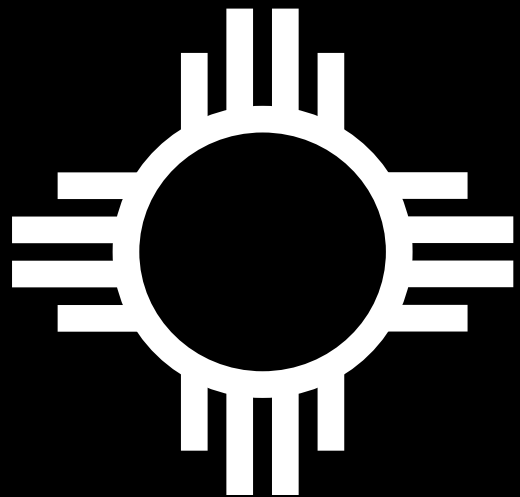


**NEW  
MEXICO  
REGISTER**

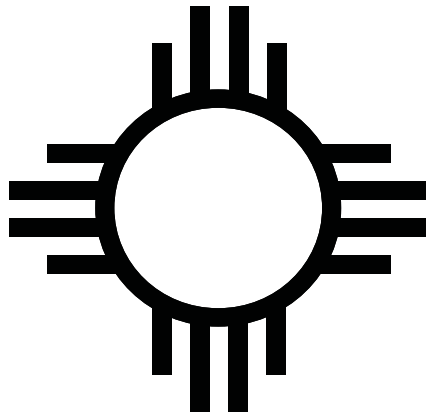


Volume XX  
Issue Number 14  
July 31, 2009



# **New Mexico Register**

**Volume XX, Issue Number 14  
July 31, 2009**



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

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Administrative Law Division  
Santa Fe, New Mexico  
2009

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# New Mexico Register

Volume XX, Number 14

July 31, 2009

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***A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered***

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## Notices of Rulemaking and Proposed Rules

### ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

#### ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING

On September 9, 2009, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM. The hearing will address:

Proposal to repeal the current excess emissions rule, *Breakdown, Abnormal Operating Conditions, Or Scheduled Maintenance*, at Section 20.11.90.12 NMAC, and replace it with a new rule, 20.11.49 NMAC, *Excess Emissions*. There are also cross-references to the current rule found within the *Volatile Organic Compounds* rule at 20.11.65.7.A NMAC and within the *Pathological Waste Destructors* rule at 20.11.69.25.A NMAC which are proposed to be changed to reference the new proposed rule.

The AQD is proposing to repeal the current excess emissions rule, *Breakdown, Abnormal Operating Conditions, Or Scheduled Maintenance*, at Section 20.11.90.12 NMAC, and replace it with a new rule, 20.11.49 NMAC, *Excess Emissions*, for the following reasons:

On September 28, 1982, September 20, 1999, and again on December 5, 2001, the U.S. Environmental Protection Agency (EPA) issued guidance on how states should address excess emissions during malfunction, startup and shutdown in their State Implementation Plan (SIP). The current version of the excess emissions rule for Bernalillo County, entitled *Breakdown, Abnormal Operating Conditions, or Scheduled Maintenance*, at Section 20.11.90.12 NMAC [AKA Regulation No. 19" or "Section 19 of Regulation # 1"] was adopted by the Air Board and filed on 6/6/1973. This rule was subsequently submitted to EPA for inclusion into the SIP and was approved by EPA on 4/10/1980, effective the same day. Except for phraseology and formatting differences, this rule has not changed substantively since then. Therefore to comply with EPA guidance, and to comport with New Mexico's new rule, 20.2.7 NMAC, *Excess Emissions*,

[effective 8/1/08], the Air Board's excess emissions rule needs to be replaced.

Therefore, the Air Quality Division (Division) proposes that Section 20.11.90.12 NMAC, be repealed (while leaving the rest of 20.11.90 NMAC intact), and be replaced by a new rule, 20.11.49 NMAC, *Excess Emissions*. The proposed replacement rule is patterned after New Mexico's rule with some modifications made in response to comments received from EPA. These modifications include the deletion of Sections 14 and 15 of 20.2.7 NMAC, and the incorporation of additional language from the Oklahoma Department of Environmental Quality's *Excess Emission Reporting Requirements*, at 252.100.9 OAC.

