishing a physical presence in a new location with intent to abandon the old domicile and make a home in the new location permanently or indefinitely.

**T. "Salaries"** means wages or the hourly pay rate for hours physically worked by trainee during a production.

**U. "Trainee"** means the crew member that shall be learning a new skill set or graduating to a higher job classification through the FCAP and is synonymous with the terms program participant or applicant.

**V. "Wages"** means the hourly pay rate for hours physically worked by trainee during production. It does not include film payments to trainees such as kit rental, holiday pay, travel time, mileage reimbursements, or any payment to employee due to penalties incurred by company during production of the project.

[5.5.51.7 NMAC - Rp, 5.5.51.7 NMAC, 4-30-2009]

#### **5.5.51.8 PROGRAM OUTLINE:**

**A.** The following is the program outline for all participating companies:

(1) Each trainee qualifies for a maximum of 1040 hours. As the trainee works on a film or television project, the hours shall be deducted accordingly.

(2) The applicable hours of the qualifying trainees shall only be for the hired position as approved by the New Mexico film division and as noted on the FCAP application and the responsibilities for the qualifying position shall meet the industry standards for that position.

(3) Trainee's pay rate shall be

consistent with trainee's job position per this crew member's contract with company and trainee's pay rate shall be higher than the positions in the lower tier of positions under trainee, or per union contractual agreement where applicable.

(4) Any requests for a different job position or mentor to be permitted in program shall be submitted in writing or via email to the New Mexico film division.

**B.** The following is in addition to the program outline in Subsection "A" and shall apply to temporary companies participating in program:

(1) Trainees shall work at least 80 hours in their hired position in order to qualify.

(2) Trainees may qualify for an additional 1040 hours if the training received through this program is used to progress from their current job to a higher job classification or to move laterally into a new skill set and the individual meets program qualifications.

(3) Qualifying participants may apply any unused hours to future on-the-job training work opportunities in the specified job position until the 1040 hours are exhausted.

(4) Unused training hours in a lower level position are forfeited once a trainee moves to a higher level within that skill set and that department.

(5) No more than two film technician trainees and non-union trainees shall qualify per production department on a given production and exceptions may be made with approval by the New Mexico film division prior to the commencement of principal photography when, as an example, a production department has more than ten crew members.

(6) Qualifying trainees shall work in standard industry job positions as listed in the New Mexico film division FCAP job titles list for individual projects produced by temporary companies.

**C.** The following are in addition to the program outline in Subsection "A" and shall apply to permanent companies participating in program:

(1) Trainees shall complete the 1040 hours to qualify.

(2) Qualifying job positions shall be technical and directly contribute to the creation of a product as determined by the New Mexico film division and shall not relate to distribution of end product(s).

(3) Qualifying trainees shall work in standard industry job positions as listed in the New Mexico film division FCAP job titles list for permanent companies creating products.

(4) Qualifying participants may only participate one time in the program as an employee of this company; however, where the trainee has completed all 1040

hours in the original hired position, requests to participate again will be considered upon written documentation submitted by the employer and by the trainee that verifies the trainee will be advancing to a higher job classification.

[5.5.51.8 NMAC - Rp, 5.5.51.8 NMAC, 4-30-2009]

#### **5.5.51.9 TRAINEE ELIGIBILITY:**

**A.** Training applicants shall be certified as a film and multimedia trainee by the New Mexico film division.

**B.** Trainee applicants shall be New Mexico residents.

**C.** Trainee applicants shall raise their film or television position to a higher classification or be adding a completely new skill set.

**D.** Applicants shall not have a film or television credit in a higher position in that department to qualify for 1040 training hours for that position.

**E.** Trainee shall not be a mentor simultaneously on a production.

[5.5.51.9 NMAC - Rp, 5.5.51.9 NMAC, 4-30-2009]

#### **5.5.51.10 MENTOR ELIGIBILITY AND QUALIFICATIONS:**

**A.** Mentors shall be certified as a film and multimedia mentor by the New Mexico film division.

**B.** Mentors of trainees shall be New Mexico residents.

**C.** Any requests for mentors who are not NM residents shall be submitted in writing or via email to the New Mexico film division.

**D.** A mentor shall not be a trainee simultaneously during a production.

**E.** Mentor shall work in the same or directly related department with the trainees that they supervise for this program.

[5.5.51.10 NMAC - Rp, 5.5.51.10 NMAC, 4-30-2009]

#### **5.5.51.11 COMPANY ELIGIBILITY AND ADMINISTRATIVE REQUIREMENTS:**

**A.** Company shall submit the JTIP for film & multimedia application part one for FCAP.

**B.** Company shall enter into a contract as outlined by the New Mexico economic development department; the term of the contract shall be based on a time period which shall allow the contractor (company) to complete its obligation to hire and provide on-the-job training opportunities for the qualified individuals and complete paperwork involved.

**C.** The approval of this contractual agreement from the New Mexico film division and the chairperson of

the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.

**D.** Company shall have a local office where claims and paperwork shall be processed or a designee shall be available to conduct the appropriate paperwork.

**E.** Entering into a contractual agreement with economic development department shall return the program contractual agreement and program application to the New Mexico film division either prior to the start of principal photography in New Mexico or within the first week of first trainee's employment in the qualifying positions.

**F.** Completed FCAP trainee applications must be submitted to the New Mexico film division by the company.

**G.** Company is subject to compliance reviews throughout the term of the contract; the compliance review shall consist of program and fiscal surveys.

**H.** Company shall submit time records and reimbursement invoices as established by the economic development division to the New Mexico economic development department, which is the payment agent.

**I.** The participating company shall submit forms and reports as established by the New Mexico film division of the New Mexico economic development department which may include:

(1) JTIP for film & multimedia application part one for FCAP; and

(2) department of finance and administration (DFA) tax information form; and

(3) JTIP for film & multimedia application part two for FCAP; and

(4) JTIP for film & multimedia agreement for FCAP; and

(5) FCAP participants' applications; and

(6) production's final crew list or equivalent as determined by the New Mexico film division; and

(7) a minimum of one call sheet or production report or equivalent as determined by the New Mexico film division; and

(8) payroll reports for each qualified trainee that verify hours worked and all rates per hours; and

(9) a notarized invoice.

**J.** All paperwork and forms shall be submitted to the development training program administrator of the New Mexico film division of the economic development department.

**K.** Companies that fail to comply with all established operating requirements and closeout procedures are

not eligible for funding and may not be eligible to apply for future participation.

[5.5.51.11 NMAC - Rp, 5.5.51.11 NMAC, 4-30-2009]

#### **5.5.51.12 REIMBURSEMENT OF TRAINING COSTS:**

**A.** Reimbursement shall be made to the participating company in accordance with the terms of JTIP for film & multimedia agreement for FCAP.

**B.** Failure to fully and accurately complete administrative requirements may require sending the invoice back to company for correction and this process shall delay reimbursement payment.

**C.** The invoice or claim for reimbursement may be submitted during the contract period, when trainees complete the number of contracted hours.

**D.** Trainee wages shall be reimbursed upon completion of the training project (not to exceed 1040 hours) and the conclusion of the production in New Mexico.

**E.** Reimbursement from the state shall be based on the negotiated contractual agreement that includes a wage range outlined in JTIP for film & multimedia application part two for FCAP to meet any wage adjustments during the training period.

**F.** Reimbursements shall be based upon the number of trainees who have qualified for the training program.

**G.** Reimbursement shall not exceed fifty percent (50%) of the trainees' rates multiplied by the hours trained.

**H.** Training costs shall be reimbursed to the company based on the number of qualified employees, their wages from hours physically worked, and the estimated production time as written in the contract.

**I.** The contract amount established in the contract shall remain the same for the length of the agreement.

**J.** Trainee wages shall be reimbursed upon completion of training on the production which shall not exceed 1040 hours per trainee at the conclusion of production in New Mexico and when company qualifications and requirements have been met.

**K.** The New Mexico film division shall make arrangements to have an audit at the end of the contract that may be facilitated by and completed at the New Mexico film division to verify program compliance by either an independent accountant or a representative of the New Mexico film division.

**L.** In the case where overpayment has been made by the state of New Mexico to the production company, the pro-

duction company shall refund the department the difference of the correct reimbursement payment from the paid reimbursement amount.

[5.5.51.12 NMAC - Rp, 5.5.51.12 NMAC, 4-30-2009]

#### **5.5.51.13 OTHER PROGRAM INFORMATION:**

**A.** The film crew advancement program (FCAP) of JTIP for film and multimedia was created by the New Mexico film division of the economic development department of state of New Mexico.

**B.** Public or private entities outside the state of New Mexico shall contact the New Mexico film division of the New Mexico economic development department at 505-476-5600 for consideration to obtain permission to use any part of this program content.

[5.5.51.13 NMAC - Rp, 5.5.51.13 NMAC, 4-30-2009]

#### **HISTORY OF 5.5.51 NMAC:**

History of Repealed Material: 5.5.51 NMAC, Development Employment Funding for Film and Multimedia Production Companies, filed 5-28-2008 is repealed effective 4-30-2009 and replaced by 5.5.51 NMAC, Development Employment Funding for Film and Multimedia Production Companies, effective 4-30-2009.

## **NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT**

### **TITLE 5 POST-SECONDARY EDUCATION**

### **CHAPTER 5 POST-SECONDARY EDUCATIONAL PROGRAMS**

### **PART 52 DEVELOPMENT PRE-EMPLOYMENT TRAINING FOR FILM AND MULTIMEDIA PRODUCTION COMPANIES**

**5.5.52.1 ISSUING AGENCY:** New Mexico Economic Development Department

[5.5.52.1 NMAC - Rp, 5.5.52.1 NMAC, 4-30-2009]

**5.5.52.2 SCOPE:** New Mexico residents pursuing film and multimedia professions.

[5.5.52.2 NMAC - Rp, 5.5.52.2 NMAC, 4-30-2009]

**5.5.52.3 STATUTORY AUTHORITY:** Section 21-19-7.1.B NMSA 1978, established in 2003, directs the New Mexico film division of the economic development department to establish

a film and multimedia pre-employment training program to furnish qualified manpower resources for the film and multimedia industry. The New Mexico film division has adopted rules implementing the pre-employment training program.

[5.5.52.3 NMAC - Rp, 5.5.52.3 NMAC, 4-30-2009]

**5.5.52.4 DURATION:** Permanent.

[5.5.52.4 NMAC - Rp, 5.5.52.4 NMAC, 4-30-2009]

**5.5.52.5 EFFECTIVE DATE:** April 30, 2009, unless a later date is cited at the end of a section.

[5.5.52.5 NMAC - Rp, 5.5.52.5 NMAC, 4-30-2009]

**5.5.52.6 OBJECTIVE:** The object of this rule is to establish standards for pre-employment development training for New Mexican residents through the job training incentive program (JTIP) for film and multimedia production companies. Pre-employment training program (PETP) is intended to furnish qualified manpower resources for the film and multimedia industry. The intention of PETP **class training** is to assist the development of New Mexico's economy by providing reimbursement funds to contractors facilitating short-term intensive courses, workshops or lectures that primarily relate to below-the-line film and television job positions. The intention of PETP **project training** is to assist the development of New Mexico's economy by providing reimbursement funds to contractors directly related to a production company's project for training in and exposure to primarily above-the-line film and television job positions. This program shall increase the hirability of New Mexico crew on film and television projects, increase economic status upon employment, and increase crew availability to productions. The PETP shall pertain to industry and production needs as determined by the New Mexico film division.

[5.5.52.6 NMAC - Rp, 5.5.52.6 NMAC, 4-30-2009]

**5.5.52.7 DEFINITIONS:** For use in this part, the following definitions apply.

**A. "Above-the-line"** is a film and television industry term derived from where the money is budgeted for creative talent, writers, directors and producers. This term means job positions that are associated with the creative or financial control of a film or multimedia project, generally not the technical aspects.

**B. "Below-the-line"** is a film and television industry term derived from where the money is budgeted for tech-

nical crew that shall work on a film or multimedia project as well as for costs related to the studio, equipment, travel, and location. In regards to job positions, this term means technical crew working in temporary positions and these individuals do not have creative or financial control of the project nor receive residuals.

**C. "Craft"** means the specialized area or department in which a film technician works.

**D. "Credit"** means the employee hired by a production company is officially acknowledged by name by the company either on a final list of employees (crew list) or on the actual screen as having worked in the hired position on their film or multimedia project.

**E. "Film technician"** means a crew member working in a below-the-line job position who often is a member of an international alliance of theater and stage employee (IATSE) film union or guild.

**F. "Hands-on classes"** mean classes where materials, tools or chemicals are utilized by participants.

**G. "JTIP"** means job training incentive program.

**H. "PETP"** means pre-employment training program.

**I. "Production company"** means the entity creating a film or television project, which includes film or multimedia project preparation, principal photography and set break down periods.

**J. "Resident"** means an individual who is domiciled in New Mexico. This domicile is the individual's permanent home; it is a place to which the individual intends to return after any temporary absence. An individual shall have only one domicile. A change in domicile is established only by establishing a physical presence in a new location with intent to abandon the old domicile and make a home in the new location permanently or indefinitely.

**K. "Trainee"** means the class, course, workshop, lecture or project attendee participating in this program and who will be learning a new skill set or graduating to a higher job classification.

**L. "Turn-around-time"** means the time between leaving a project and returning to a project to continue training.

[5.5.52.7 NMAC - Rp, 5.5.52.7 NMAC, 4-30-2009]

**5.5.52.8 PRE-EMPLOYMENT CLASS TRAINING PROGRAM OUTLINE:**

**A.** The New Mexico film division of the economic development department shall contract a qualified contractor to provide venues, staff, equipment

and materials to conduct short-term, intensive training New Mexicans in primarily below-the-line film and television crafts and that shall increase the employment opportunities of New Mexican crew on film and television projects.

**B.** Mandatory or regulatory training is allowed if required for employment on a film and approved by the New Mexico film division of the economic development department.

**C.** Total course cost shall not exceed twenty thousand dollars (\$20,000.00) regardless of the number of contractors.

**D.** The potential contractor shall provide a proposal and application to the New Mexico film division and the documents noted within to be considered for the training reimbursement.

**E.** Approved contractor shall enter into an agreement as outlined by the New Mexico economic development department.

**F.** The approval from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.

**G.** The term of the contract shall be based on a time period, which shall allow the contractor to complete its obligation to facilitate and provide training classes for the qualified individuals and complete the paper-work involved.

**H.** Contractor shall ensure that all trainees are pursuing work in or are currently working in the film and television industry and shall either be training in a new classification or are in need of additional training in this classification.

**I.** Contractor shall ensure all trainees are New Mexico residents.

**J.** Contractor shall ensure all trainees are at least 18 years of age for all "hands-on" classes and must be accompanied by an adult if under the age of 18 years for lectures.

**K.** Contractor shall qualify registrants per the PETP class trainee certification form which is based on class prerequisites and specific industry experience.

**L.** Contractors may require trainees to pay a nominal fee per the approval of the New Mexico film division.

**M.** All instructors and facilitators shall be certified as such by the New Mexico film division.

**N.** The contractor is subject to compliance visits and program surveys at any time during the training class.

**O.** The contractors that fail to comply with all established operating requirements and closeout procedures are not eligible to apply for future participation.

**P. Eligible costs for reim-**



**bursement per PETP class application:**

(1) tuition and registration fees; and

(2) certification and licensing fees for trainees when applicable; and

(3) instructional literature; and

(4) expendable supplies; and

(5) instructor and facilitator fees where these individuals are not employee of the contractor's business; and

(6) additional insurance if required and when approved by department's legal counsel; and

(7) facility rental; and

(8) equipment rental; and

(9) approved travel expenses which is based on department of finance administration rule 2.42.2 NMAC, Regulations Governing Per Diem and Mileage Act.

**Q. Reimbursement of training costs:** Reimbursement amount shall be made to the participating contractor in accordance with the terms of the training contract. Funds from the state shall be based on the negotiated contractual agreement as outlined in the contract.

**R. Reporting:** The following established documentation may be required by the New Mexico film division and is subject to review during compliance visits and program surveys:

(1) original class proposal and documents noted within; and

(2) applicable insurance certificate(s); and

(3) New Mexico tax information form or current state vendor number; and

(4) PETP class film and multimedia pre-employment training application and supporting documents noted within; and

(5) PETP class film and multimedia pre-employment agreement; and

(6) PETP trainee forms; and

(7) PETP instructor and facilitator forms; and

(8) receipts per approved expenditures in application; and

(9) roster of trainees; and

(10) class evaluation forms; and

(11) invoice.

**S.** The mailing address to submit paperwork including the invoice is to the development training program administrator, New Mexico film division of the economic development department, 418 Montezuma Avenue, Santa Fe, New Mexico, 87501, 505-476-5600. [5.5.52.8 NMAC - Rp, 5.5.52.8 NMAC, 4-30-2009]

**5.5.52.9 PRE - EMPLOY - MENT PROJECT TRAINING:**

**A. Project training** shall assist the development of New Mexico's

economy by providing reimbursement funds to contractors directly related to a production company's project for training in and exposure to primarily above-the-line film and television job positions. This program shall increase the hirability of New Mexico crew on film and television projects, increase economic status upon employment, and increase crew availability to productions. Pre-employment project training shall pertain to industry and production needs as determined by the New Mexico film division of the economic development department.

**B. Production company qualifications and requirements:**

(1) The production company shall provide an outline of each training concept with the NMFO proposal form to be considered for approval.

(2) The production company shall be required to provide qualifications of instructors and mentors, all relevant details, certificates and costs per the program application; and upon approval of the New Mexico film division shall enter into the film and multimedia pre-employment project training agreement as outlined by the New Mexico film division of the economic development department; and the approval from the New Mexico film division shall grant training funds to the production company for the purpose of conducting this training.

(3) The production company entering into a contractual agreement with New Mexico economic development department shall return the contractual agreement to the department within 15 business days from the issue date or commencement of project whichever date comes first.

(4) The production company shall interview and consider trainees endorsed by the New Mexico above-the-line mentorship panel (NM AMP) for this training.

(5) The production company ensures that all trainees are New Mexico residents.

(6) The production company ensures that all trainees shall receive specialized training to work in the film industry.

(7) The production company shall not have more than two trainees per mentor or instructor.

(8) The production company shall ensure each trainee completes project trainee certification form.

(9) The production company shall ensure the trainee shall be covered under their production insurance.

(10) The production company is subject to compliance visits and program surveys at any time during the training.

(11) Breaks and meals per film industry standards shall apply to partici-

pants training on production project.