The Division's proposal tightens notification requirements and establishes criteria recommended by EPA for affirmative defenses. The proposed rule prohibits excess emissions for startup or shutdown unless they are the result of unavoidable and unforeseeable malfunctions. In addition, as part of the required analysis for excess emissions events, the Division is proposing a requirement for a "root cause analysis". This would be a detailed technical analysis of excess emission events that determines the underlying reason(s) that the event occurred and all contributing factors to the malfunction, to the extent possible. The analysis would also require an evaluation of alternative measures (if any) that can be implemented to reduce the likelihood of a recurrence of an incident. Minimizing the likelihood of excess emissions from malfunctions will reduce the reporting burden for both facilities and the Division.

Finally, the cross-references made to 20.11.90.12 NMAC, found at 20.11.65.7.A NMAC and 20.11.69.25.A NMAC, are proposed to be changed to reference 20.11.49 NMAC.

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the proposal to repeal the current excess emissions rule, *Breakdown, Abnormal Operating Conditions, Or Scheduled Maintenance*, 20.11.90.12 NMAC, and replace it with a new rule, 20.11.49 NMAC, *Excess Emissions*.

The Air Board is the federally-delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Air Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to

require local air pollution sources to comply with air quality standards and regulations.

Hearings and meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6, and 20.11.82 NMAC, Rulemaking Procedures -- Air Quality Control Board.

Anyone intending to present technical testimony at this hearing is required by 20.11.82.20 NMAC to submit a written Notice Of Intent to testify (NOI) before 5:00pm on August 25, 2009, to: Attn: Hearing Clerk, Ms. Janice Amend, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to the Environmental Health Department, Suite 3023, 400 Marquette Avenue NW. The NOI shall: 1. identify the person for whom the witness or witnesses will testify; 2. identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background; 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. include the text of any recommended modifications to the proposed regulatory change; and 5. list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

In addition, written comments to be incorporated into the public record for this hearing should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on September 2, 2009. Comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to [jamend@cabq.gov](mailto:jamend@cabq.gov) and shall include the required name and address information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department office, or by contacting Ms. Janice Amend electronically at [jamend@cabq.gov](mailto:jamend@cabq.gov) or by phone (505) 768-2601, or by downloading a copy from the City of

Albuquerque Air Quality Division website <http://www.cabq.gov/airquality/aqcb/public-review-drafts>.

**NOTICE FOR PERSON WITH DISABILITIES:** If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes

## ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO  
COUNTY AIR QUALITY CONTROL  
BOARD  
NOTICE OF HEARING

On October 14, 2009, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM. The hearing will address:

Proposal to amend 20.11.47 NMAC, *Emissions Inventory Requirements*, and submit this amendment to EPA as a revision to the State Implementation Plan (SIP). The Air Quality Division (Division) is proposing to amend 20.11.47 NMAC, for the following reasons:

The current language at 20.11.47.14.B.(1) NMAC is overly broad in scope, requiring an annual emissions inventory report for *all* air pollution sources, including those with an air quality 'permit' and those with only an air quality 'registration'. Air pollution sources issued 'registrations' emit only small amounts of pollution, and thus do not trigger air quality 'permitting' thresholds (e.g. sources such as small generators and small manufacturing operations). The proposed language for 20.11.47.14.B.(1) NMAC would provide the Division the flexibility to require emissions reports from sources with air quality 'permits', but not require a report from all the smaller sources with 'registrations', unless it becomes necessary in the future. This will shrink the universe of affected sources down to that, which was originally intended the last time this rule was amended, and at the same time, retains

the flexibility to include more sources in the future if necessary.

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the proposed amendment to 20.11.47 NMAC, *Emissions Inventory Requirements*, and submit this amendment to EPA as a revision to the SIP.

The Air Board is the federally-delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Air Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards and regulations.

Hearings and meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6, and 20.11.82 NMAC, Rulemaking Procedures -- Air Quality Control Board.

Anyone intending to present technical testimony at this hearing is required by 20.11.82.20 NMAC to submit a written Notice Of Intent to testify (NOI) before 5:00pm on September 29, 2009, to: Attn: Hearing Clerk, Ms. Janice Amend, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to the Environmental Health Department, Suite 3023, 400 Marquette Avenue NW. The NOI shall: 1. identify the person for whom the witness or witnesses will testify; 2. identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background; 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. include the text of any recommended modifications to the proposed regulatory change; and 5. list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

In addition, written comments to be incorporated into the public record for this hearing should be received at the above P.O.