(12) A minimum turn-around-time of eight hours shall apply to all training participants.

**C.** The production company that fail to comply with all established operating requirements and close-out procedures are not eligible to apply for future participation and may not receive the training reimbursement.

**D.** Instructors and mentor qualifications shall be certified as such by the New Mexico film division.

**E.** A maximum of 60 days on a given production company's project per trainee; however, exceptions may be made by the director of the New Mexico film division when a request is submitted in writing to this director.

**F.** Funds shall not be used to purchase equipment, software, non-expendable supplies.

**G.** Total training cost shall equate to twenty-five percent (25%) of daily compensation for director, producer and writer mentors and fifty percent (50%) of daily compensation for mentors in specialized crafts including but not limited to production designer, sound looping, editor, script supervisor, unit production manager, production supervisor, casting director, and story board artist.

**H.** Mandatory or regulatory training is allowed if required for employment on a film and approved by the New Mexico film division of economic development department.

**I.** The term of the contract shall be based on a time period, which shall allow the production company to complete its obligation to facilitate and provide training classes for the qualified individuals and complete the paper-work involved.

**J.** Reimbursement of training costs shall be made to the participating production company in accordance with the terms of the contract which is based upon the costs to facilitate training.

**K.** The rate established in the contract shall remain the same for the length of the agreement.

**L.** The invoice shall include all costs accepted and stated in the application and contract.

**M.** The mailing address to submit the invoice and all required information is development training program administrator of the New Mexico film division of the economic development department, 418 Montezuma Avenue, Santa Fe, New Mexico, 87501, 505-476-5600.

**N. Reporting:** The following established documentation may be required by the New Mexico film division and is subject to review during compliance visits and program surveys:

- (1) PETP project proposal; and
- (2) New Mexico tax information form; and
- (3) film and multimedia pre-employment project training application and supporting documents noted within; and
- (4) film and multimedia pre-employment project agreement; and
- (5) project trainee certification form for each trainee and supporting documentation noted within; and
- (6) copy of production insurance; and
- (7) final roster of trainees that have completed the training with individual's contact information; and
- (8) call sheet or equivalent documentation as determined by the New Mexico film division for each day of training; and
- (9) time cards or equivalent documentation as determined by the New Mexico film; and
- (10) evaluation forms; and
- (11) invoice.

**O.** All records shall be submitted to the New Mexico film division of the economic development department and they are subject to review during compliance visits and program surveys. [5.5.52.9 NMAC - Rp, 5.5.52.9 NMAC, 4-30-2009]

**5.5.52.10 OTHER PROGRAM INFORMATION:**

**A.** The pre-employment training program through the job training incentive program for film and multimedia was created by the New Mexico film division of the economic development department of state of New Mexico.

**B.** Public or private entities outside the state of New Mexico shall contact the New Mexico film division of the economic development department for consideration to obtain permission to use any part of this program content at 505-476-5600. [5.5.52.10 NMAC - Rp, 5.5.52.10 NMAC, 4-30-2009]

**HISTORY OF 5.5.52 NMAC:**

History of Repealed Material: 5.5.52 NMAC, Development Pre-Employment Training for Film and Multimedia Production Companies, filed 5-28-2008 is repealed effective 4-30-2009 and replaced by 5.5.52 NMAC, Development Pre-Employment Training for Film and Multimedia Production Companies, effective 4-30-2009.

**NEW MEXICO DEPARTMENT OF HEALTH**

The New Mexico Department of Health repeals its rule entitled Health, Disease Control (Epidemiology), Control of Disease and Conditions of Public Health Significance, 7.4.3 NMAC (filed July 31, 2003) and replaces it with the new rule 7.4.3 NMAC, Health, Disease Control (Epidemiology), Control of Disease and Conditions of Public Health Significance, effective April 30, 2009.

**NEW MEXICO DEPARTMENT OF HEALTH**

**TITLE 7 HEALTH  
CHAPTER 4 DISEASE CONTROL (EPIDEMIOLOGY)  
PART 3 CONTROL OF DISEASE AND CONDITIONS OF PUBLIC HEALTH SIGNIFICANCE**

**7.4.3.1 ISSUING AGENCY:** New Mexico Department of Health. [7.4.3.1 NMAC - Rp, 7.4.3.1 NMAC, 04/30/2009]

**7.4.3.2 SCOPE:** All physicians, laboratories, health care professionals, and other persons having knowledge of diseases or conditions covered by these regulations. [7.4.3.2 NMAC - Rp, 7.4.3.2 NMAC, 04/30/2009]

**7.4.3.3 STATUTORY AUTHORITY:** These provisions set forth herein are promulgated by the secretary of the department of health by authority of Section 9-7-6(E) NMSA 1978 and in conformity with the Public Health Act, particularly Sections 24-1-3C, 24-1-7, and 24-1-15 NMSA 1978. Administration and enforcement of these rules are the responsibility of the epidemiology and response division of the department of health. [7.4.3.3 NMAC - Rp, 7.4.3.3 NMAC, 04/30/2009]

**7.4.3.4 DURATION:** Permanent. [7.4.3.4 NMAC - Rp, 7.4.3.4 NMAC, 04/30/2009]

**7.4.3.5 EFFECTIVE DATE:** April 30, 2009, unless a later date is cited at the end of a section. [7.4.3.5 NMAC - Rp, 7.4.3.5 NMAC, 04/30/2009]

**7.4.3.6 OBJECTIVE:** The essential objective of these rules is the control of disease and conditions of public

health significance through the prompt identification of disease, notification of responsible health authorities, and institution of preventive and ameliorative measures.

[7.4.3.6 NMAC - Rp, 7.4.3.6 NMAC, 04/30/2009]

**7.4.3.7 DEFINITIONS:** As used in these provisions, the following terms shall have the meaning given to them, except where the context clearly requires otherwise.

**A.** "Cancer" means all malignant neoplasms and in situ neoplasms and all intracranial neoplasms, regardless of the tissue of origin.

**B.** "Carrier" means an infected person or animal that harbors a specific infectious agent without clinical symptoms and that serves as a potential source of infection for humans.

**C.** "Condition of public health significance" means a condition dangerous to public health or safety.

**D.** "Designee" means an agency or institution designated by the department of health to receive reports of notifiable conditions on its behalf for the purpose of public health surveillance.

**E.** "Disease" means an illness, including those caused by infectious agents or their toxic products which may be transmitted to a susceptible host.

**F.** "Division" means the epidemiology and response division of the department of health, P.O. Box 26110, Santa Fe, NM 87502-6110.

**G.** "Health care professional" means any licensed doctor of medicine or osteopathy, nurse, physician's assistant, midwife, or other licensed health care provider unless the context clearly requires otherwise.

**H.** "Isolation, detention or quarantine" means the complete separation or partial restriction of movement and association in such manner and for such period as will prevent the direct and indirect transmission of the infectious agent.

**I.** "Laboratory" means the scientific laboratory division of the department of health or any other laboratory which performs diagnostic tests on specimens obtained from New Mexico sources or from sources having significant epidemiological contact with New Mexico, for diseases and conditions covered by these rules.

**J.** "Notifiable condition" means a disease or condition of public health significance required by statute or these rules to be reported to the division.

**K.** "Other person" includes but is not limited to: a laboratory; an official in charge of any health facility; hospital records or administrative personnel; the principal or person in charge of any

private or public school, or child care center; teachers and school nurses; and a householder or any other person, in the absence of a health care professional having direct knowledge of a disease or condition of public health significance.

L. "Regional or local public health office" means a public health office designated by the public health division of the department of health.

M. "Report" means a notification to the division pursuant to these rules.

N. "Specimen" means any material derived from humans or animals for examination for diagnosis, prevention or treatment of any disease or condition of public health significance. [7.4.3.7 NMAC - Rp, 7.4.3.7 NMAC, 04/30/2009]

#### **7.4.3.8 NOTIFIABLE CONDITIONS:**

A. Declaration of notifiable conditions: The division shall periodically issue a list of notifiable conditions according to reporting category designated as 7.4.3.12 NMAC. The list shall be reviewed on a regular basis and revised as necessary. Diseases shown in 7.4.3.12 NMAC are declared notifiable conditions as of the effective date.

B. Official listing: The list of notifiable conditions shall be issued in a quick reference format and shall show that it is the current official list and shall specify its effective date. The division shall routinely supply the current official list to health care professionals and health facilities and to other persons or entities on request.

C. Reporting of notifiable conditions: Reporting will be by means of the following:

(1) the division's 24-hour telephone number as listed in the "New Mexico epidemiology report," the division's newsletter or by direct telephone contact with the regional or local public health office;

(2) the division's toll-free telephone receiving and recording system telephone number listed in the "New Mexico epidemiology report,"

(3) for specified conditions, reporting to the address/phone number published on the printed form of the "list of notifiable conditions;"

(4) written report to the division, or

(5) electronic transmission, which includes facsimile and computer data transfers.

D. Reporting requirements - health care professionals: Every health care professional treating any person having

or suspected of having any notifiable condition shall report the condition within the time and in the manner set out in the list of notifiable conditions.

E. Reporting requirements - laboratories: All laboratories performing diagnostic tests for any notifiable condition shall report all positive findings within the time and in the manner set out in the list. Reports shall include the name of the reporting laboratory, the patient's name, date of birth/age, and address, the date of clinical diagnosis, if known, and the physician or hospital requesting the test.

F. Reporting requirement - other persons: Any other person, including all persons listed in Subsection J of 7.4.3.7 NMAC of these rules, having knowledge of any person having or suspected of having a notifiable condition, shall immediately report the condition to the division.

G. Conditions of public health significance: Any person, including health care professionals and persons listed in Subsection J of 7.4.3.7 NMAC of these rules, having knowledge of a notifiable condition shall immediately report the condition to the division.

[7.4.3.8 NMAC - Rp, 7.4.3.8 NMAC, 04/30/2009]

#### **7.4.3.9 CONTROL OF DISEASE AND CONDITIONS OF PUBLIC HEALTH SIGNIFICANCE:**

A. Responsibility for protection of public health: The department of health may take such measures on the advice of its medical officer or officers as are deemed necessary and proper for the protection of the public health.

B. Coordination among agencies: The department of health shall coordinate the efforts of other concerned or interested federal, state and local agencies and shall cooperate with local health care professionals and health care facilities.

C. Imposition of isolation or quarantine: The department of health may establish or require isolation or quarantine of any animal, person, institution, community or region.

D. Case incidence in schools or health facilities: Where any case of communicable disease occurs or is likely to occur in a public, private, or parochial school, child care facility, or in a health care facility, the department of health may require:

(1) exclusion of infected persons and non-immune persons, whether students, patients, employees or other persons;

(2) closure and discontinuance of operations if there is likelihood of an epidemic.

E. Refusal of voluntary treatment, detention or observation: When a

person who is actively infectious with a threatening communicable disease and refuses voluntary treatment, detention or observation, the department of health may seek a court order to detain the person pursuant to Section 24-1-15 NMSA 1978 of the Public Health Act until the person is no longer a contagious threat to the public or the person voluntarily complies with appropriate treatment and contagion precautions.

F. Other public health orders: The department of health may issue orders for the testing of particular populations or groups of persons or animals to identify carriers of disease, including immigrants, travelers, students or preschoolers and others who have been at risk of transmission or exposure. The department of health may require that all tests be done under the control of the scientific laboratory division or by a laboratory approved for that purpose.

G. Enforcement of public health orders: Any order issued by the department of health under the Public Health Act or these rules shall be enforceable as provided by law and violation is punishable in accordance with Section 24-1-21 NMSA 1978.

H. Medical records: To carry out its duties to investigate and control disease and conditions of public health significance, the department of health or designee shall have access to all medical records of persons with, or suspected of having, notifiable diseases or conditions of public health significance. The department of health is a "public health authority" as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Privacy Rule. The department of health is authorized to receive protected health information without patient authorization for purposes of public health surveillance, investigation and interventions and as otherwise required by law. The division or designee may periodically review medical records to ensure the completeness and quality of reporting.

I. Confidentiality of reports: All notifiable condition reports are confidential. Disclosure to any person of report information, except for disclosure for the purpose of prevention or control, is prohibited unless disclosure is required by law.

J. Research use of notifiable condition data: Researchers authorized by the division or its agents who certify to the satisfaction of the division that confidentiality of data will be maintained in accordance with applicable state and federal confidentiality requirements, may conduct studies utilizing notifiable condition data, including studies of the sources and causes of conditions of public health signif-

icance, evaluations of the cost, quality, efficacy and appropriateness of screening, diagnostic, therapeutic, rehabilitative and preventive services and programs relating to conditions of public health significance and other clinical or epidemiologic research.

[7.4.3.9 NMAC - Rp, 7.4.3.9 NMAC, 04/30/2009]

#### 7.4.3.10 EMERGENCY DEPARTMENT REPORTING:

A. Reporting requirements: Hospitals shall report all emergency department visits electronically to the department of health in such a format, with such data elements and in accordance with such standards of quality, timeliness and completeness as established by the department of health.

B. Confidentiality: All emergency department visit reports are confidential. Disclosure to any person of report information, except for disclosure of a notifiable condition for the purpose of prevention or control of diseases and other health conditions, is prohibited unless disclosure is required by law.

[7.4.3.10 NMAC - Rp, 7.4.3.10 NMAC & 7.4.3.11 NMAC, 04/30/2009]

7.4.3.11 **REPEALER:** These requirements repeal and replace all previous rules, particularly rules governing the control of communicable disease of November 11, 1952, rules governing the reporting of notifiable disease of June 29, 1974 and rules governing the control of disease and conditions of public health significance of 1980. [7.4.3.11 NMAC - Rp, 7.4.3.12 NMAC, 04/30/2009]

#### 7.4.3.12 NOTIFIABLE DISEASES OR CONDITIONS IN NEW MEXICO:

A. All reports must include:

(1) the disease or condition being reported;

(2) patient's name, date of birth/age, gender, race/ethnicity, address, telephone number, and occupation;

(3) physician or licensed health-care professional (or laboratory) name and telephone number.

B. Laboratory or clinical samples for conditions marked with (\*) are required to be sent to the scientific laboratory division.

C. Emergency reporting of diseases or conditions: The following diseases, confirmed or suspected, require **immediate reporting** by telephone to the epidemiology and response division at (505) 827-0006. If no answer, call 1-866-885-6485.

(1) Infectious diseases:

(a) anthrax\*;  
(b) avian or novel influenza\*;  
(c) botulism (any type) \*;  
(d) cholera\*;  
(e) diphtheria\*;  
(f) haemophilus influenzae invasive infections\*;

(g) measles;  
(h) meningococcal infections, invasive\*;

(i) pertussis;  
(j) plague\*;  
(k) poliomyelitis, paralytic and non-paralytic;

(l) rabies;  
(m) rubella (incl congenital);  
(n) severe acute respiratory syndrome (SARS)\*;

(o) smallpox\*;  
(p) tularemia\*;  
(q) typhoid fever\*;  
(r) yellow fever.

(2) Other conditions:  
(a) suspected foodborne illness or conditions in two or more unrelated persons\*;

(b) suspected waterborne illness or conditions in two or more unrelated persons\*;

(c) illnesses or conditions suspected to be caused by the intentional or accidental release of biologic or chemical agents\*;

(d) acute illnesses or conditions of any type involving large numbers of persons in the same geographic area;

(e) severe smallpox vaccine reaction;

(f) other illnesses or conditions of public health significance.

(3) Infectious diseases in animals:  
(a) anthrax;  
(b) plague;  
(c) rabies;  
(d) tularemia.

D. Routine reporting of diseases or conditions:

(1) Infectious diseases (report case within 24 hours to epidemiology and response division at 1-800-432-4404 or 505-827-0006; or contact the local health office).

(a) brucellosis;  
(b) campylobacter infections\*;  
(c) coccidioidomycosis;  
(d) Colorado tick fever;  
(e) cryptosporidiosis;  
(f) cysticercosis;  
(g) cyclosporiasis;  
(h) E. coli 0157:H7 infections\*;  
(i) E. coli, shiga-toxin producing (STEC) infections\*;

(j) encephalitis, other;  
(k) giardiasis;  
(l) Group A streptococcal invasive infections\*;  
(m) Group B streptococcal inva-

sive infections\*;  
(n) hantavirus pulmonary syndrome;

(o) hemolytic uremic syndrome;  
(p) hepatitis A, acute;  
(q) hepatitis B, acute or chronic;  
(r) hepatitis C, acute or chronic;  
(s) hepatitis E, acute;  
(t) influenza, laboratory con-

firmed hospitalization only;  
(u) legionnaires' disease;  
(v) leptospirosis;  
(w) listeriosis\*;

(x) lyme disease;  
(y) malaria;  
(z) mumps;  
(aa) psittacosis;

(bb) q fever;  
(cc) relapsing fever;  
(dd) Rocky Mountain spotted

fever;  
(ee) salmonellosis\*;  
(ff) shigellosis\*;  
(gg) St. Louis encephalitis infec-

tions;  
(hh) streptococcus pneumoniae, invasive infections\*;

(ii) tetanus;  
(jj) trichinellosis;  
(kk) toxic shock syndrome;  
(ll) varicella;

(mm) vibrio infections\*;  
(nn) west nile virus infections;  
(oo) western equine encephalitis infections;

(pp) yersinia infections\*.

(2) Infectious diseases in animals (report case within 24 hours to epidemiology and response division at 1-800-432-4404 or 505-827-0006; or contact the local health office).

(a) arboviral, other;  
(b) brucellosis;  
(c) psittacosis;  
(d) west nile virus infections.

(3) Tuberculosis\* or other nontuberculous mycobacterial infections (including Mycobacterium avium complex or leprosy). Report suspect or confirmed cases within 24 hours to tuberculosis program, NM Department of Health, P. O. Box 26110, Santa Fe, NM 87502-6110; or call 505-827-2474 or 505-827-2473.

(4) Sexually transmitted diseases. Report to infectious disease bureau - STD program, NM Department of Health, P.O. Box 26110, Santa Fe, NM 87502-6110, fax 505-476-3638; or call 505-476-3636.

(a) chancroid;  
(b) chlamydia trachomatis infections;

(c) gonorrhea;  
(d) syphilis.

(5) HIV (human immunodeficiency virus) and AIDS (acquired immunodeficiency syndrome). Report to HIV and hepatitis epidemiology program, 1190 St.

Francis Dr., N1350, Santa Fe, NM 87502, fax 505-476-3544 or call 505-476-3515.