Box, or Environmental Health Department office, before 5:00 pm on October 7, 2009. Comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to [jamend@cabq.gov](mailto:jamend@cabq.gov) and shall include the required name and address information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department office, or by contacting Ms. Janice Amend electronically at [jamend@cabq.gov](mailto:jamend@cabq.gov) or by phone (505) 768-2601, or by downloading a copy from the City of Albuquerque Air Quality Division website <http://www.cabq.gov/airquality/aqcb/public-review-drafts>

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## NEW MEXICO ENVIRONMENT DEPARTMENT

**CORRECTION:** In the matter of amendments to 20.2.89 NMAC - Qualified Generating Facility Certification Public Meeting and Rulemaking Hearing to be held on August 13, 2009. If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Judy Bentley by **August 6, 2009**, at New Mexico Environment Department, Personnel Service Bureau, Room N-4071, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico, 87502. Ms. Bentley's telephone number is (505) 827-9872. TDY users please access Ms. Bentley's number through the New Mexico Relay Network at 1-800-659-8331.

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**NEW MEXICO ENVIRONMENTAL  
IMPROVEMENT BOARD  
NOTICE OF PUBLIC HEARING TO  
CONSIDER PROPOSED REVISION  
OF THE FOOD SERVICE AND FOOD  
PROCESSING REGULATIONS, 7.6.2  
NMAC.**

The New Mexico Environmental



Improvement Board (“Board” or “EIB”) will hold a public hearing on October 5, 2009 at 10:00 a.m. and continuing thereafter as necessary in Room 317, State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing location may change prior to October 5, 2009 and those interested in attending should check the EIB website: <http://www.nmenv.state.nm.us/eib/index.html> prior to the hearing. The purpose of the hearing is to consider proposed amendments to 7.6.2 NMAC, the Food Service and Food Processing Regulations. The New Mexico Farmers Marketing Association, the New Mexico Food and Agriculture Policy Council and Farm to Table are the proponents of these regulations.

The proposed amendments relate to the home-processing of non-potentially hazardous foods for sale to the general public.

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

The proposed regulations may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87505. Copies of the proposed regulations may be obtained by contacting Joyce Medina at (505) 827-2425 or by email at [joyce.medina@state.nm.us](mailto:joyce.medina@state.nm.us). Please refer to Docket No. EIB 09-05(R). Written comments regarding the new regulations may be addressed to Ms. Medina at the above address, and should reference Docket No. EIB 09-05(R).

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

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

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

shall:

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

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on September 21, 2009, and should reference the name of the regulation, the date of the hearing, and Docket No. EIB 09-05(R). Notices of intent to present technical testimony should be submitted to:

Joyce Medina  
Board Administrator  
NMED Boards and Commissions  
Harold Runnels Building  
1190 St. Francis Dr., Room N-2153  
Santa Fe, NM 87502

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Judy Bentley at the Personnel Services Bureau by September 21, 2009. The Personnel Services Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-2844. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779).

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

## NEW MEXICO GAME COMMISSION

### STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On **Thursday, August 20, 2009**, beginning at 9:00 a.m., at the State Bar of New Mexico - Auditorium, **5121 Masthead, NE, Albuquerque, New Mexico 87199**, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Updates and Miscellaneous; Revocations; Fiscal Year 2009 4th Quarter and Annual Depredation Report; Approval of FY 2011 Operating Budget and Capital Improvement Projects Request; General Public Comments (comments limited to 3 minutes); Update on the Proposed A-PLUS System and Possible Extension of Final Rule Adoption; Update Regarding Prospective Amendments to the Elk Rule, 19.31.14, NMAC, and Private Land Elk License Allocation Rule, 19.30.5, NMAC, for Game Management Units 6-A and 6-C; Update Regarding Prospective Amendments to the Deer Rule, 19.31.13, NMAC, and Hunting and Fishing License Application Rules, 19.31.3, NMAC; Furbearer Management; Update Regarding Prospective Changes to the Use of Department of Game and Fish Lands Rule (19.34.3 NMAC) with Emphasis on the Gaining Access Into Nature Program; Reservation of Two (2) Elk Licenses for Non-profit Wish-granting Organization(s), Section 17-3-13.5, NMSA, 1978; Rule Promulgation and Public Comment Process; Briefing and Update Regarding Transfer of the Off-Highway Vehicle Program from the Department of Tourism to the Department of Game and Fish; Closed Executive Session; Notice of Commission Contemplated Action; and Land Acquisition and Disposal Report.