(a) HIV: (1) confirmed positive HIV antibody test (screening test plus confirmatory test), or (2) any test for HIV RNA or HIV cDNA ("viral load"), or (3) any test to detect HIV proteins, or (4) any positive HIV culture, or (5) any other test or condition indicative of HIV infection as defined by the United States centers for disease control and prevention.

(b) AIDS: Opportunistic infections, cancers, CD4 lymphocyte count (<200 per uL or <14 percent of total lymphocytes), or any condition indicative of AIDS.

(6) Occupational illness and injury. Report to epidemiology and response division, NM Department of Health, P.O. Box 26110, Santa Fe, NM 87502-6110; or call 1-800-432-4404 or 505-827-0006.

(a) asbestosis;  
(b) chronic beryllium lung disease;  
(c) coal worker's pneumoconiosis;  
(d) heavy metal poisoning;  
(e) hypersensitivity pneumonitis;  
(f) mesothelioma;  
(g) noise induced hearing loss;  
(h) occupational asthma;  
(i) occupational pesticide poisoning;  
(j) silicosis;  
(k) other illnesses related to occupational exposure.

(7) Health conditions related to environmental exposures and certain injuries. Report to epidemiology and response division, NM Department of Health, P.O. Box 26110, Santa Fe, NM 87502-6110; or call 1-800-432-4404 or 505-827-0006.

(a) Environmental exposures:  
(i) acetylcholinesterase (all blood levels);  
(ii) all pesticide poisoning;  
(iii) arsenic in urine greater than 50 micrograms/liter;  
(iv) infant methemoglobinemia;  
(v) lead (all blood levels);  
(vi) mercury in urine greater than 3 micrograms/liter and/or mercury in blood greater than 5 micrograms/liter;  
(vii) uranium in urine greater than 0.08 ug/L;  
(viii) other suspected environmentally-induced health conditions.

(b) Injuries:  
(i) drug overdose;  
(ii) firearm injuries;

(iii) traumatic brain injuries.

(8) Adverse vaccine reactions. Report to vaccine adverse events reporting system, <http://www.vaers.hhs.org>. Send copy of report to immunization program vaccine manager, NM Department of Health, P.O. Box 26110, Santa Fe, NM 87502-6110; fax 505-827-1741.

(9) Cancer. Report to designee. Report all malignant and in situ neoplasms and all intracranial neoplasms, regardless of the tissue of origin, using the prevailing standards promulgated by the National Cancer Institute, the Centers for Disease Control and Prevention, the North American Association of Central Cancer Registries, and the American College of Surgeons.

(10) Human papillomavirus (HPV). Laboratories report the following tests to designee

(a) papanicolaou test results (all results);  
(b) cervical, vulvar and vaginal pathology results (all results);  
(c) HPV test results (all results).

(11) Birth defects and congenital hearing loss.

(a) Report to children's medical services, 2040 S. Pacheco, Santa Fe, NM 87505; or call 505-476-8868.

(b) All birth defects diagnosed by age 4 years, including:

(i) defects diagnosed during pregnancy;  
(ii) defects diagnosed on fetal deaths;

(iii) defects found in chromosome testing on amniotic fluid, chorionic villus sampling and products of conception for Trisomy 13, Trisomy 18 and Trisomy 21.

(c) Suspected or confirmed congenital hearing loss in one or both ears.

(d) All conditions identified through statewide newborn genetic screening. [7.4.3.12 NMAC - Rp, 7.4.3.12 NMAC, 04/30/2009]

#### HISTORY OF 7.4.3 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:

HSSD 72-3, Regulations Governing The Reporting Of Notifiable Diseases, filed 10/4/72.

HSSD 74-16, Regulations Governing The Reporting Of Notifiable Diseases, filed 7/30/74.

HED-79-4 (HSD), Regulations Governing The Control Of Disease And Conditions Of Public Health Significance, filed 12/20/79.

**History of Repealed Material:** 7 NMAC 4.3, Control of Disease and Conditions of Public Health Significance (filed 10/31/96), repealed 8/15/2003.

7.4.3 NMAC, Control of Disease and Conditions of Public Health Significance (filed July 31, 2003), repealed 04/30/2009.

#### Other History:

HED-79-4 (HSD), Regulations Governing The Control Of Disease And Conditions Of Public Health Significance (filed 12/20/79) was renumbered, reformatted, and amended into the first version of the New Mexico Administrative code as 7 NMAC 4.3, Control of Disease and Conditions of Public Health Significance, effective 10/31/96.

7 NMAC 4.3, Control of Disease and Conditions of Public Health Significance, filed 10/16/96 was replaced by the second version of the New Mexico Administrative code as 7.4.3 NMAC, Control of Disease and Conditions of Public Health Significance, effective 8/15/2003.

7.4.3 NMAC, Control of Disease and Conditions of Public Health Significance (filed July 31, 2003) was replaced by 7.4.3 NMAC, Health, Disease Control (Epidemiology), Control of Disease and Conditions of Public Health Significance, effective 04/30/2009.

## NEW MEXICO DEPARTMENT OF HEALTH PUBLIC HEALTH DIVISION

This is an amendment to 7.32.7 NMAC Sections 2, 3, 7, 8, 9, 10, 11, 12, and 13, effective 4/30/2009.

**7.32.7.2 SCOPE:** This rule applies to all persons other than a licensed health care professional permitted by law to administer an opioid antagonist to another person ~~and~~, including opioid antagonist administration programs.

[7.32.7.2 NMAC - Rp 7.32.7.2 NMAC, 9/13/2001; A, 4/30/2009]

#### 7.32.7.3 STATUTORY

**AUTHORITY:** The statutory authority for adopting these rules is found in ~~[Section 9-7-6 E.]~~ NMSA 1978, ~~Section 9-7-6 E of the~~ (Department of Health Act), which authorizes the Secretary of Health to "adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department" and in ~~[Laws of 2001, Chapter 228, Section 1.]~~ NMSA 1978, Section 24-23-1 (Public Health Act), which allows a person "authorized by federal, state or local government regulations, other than a licensed health care professional permitted by law to administer an opioid antagonist" to administer an opioid antagonist to another person under certain circum-

stances.

[7.32.7.3 NMAC - Rp 7.32.7.3 NMAC, 9/13/2001; A, 4/30/2009]

### 7.32.7.7 DEFINITIONS:

**A. "Administration of opioid antagonist"** means the administration of an opioid antagonist by a person authorized pursuant to this regulation.

**B. "Department"** means the New Mexico department of health.

**C. "Emergency medical service(s) (EMS)"** means the services rendered by licensed emergency medical technicians, certified emergency medical services first responders or emergency medical dispatchers in response to a person's need for immediate medical care to prevent loss of life or aggravation of physical or psychological illness or injury.

**D. "Medical direction"** means guidance or supervision for trained targeted responders provided by a physician for the administration of opioid antagonists. This includes overseeing training, emergency medical services coordination, protocol approval, quality assurance and reporting.

**E. "Opioid"** means containing or derived from opium, including but not limited to morphine and heroin.

**F. "Opioid antagonist"** means a drug that nullifies in whole or in part the administration of an opioid. The opioid antagonist is limited to naloxone or other medications approved by the department, unless otherwise stated in this regulation.

**G. "Opioid antagonist administration program"** means an organized program to administer an opioid antagonist in accordance with these regulations.

**H. "Opioid antagonist training program"** means a training program which prepares a person to administer an opioid antagonist as shown by best practices or recommended by the department for an opioid antagonist administration program.

~~[I. "Person" means any individual other than a licensed health care professional permitted by law to administer an opioid antagonist, including, but not limited to, private individuals, law enforcement personnel, and first responders who are not certified by the department.]~~

~~[J. "Physician" means a doctor of medicine or doctor of osteopathy who is licensed or otherwise authorized to practice medicine or osteopathic medicine in New Mexico.~~

~~[K. "Physician medical director" means a physician who is responsible for medical oversight of an opioid antagonist administration program, including providing for or ensuring the medical control of trained targeted responders; ~~the~~~~

~~development, implementation, and evaluation of] developing, implementing, and evaluating medical protocols; ~~oversight of] overseeing~~ quality assurance activities, and ensuring compliance with the New Mexico board of pharmacy requirements.~~

~~[L. "Protocols" means predetermined, written medical care plans and includes standing orders.~~

~~[M. "Provider" means a person or entity delivering emergency medical services in New Mexico.~~

~~[N. "Trained targeted responder" means a person who has completed an authorized opioid antagonist training program and who administers opioid antagonists.~~

[7.32.7.7 NMAC - Rp, 7.32.7.7 NMAC, 9/13/2001; A/E, 01/29/2009; A, 4/30/2009]

**7.32.7.8 INDIVIDUAL AUTHORIZATION TO ADMINISTER OPIOID ANTAGONIST:** ~~[Persons] A~~ person, other than a licensed health care professional permitted by law to administer an opioid antagonist, ~~[are] is~~ authorized to administer an opioid antagonist to another person if he, in good faith, believes the other person is experiencing an opioid drug overdose and he acts with reasonable care in administering the drug to the other person. It is strongly recommended that any person administering an opioid antagonist to another person immediately call for emergency medical services.

[7.32.7.8 NMAC - Rp, 7.32.7.8 NMAC, 9/13/2001; A, 4/30/2009]

**7.32.7.9 ESTABLISHMENT OF AN OPIOID ANTAGONIST ADMINISTRATION PROGRAM:** The primary reason for establishing an opioid antagonist administration program by trained targeted responders is to improve response to drug overdose, which may prevent unnecessary loss of life. While opioid antagonist administration does not automatically guarantee to reverse the effects of overdose due to substance ~~[abuse] use~~, it is the only definitive care currently available for reversing the effects of opioid substances. Therefore, persons suffering from an overdose, when an opioid is a suspected substance, should be administered an opioid antagonist as quickly as possible.

[7.32.7.9 NMAC - N, 9/13/2001; A, 4/30/2009]

**7.32.7.10 OPIOID ANTAGONIST ADMINISTRATION PROGRAM GUIDELINES:** ~~[It is recommended that~~ ~~an] An~~ opioid antagonist administration program shall adhere to the following guidelines.

**A. Opioid antagonist administration program director:** A program director shall be identified who man-

ages the opioid antagonist administration program. The program director shall:

(1) identify a physician medical director to oversee the opioid antagonist administration program;

(2) select and identify persons as trained targeted responders;

(3) maintain opioid antagonist administration training records for all trained targeted responders while they are active in the program, and for at least three (3) years thereafter;

(4) maintain opioid antagonist administration program records, including opioid antagonist inventory records, trained targeted responder training records, and opioid antagonist administration program usage records;

(5) ensure that all trained targeted responders are trained using an opioid antagonist training program, which may be recommended by the department;

(6) provide evidence of coordination of the opioid antagonist administration program with local EMS ~~[services and emergency dispatch agencies]~~, including 911 dispatch agencies;

(7) register the opioid antagonist administration program with the department using the application format outlined in appendix A;

(8) report all administrations of an opioid antagonist to the department using the reporting format outlined in appendix B;

(9) assist the physician medical director with quality assurance review of all opioid antagonist administrations; and~~;~~

(10) ensure that the opioid antagonist is maintained and stored in accordance with the manufacturer's guidelines.

**B. Physician medical director:** Each opioid antagonist administration program shall ~~[have] appoint and retain~~ a physician medical director who provides oversight of the opioid antagonist administration program in accordance with the requirements of the New Mexico board of pharmacy. The selected physician shall:

(1) provide medical leadership, expertise, and ~~[oversee] medical oversight of~~ the program;

(2) serve as an advocate and spokesperson for the opioid antagonist administration program;

(3) ensure that all trained targeted responders are properly trained and ~~[their] that trained targeted responders'~~ skills are maintained;

(4) develop and approve medical protocols for the opioid antagonist administration program;

(5) ensure quality assurance review for all administrations of an opioid antagonist;

(6) assume overall responsibility for how the opioid antagonist administration program is planned and conducted;

and[;]

(7) ensure compliance with the New Mexico board of pharmacy requirements for the issuance, control and storage of medications.

**C. Trained targeted responders:** ~~[Each Trained Targeted Responder should:]~~ A trained targeted responder shall:

(1) complete an initial opioid antagonist administration training program ~~[, which may be] that is~~ recommended by the department[;];

(2) ~~[At least every two (2) years, trained targeted responders should complete] complete a department recommended refresher opioid antagonist administration training course [from a department recommended training program] at least once every two years[;];~~

(3) activate the emergency medical system using pre-established methods (e.g., contact E-911 public safety answering point or local emergency number) during any response to a victim of suspected drug overdose, and advise local EMS that an opioid antagonist is being used[;];

(4) comply with physician medical director protocols for response to victims of suspected drug overdose;

(5) report all responses to ~~[victims of]~~ suspected drug overdoses to the opioid antagonist administration program director and physician medical director and complete a report as ~~[listed] detailed in appendix B; [A copy of the report] the trained targeted responder shall [be submitted] submit a copy of the report to the department [within twenty (20) calendar days] by the 10th day of the month following the month in which the opioid antagonist was administered[;];~~

(6) ensure that the opioid antagonist drugs and other supplies are maintained and used in accordance with the manufacturer's guidelines, and inspect the opioid antagonists' drug expiration dates at least monthly.

**D. Notification:** ~~[Local EMS services and emergency dispatch agencies shall be notified] The director of an opioid antagonist administration program shall promptly notify local EMS of the activation and existence of the opioid antagonist administration program. The notification shall include the name of the opioid antagonist administration's program director, physician medical director, location [of the program], telephone number, and a copy of medical director approved protocols. The [local emergency services and dispatch agencies shall also be notified if an existing] director of an opioid antagonist administration program shall also promptly notify local EMS in the event that the opioid antagonist administration program stops or cancels [the opioid antagonist administra-~~

~~tion program] its operations.~~

**E. Opioid antagonist selection, supplies, and medication storage/control:**

(1) opioid antagonist selection: opioid antagonist administration programs shall use naloxone, or other medications approved by the department, as the opioid antagonist; the physician medical director shall select the specific ~~[injection device] administration device for the opioid antagonist. [It is recommended that single dose, pre-filled syringes with attached safety needles be used.]~~

(2) response supplies: opioid antagonist administration programs shall provide and maintain at least the following minimum response equipment as selected by the physician medical director:

(a) medical exam gloves[;];  
(b) container approved for sharp medical waste[;]; and

(c) mask or other barrier for use during rescue breathing;

~~[(d) Agent to prepare skin before injection.]~~

(3) medication storage and control: medication storage and control shall be in accordance with the New Mexico board of pharmacy and federal food and drug administration rules and regulations.

[7.32.7.10 NMAC - N, 9/13/2001; A, 4/30/2009]

**7.32.7.11 Record Keeping:** The ~~[Opioid] opioid antagonist administration program shall establish and maintain a record keeping system that is available for audit by the department. It shall include the following information:~~

**A.** list of trained targeted responders;

**B.** dates of training for trained targeted responders[;];

**C.** copy of medical director approved medical protocols;

**D.** copy of the medical director contract/agreement;

**E.** copy of registration and EMS ~~[service] notification forms;~~

**F.** opioid antagonist administration usage reports/data collection forms (appendix B);

**G.** quality assurance review documentation; and[;]

**H.** opioid antagonist purchase and maintenance records.

[7.32.7.11 NMAC - N, 9/13/2001; A, 4/30/2009]

**7.32.7.12 Appendix A: Registration of an opioid antagonist administration program:** Prior to beginning an opioid antagonist administration program, the program director shall submit an application for registration to the depart-

ment using the following format ~~[outlined below][;];~~

**A.** application date;  
**B.** program start-up date;  
**C.** program name;  
**D.** program director name;  
**E.** program mailing

address;  
**F.** program physical location;

**G.** program telephone number;

**H.** physician medical director name;

**I.** physician medical director mailing address;

**J.** physician medical director telephone number;

**K.** physician medical director New Mexico license number;

**L.** date that the opioid antagonist administration program notified and coordinated with local [EMS] emergency medical service(s), including emergency medical dispatch agencies, [provide date] and the names and types of the services contacted;

~~[M. Notified and Coordinated with local 911 Dispatch Agency]~~

~~[N] M.~~ name of consulting pharmacist;

~~[O] N.~~ address of consulting pharmacist;

~~[P] O.~~ telephone number of consulting pharmacist.

[7.32.7.12 NMAC - N, 9/13/2001; A, 4/30/2009]

**7.32.7.13 Appendix B: Report of opioid antagonist administration:** Any administration of an opioid antagonist to another person by a trained targeted responder affiliated with an opioid antagonist administration program, shall be reported to the department. Any trained targeted responder who has knowledge of the administration of an opioid antagonist by a non-trained targeted responder, shall also report such administration to the department. ~~[As] At a minimum, the report shall contain the following information [listed below]:~~

**A.** name of opioid antagonist administration program;

**B.** name of trained targeted responder submitting report;

~~[C. Name of Person to whom Opioid Antagonist was administered;~~

~~D. Address of Person to whom Opioid Antagonist was administered;~~

~~E. Telephone number of Person to whom Opioid Antagonist was administered;~~

**F] C.** amount of opioid antagonist administered;

~~[G] D.~~ if known, list the type

of overdose drugs (other than opioids) taken by the person to whom the opioid antagonist was administered;

~~[H.]~~ Antagonist was administered; and;

~~[I.]~~ E. circumstances relating to overdose (if known);

~~[J.]~~ E. date of overdose;

~~[K.]~~ Signs and symptoms indicating overdose.

~~[L.]~~ G. [Was] whether emergency medical services was called[?];

~~[M.]~~ H. [Was] whether the person to whom the opioid antagonist was administered was transported to a clinical facility[?];

~~[N.]~~ L. [Was] whether rescue breathing was performed on the person [who overdosed] to whom the opioid antagonist was administered[?];

~~[O.]~~ I. distance from nearest emergency department (in road miles)[?];

~~[P.]~~ Location of injection site on the overdose person's body.

~~[Q.]~~ K. clinical disposition of overdose incident (if known).

[7.32.7.13 NMAC - N, 9/13/2001; A, 4/30/2009]

## NEW MEXICO MINING COMMISSION

The following is an amendment to 19.10.3 NMAC, Section 302, effective April 30, 2009.

### 19.10.3.302 MINIMAL IMPACT EXPLORATION OPERATIONS

A. A minimal impact exploration operation will not exceed 1000 cubic yards of excavation ~~[excluding drill hole materials.]~~ per permit. Disturbances for constructed roads, drill pads and mud pits shall be no more than 5 acres total and will not be counted in the excavated materials. ~~[However,]~~ The type of road construction, the number and type of drill pads, and other disturbances when considered with site specific conditions will be major factors in determining eligibility for minimal impact status which is in the discretion of the director.