The following rules will be opened for public comment and consideration for adoption by the Commission:

- \* Proposed Change to the Fisheries Rule, 19.31.4, NMAC;
- \* Amend the Barbary Sheep, Oryx, and Persian Ibex Rule, 19.31.12, NMAC, to Clarify Certain Provisions; and,
- \* Amendments to the Hunting and Fishing Manner and Method of Taking Rule, 19.31.10 NMAC, Regarding Hunting on Public Land With a Landowner License.

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or on the Department's

website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) for updated information.

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 or meeting, please contact Shirley Baker at (505) 476-8029. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

**NEW MEXICO  
DEPARTMENT OF HEALTH  
PUBLIC HEALTH DIVISION**

**NOTICE OF PUBLIC HEARING**

The New Mexico Department of Health will hold a public hearing on 16.11.2 NMAC "Certified Nurse Midwives". The Hearing will be held on Thursday, September 3, 2009 at 9:00 a.m. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted to receive public comment regarding proposed changes to the rule.

A copy of the proposed regulation can be obtained from:

Roberta Moore, Maternal Health Program Manager  
Family Health Bureau  
New Mexico Department of Health  
2040 S. Pacheco  
Santa Fe, New Mexico 87505

Please submit any written comments regarding the proposed regulation to Ms. Moore at the address listed above.

The Department will accept public comment through the close of the hearing unless otherwise specified.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Roberta Moore at the above address or telephone number. The Department requests at least ten (10) days advance notice for special accommodations requests.

**NEW MEXICO MEDICAL BOARD**

NEW MEXICO MEDICAL BOARD

Notice

The New Mexico Medical Board will convene a regular Board Meeting on Thursday, August 13, 2009 at 8:30 a.m. and Friday, August 14, 2009 at 8:30 a.m. in the Conference Room, 2055 S. Pacheco, Building 400, Santa Fe, New Mexico. A Public Rule Hearing will be held on Friday, August 14, 2009 at 9:00 a.m. The Board will reconvene after the Hearing to take action on the proposed rules. The Board may enter into Executive Session during the meeting to discuss licensing or limited personnel issues.

The purpose of the Rule Hearing is to consider amending 16.10.7 NMAC (License Expiration, Renewal, and Reinstatement), 16.10.8 NMAC (Medical Ethics), 16.10.15 NMAC (Physician Assistants: Licensure and Practice Requirements) and 16.10.19 NMAC (Qualifications & Licensure for Anesthesiologist Assistants).

Copies of the proposed rules will be available on July 13th on request from the Board office at the address listed above, by phone (505) 476-7220, or on the Internet at [www.nmbb.state.nm.us](http://www.nmbb.state.nm.us).

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m., August 7, 2009, to the board office, 2055 S. Pacheco, Building 400, Santa Fe, NM, 87505.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please contact Lynnelle Tipton, Administrative Assistant at 2055 S. Pacheco, Building 400, Santa Fe, NM at least one week prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats.

**NEW MEXICO COMMISSION OF PUBLIC RECORDS**

**NOTICE OF REGULAR MEETING**

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, August 18, 2009, at 9:30 A.M. The meeting will be held at the New Mexico Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, New Mexico. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette L. Solano at 476-7902 by July 31, 2009. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

**NOTICE OF RULEMAKING**

The Commission of Public Records may consider the following items of rulemaking at the meeting:

Amendment

- 1.13.1 NMAC Public Records: General Provisions
- 1.18.665 NMAC ERRDS, Department of Health
- 1.18.690 NMAC ERRDS, Children Youth and Families Department, and
- 1.18.770 NMAC ERRDS, Corrections Department

**NEW MEXICO PUBLIC REGULATION COMMISSION  
INSURANCE DIVISION**

**BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE**

\_\_\_\_\_ )  
**IN THE MATTER OF:** )  
 \_\_\_\_\_ )  
**THE 2009 BIENNIAL TITLE** ) **Docket No. 09-00123-IN**  
**INSURANCE HEARING** )  
 \_\_\_\_\_ )