B. Timing of applications and deadlines for approval for minimal impact exploration operations must be in accordance with 19.10.4.401 NMAC, except that a complete application for minimal impact exploration operations shall be submitted not less than 45 days prior to the anticipated date of commencement of operations.

C. An applicant for a minimal impact exploration operation permit shall submit six copies of a completed application on a form provided by the director. If the proposed operation is on federal

land, information submitted to the federal land management agency may be submitted with the application in lieu of providing duplicative information. Any confidential information shall be submitted separately in accordance with Subsection B of 19.10.4.402 NMAC.

D. The application shall include the following information:

(1) the name and address of the applicant, and if different, the name and address of the owner of the operation and the land; a statement of the basis on which the applicant has the right to enter the property to conduct the mining and reclamation;

(2) the location of the proposed operation as shown on a topographic map which indicates the proposed permit area and gives the location of the following: perennial, intermittent and ephemeral streams; springs; wetlands, riparian areas, lakes and reservoirs; residences; existing and proposed roads; other access routes; support facilities; cemeteries; burial grounds; cultural resources listed on either the *national register of historic places* or the *state register of cultural properties*; pipelines; and oil, gas and water wells on the permit area; areas and types of proposed disturbances shall be indicated; the anticipated dimensions of each proposed disturbance shall also be provided;

(3) an explanation of why the proposed operation qualifies as a minimal impact operation in accordance with 19.10 NMAC;

(4) a general description of the minerals sought and the methods of exploration; any chemicals to be used on site must be identified;

(5) an estimate of depth to ground water and total dissolved solids concentration; and

(6) a general description of how the operation will be operated and reclaimed to meet the requirements of reclamation, as defined in 19.10.1.7 NMAC.

E. The application must be accompanied by the permit fee as required by 19.10.2 NMAC.

F. If the permit area includes state or federally-owned lands, no permit will be issued unless the appropriate land management agency has approved or acknowledged the proposed operation, if such approval or acknowledgement is required by the agency's rules.

G. The director shall, after determining that the application is complete, deliver copies of the application (except those parts of the application designated confidential under Subsection B of 19.10.4.402 NMAC provided, however, that the director shall include with the application a list of the parts withheld and will provide such parts on specific request) to the agencies listed in Subsection F of

19.10.4.402 NMAC which shall have 20 days in which to provide comments to the director. The director shall consider comments from these agencies in making a determination of eligibility for minimal impact status.

H. The director shall determine if an operation is eligible for a minimal impact operation permit and may conduct a site visit in making this determination.

I. No permit for a minimal impact exploration operation will be issued until the director finds the following:

(1) the application is complete and demonstrates that the proposed operation and reclamation will meet the requirements of reclamation, as defined in 19.10.1.7 NMAC; reclamation of the disturbed area will be initiated as soon as possible, and will be completed within ~~two years following the completion or abandonment of the exploration operation~~ the permit term unless the disturbed area is included within a complete permit application for a new mining operation;

(2) the applicant has paid the permit fee determined by 19.10.2 NMAC;

(3) the applicant has signed a statement indicating he agrees to comply with the reclamation requirements of the permit, 19.10 NMAC, and the act and allows the director to enter the permit area, without delay, for the purpose of conducting inspections during exploration and reclamation; ~~and~~

(4) the applicant has certified he is not in violation of the New Mexico Mining Act or 19.10 NMAC[.]; ~~and~~

(5) the applicant has provided satisfactory financial assurance in an amount determined by the director; acceptable forms of financial assurance are limited to surety bonds, letters of credit or cash accounts described in 19.10.12.1208 NMAC.

J. The term of a permit for a minimal impact exploration operation is governed by Subsections A, C and D of 19.10.4.405 NMAC. Modifications to the permit are governed by 19.10.4.406 NMAC. A termination report pursuant to 19.10.4.407 NMAC is also required at the conclusion of an exploration operation not being renewed, unless the permittee has applied for a mining operation permit.

K. Reclamation of the disturbed area shall be initiated as soon as possible and completed in accordance with the schedule in the permit. Topsoil or topdressing material removal and stockpiling shall precede any excavation within the drill site area. All lands, including access roads or terrain damaged in gaining access to or clearing the site, or lands whose natural state has been substantially disturbed as a result of the exploration by drilling, shall be



restored as nearly as possible to their original condition unless otherwise requested by the landowner and applicant and approved by the director. Where vegetation has been removed or destroyed within the permit area, vegetative cover shall be reestablished by seeding, planting, transplanting, or other adequate methods. All open mud pits shall be constructed in a manner to prevent wildlife entrapment, and shall be constructed to prevent any overflows. When drilling is completed, the mud pits shall be allowed to dry and then backfilled with native cover.

**L.** Each drill hole shall be plugged from total depth to within 2 feet of the original ground surface or the collar of the hole, whichever is lower, with a column of cement, high-density bentonite clay or other materials specified in the permit. If the approved plugging material is not cement, then the top ten feet of the column must be a cement plug. The hole shall be backfill with topdressing or topsoil from above the cement plug to the original ground surface. The hole shall be plugged as soon as practicable and satisfy the requirements of the state engineer and the New Mexico environment department for proper plugging of such holes. This plugging requirement may be waived if the state engineer issues a permit for a well for the exploration drill hole.

**M.** Financial assurance may only be released after the permittee has submitted a termination report that meets the requirements of 19.10.4.407 NMAC and the director has determined, after inspection, that the reclamation requirements of this section and the permit have been satisfied.  
[7-12-94, 2-15-96; 19.10.3.302 NMAC - Rn, 19 NMAC 10.2.3.302, 05-15-2001; A, 04-30-09]

## NEW MEXICO MINING COMMISSION

The following is an amendment to 19.10.4 NMAC, Sections 403 and 407, effective April 30, 2009.

**19.10.4.403 PERFORMANCE AND RECLAMATION STANDARDS AND REQUIREMENTS:** Operations shall be designed and conducted to mitigate disturbance caused by exploration operations and, to the extent practicable, provide for the stabilization of disturbed areas to minimize future impact to the environment and protect air and water resources following closure. The reclamation plan must be developed to address site-specific characteristics and the exploration and excavation work to be performed.

**A.** Reclamation of the dis-

turbed area shall be initiated ~~[as soon as possible following the completion or abandonment of the exploration operation]~~ and completed within the permit term, unless the disturbed area is included within a complete permit application for a new mining operation. Drill holes shall be plugged in accordance with Subsections K and L of 19.10.3.302 NMAC.

**B.** Cemeteries and burial grounds and the disturbance of cultural resources listed on or eligible for the *national register of historic places* or the *state register of cultural properties* shall be avoided until clearance has been granted by the director after consultation with the state historic preservation officer.

**C.** Measures shall be taken to safeguard the public from unauthorized entry into hazardous areas if such hazards were created by the operator. Depending on site-specific characteristics, the following measures shall be required:

- (1) closing shafts, adits and tunnels to prevent entry;
- (2) posting warning signs in locations near hazardous areas;
- (3) restricting access to hazardous areas; or
- (4) other measures as needed to protect human safety.

**D.** Trash, other materials and structures incidental to exploration shall be removed and disposed of appropriately.

**E.** Exploration and reclamation operations shall be conducted to minimize erosion.

**F.** Disturbance to riparian areas and wetlands shall be minimized during exploration. Adverse effects on riparian areas and wetlands shall be mitigated during reclamation.

**G.** Measures shall be taken during exploration and reclamation to minimize adverse impacts on wildlife and important habitat. Impacts on important habitat shall be mitigated during reclamation.

**H.** If necessary for the reestablishment of vegetation, topsoil or topdressing shall be salvaged, stockpiled, and distributed.

**I.** Vegetation shall be reestablished with appropriate species.

**J.** Road construction should be limited. Roads shall be located to minimize disturbance to land and wildlife and enhance stability. Roads shall be constructed and maintained to control erosion. Roads constructed in or across intermittent or perennial streams require site specific designs. Roads to remain permanent must be approved by the surface owner and must be stabilized to control erosion.

**K.** Excavations shall be

backfilled and graded to approximate the original topography. Adits and shafts created by the operator shall be sealed. Drill holes not regulated by the state engineer office shall be plugged or filled to prevent subsidence and injury to the public and wildlife.

**L.** Blasting shall be conducted to prevent injury to persons or damage to property not owned by the operator. Fly rock shall be confined to the permit area. The director may require a detailed blasting plan, pre-blast surveys or specific blast design limits to control possible adverse effects to structures.

[7-12-94, 2-15-96; 19.10.4.403 NMAC - Rn, 19 NMAC 10.2.4.403, 05-15-2001; A, 04-30-09]

**19.10.4.407 TERMINATION REPORT:** At the conclusion of an exploration operation not to be renewed, the permittee shall submit to the director a termination report. The report shall:

**A.** certify that the exploration reclamation operations have been completed in accordance with the approved permit;

**B.** provide the total depth and diameter of each hole drilled, the date each hole was completed, depth of water bearing zones and a statement describing any flow to the surface;

**C.** identify on an approved map, the disturbed area including the number and the location of the disturbed acres, and the location, including identification number, of all drill holes and excavation sites[-]; and

**D.** financial assurance may only be released after the permittee has submitted a termination report that meets the requirements of 19.10.4.407 NMAC and the director has determined, after inspection, that the reclamation requirements of 19.10.4.403 NMAC and the permit have been satisfied.

[7-12-94, 2-15-96; 19.10.4.407 NMAC - Rn, 19 NMAC 10.2.4.407, 05-15-2001; A, 04-30-09]

## NEW MEXICO MINING COMMISSION

The following is an amendment to 19.10.12 NMAC, Sections 1201 and 1204, effective April 30, 2009.

**19.10.12.1201 REQUIREMENT TO FILE FINANCIAL ASSURANCE:**

**A.** Except for existing mining operations without new units ~~[and minimal impact explorations]~~, the applicant for a permit shall provide a financial assurance proposal to the director following the director's determination that the permit

application is approvable, but prior to the permit issuance. An applicant's financial assurance proposal shall be based upon estimates for a third-party contractor to complete reclamation work. The permit shall not be issued until receipt of the approved financial assurance by the director.

**B.** The permittee of an existing mining operation shall provide a financial assurance proposal in an amount adequate to complete the proposed closeout plan as soon as practicable after the permittee receives notice from the director that the closeout plan is approvable. The permittee shall provide the approved financial assurance prior to the director's approval of the closeout plan.

**C.** Financial assurance shall be payable to the state of New Mexico and conditioned upon the performance of all the requirements of the act, 19.10 NMAC, the permit, and the reclamation plan or closeout plan.

**D.** Financial assurance proposals submitted by applicants or permittees may be required to be reviewed by a third party contractor as ordered by the director. All costs for such review shall be paid by the applicant or permittee. [7-12-94, 2-15-96; 19.10.12.1201 NMAC - Rn, 19 NMAC 10.2.12.1201, 05-15-2001; A, 10-15-03; A, 04-30-09]

#### **19.10.12.1204 PERIOD OF LIABILITY:**

**A.** The permittee shall maintain the financial assurance in effect, except as reduced pursuant to 19.10.12 NMAC, until such time as the director releases the financial assurance pursuant to 19.10.12.1210 NMAC. For areas to be revegetated, the director shall retain the amount of financial assurance necessary for a third party to re-establish vegetation for a period of 12 years after the last year of augmented seeding, fertilizing, or irrigation, unless a post-mining land use is approved by the director that does not require revegetation. Interseeding to establish diversity shall not be considered augmented seeding. Interseeding may not be performed within the last three years of the liability period.

**B.** For new mining operations only, no part of the financial assurance necessary for a third party to re-establish vegetation shall be released so long as the lands to which the release would be applicable are contributing suspended solids above background levels to streamflow of intermittent or perennial streams.

**C.** Isolated and clearly defined portions of the disturbed area not qualifying for financial assurance release may be separated from the original area and assured separately with the approval of the director. Access to the separated areas for remedial work may be included in the area

under extended liability if deemed necessary by the director.

**D.** For exploration permits, financial assurance may be released after the permittee has submitted a termination report that meets the requirements of 19.10.4.407 NMAC and the director has determined, after inspection, that the reclamation requirements of 19.10.3 NMAC and 19.10.4 NMAC, as applicable, and the permit have been satisfied.

[7-12-94, 2-15-96; 19.10.12.1204 NMAC - Rn, 19 NMAC 10.2.12.1204, 05-15-2001; A, 04-30-09]

### **NEW MEXICO COMMISSION OF PUBLIC RECORDS**

April 1, 2009

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

Mr. Lucero:

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

\* 1.18.369 NMAC ERRDS,  
Commission of Public Records

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

Sincerely,

Sandra Jaramillo  
State Records Administrator

SJ/lrl

### **NEW MEXICO COMMISSION OF PUBLIC RECORDS**

#### **SYNOPSIS**

#### **1.18.369 NMAC ERRDS, Commission of Public Records**

**1. Subject matter:** 1.18.369 NMAC, Executive Records Retention and Disposition Schedule for the Commission of Public Records. This is an amendment to modifying Sections 30 through 39, 41, 42, 72 and 75 of the existing executive records retention and disposition schedule for the

Commission of Public Records, State Records Center and Archives. The records retention and disposition schedule is a timetable for the management of specific records series created by the Commission of Public Records, State Records Center and Archives. It describes each record series by record name, record function, record filing maintenance system, record content, 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 State Records Center and Archives as well as its final disposition. The retention and disposition requirements in this rule are based on the legal 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 and the New Mexico Commission of Public Records.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Commission of Public Records, State Records Center and Archives. Persons and entities normally subject to the rules and regulations of the Commission of Public Records, State Records Center and Archives may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Commission of Public Records, State Records Center and Archives.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the Commission of Public Records, State Records Center and Archives. Any person or entity outside the covered geographical area that conducts business with or through the Commission of Public Records, State Records Center and Archives 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.



cation numbers, social security numbers, provider medicaid numbers, provider emergency policies, etc.), subcontractor information (i.e., names, addresses, social security numbers, background checks, business license copies, professional licensure copies, etc.), facility surveys, complaints, investigations, moratoriums, final investigation reports, correspondence, etc.

**D. Retention:** six years after expiration date of contract agreement

**E. Confidentiality:** Portions of record may be confidential pursuant, but not limited to 5 USC, Section 552a (i.e., social security number) and Section 14-6-1 NMSA 1978 (i.e., health information).

[1.18.665.885 NMAC - N, 5/4/2009]

### NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.667 NMAC, ERRDS Department of Environment, amending Sections 246 and 247 and repealing Section 248, effective 5/4/2009.

**1.18.667.246** [~~AD~~ ~~HOC~~ ~~REPORTS:~~] [RESERVED]

[1.18.667.246 NMAC - N, 7/8/2000; A, 5/4/2009]

**1.18.667.247** **C O R R E C T I V E**  
**ACTION FUND DATABASE:**

**A. Program:** [~~underground storage tanks.~~] petroleum storage

**B. Maintenance system:** numerical by primary key

**C. Description:** [~~database tracks the fund intended to provide for financial assurance coverage required by federal law and used by the state to take corrective action at sites contaminated by leakage from underground storage tanks. Database may contain application claim requesting payments from the fund, pre-audit of claim, documentation of costs, site assessment, certification that services were rendered, financial audit, etc.] database used to manage and maintain information on payments to or expenditures from the corrective action fund. Data may include name and address of contractor, site assessment and work plan information, invoice information, validation of work plan completion data, payment date, warrant number, etc.~~

**D. Data retention:** [Retention of data is permanent. For retention of system, software and documentation, refer to 1.15.2.301 NMAC *general administrative records.*] permanent

**E. Input:** All documents used as input for the *corrective action fund*

*database are filed in the corrective action and remediation files.* 1.18.667.254 NMAC.

**F. Output:** Because the *corrective action fund database* is a data-based system, ad hoc and regularly scheduled reports may be generated upon request or demand. When produced these reports are forwarded to the requesting entity.

[1.18.667.247 NMAC - N, 7/8/2000; A, 5/4/2009]

**1.18.667.248** [~~C O R R E C T I V E~~  
~~ACTION FUND FILES:~~

**A. Program:** ~~underground storage tanks.~~

**B. Maintenance system:** numeric by facility number.

**C. Description:** ~~hard copy input records for 1.18.667.247 NMAC corrective action fund database. Records concerning the fund intended to provide for financial assurance coverage required by federal law and used by the state to take corrective action at sites contaminated by leakage from underground storage tanks. Files may contain application claim requesting payments from the fund, pre-audit of claim, documentation of costs, site assessment, certification that services were rendered, financial audit, voucher and voucher package, copies of warrants, correspondence, memoranda, etc.~~

**D. Retention:** permanent. Transfer to archives 10 years after date created. [RESERVED]

[1.18.667.248 NMAC - N, 7/8/2000; Repealed, 5/4/2009]

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### End of Adopted Rules Section

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**Other Material Related to Administrative Law**

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**NEW MEXICO CHILDREN,  
YOUTH AND FAMILIES  
DEPARTMENT  
EARLY CHILDHOOD SERVICES  
DIVISION****NOTICE OF PUBLIC HEARING  
2010-2011 CCDF State Plan**

The Children, Youth and Families Department, Early Childhood Services, will hold a formal public hearing on Monday, June 1, 2009, from 10:00 a.m. to 12:00 p.m. in Apodaca Hall on the 2<sup>nd</sup> floor of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico, to receive public comments regarding proposed updates to the 2010-2011 Child Care and Development Fund State Plan.

The draft CCDF State Plan may be obtained at [www.newmexicokids.org](http://www.newmexicokids.org) or by calling 505-771-5901. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on June 1, 2009. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Early Childhood Services, Children, Youth and Families Department, 4359 Jager Dr. NE Suite A, Rio Rancho, NM 87144; Fax: 505-867-8490.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Early Childhood Services at 505-771-5901. CYFD requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

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**End of Other Related  
Material Section**

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## SUBMITTAL DEADLINES AND PUBLICATION DATES

### 2009

<b>Volume XX</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 30
Issue Number 3	February 2	February 13
Issue Number 4	February 16	February 27
Issue Number 5	March 2	March 16
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 14
Issue Number 10	May 15	May 29
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 3	August 14
Issue Number 16	August 17	August 31
Issue Number 17	September 1	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	November 2	November 13
Issue Number 22	November 16	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.