**NOTICE OF HEARING TO CONSIDER PROMULGATION OF PREMIUM RATES**

**AND PROCEDURAL ORDER**

**THIS MATTER** comes before the New Mexico Superintendent of Insurance ("Superintendent") upon the Superintendent's own motion, pursuant to the statutory mandate of NMSA 1978, Section 59A-30-8(A) (2009), requiring the Superintendent to hold a biennial hearing during November of each calendar year to consider promulgation of premium rates and any other matters related to the regulation of the business of title insurance deemed necessary by the Superintendent. The Superintendent, being fully advised in the premises, hereby issues the following notice and order:

1. A public hearing shall be held commencing on **Tuesday, November 17, 2009, at 9:00 a.m.**, and continuing thereafter as necessary in the Public Regulation Commission Board Room, Third Floor (Ground Floor), P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico. The hearing shall be held for the purpose of considering title insurance rates. The proceeding shall be a formal administrative hearing within the meaning of NMSA 1978, Section 59A-4-17. Certain provisions of the Administrative Procedures Act, specifically NMSA 1978, Sections 12-8-10 through 12-8-13 and 12-8-15, shall apply to the proceeding.

2. Pursuant to NMSA 1978, 59A-30-6(C), title insurance rates shall not be excessive, inadequate, or unfairly discriminatory, and shall contain an allowance permitting a profit which is not unreasonable in relation to the riskiness of the business of title insurance.

3. Any person intending to file a rate proposal or otherwise participate as a party to this proceeding shall file a motion for leave to intervene on or before **Friday, August 7, 2009**. Objections to motions for leave to intervene shall be filed on or before **Friday, August 14, 2009**.

4. Techniques of pre-hearing discovery permitted in civil actions in New Mexico, such as interrogatories, depositions, and requests for production of documents, may be employed by Staff or any party commencing on or after **Friday, September 4, 2009**. The time in which to respond to interrogatories and requests for production of documents shall be shortened to 10 calendar days after service.

5. Staff of the Insurance Division Title Insurance Bureau ("Staff") and all other persons who have been granted leave to intervene ("parties") who wish

to submit independent written rate proposal(s) and actuarial reports(s) relating to the rate proposals(s) shall file such proposal(s) and report(s) in this docket on or before **Friday, October 16, 2009**.

6. Staff and all parties shall file the following items in this docket on or before **Friday, October 16, 2009**: (a) Notice of Intent to Call Expert Witnesses, which shall include the name, address, and business association of each expert witness; (b) Witness List, which shall include addresses and telephone numbers for each witness named; and (c) Pre-filed Direct Testimony and copies of related exhibits for each lay witness and for each expert witness.

7. All lay witnesses and all expert witnesses shall file pre-filed direct testimony, appear at the hearing and submit to examination under oath.

8. Staff and all parties shall file the following items in this docket on or before **Monday, November 2, 2009**: (a) Pre-filed Rebuttal Testimony and copies of related exhibits; and (b) Objections to Pre-filed Direct Testimony and exhibits.

9. Staff and all parties shall file Objections to Pre-filed Rebuttal Testimony and exhibits in this docket on or before **Wednesday, November 11, 2009**.

10. Staff and all parties shall meet and confer to discuss the narrowing of issues to be addressed at the hearing, stipulations regarding undisputed material facts and admissibility of all uncontested documents, and any other unresolved issues to be addressed at the hearing. The parties shall prepare and file a joint proposed hearing agenda regarding the promulgation of premium rates and any stipulations reached by the parties on or before **Wednesday, November 11, 2009**.

11. No discovery requests or notices of taking deposition shall be served after **Wednesday, November 11, 2009**.

12. A pre-hearing conference shall be held on **Wednesday, November 11, 2009, at 10:00 a.m.** at the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico. The Superintendent or his designated hearing officer shall preside at the pre-hearing conference. The purpose of the pre-hearing conference is to narrow the issues to be addressed at the hearing, to hear all pending motions and other outstanding matters related to the hearing, and to set the agenda for the hearing.

13. An original and two copies of all proposals, reports, comments, motions, notices and other materials to be filed shall be submitted in person or by mail to the Public Regulation Commission's Docketing Office, citing the above-referenced docket. The Docketing Office is located in Room 406, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico and its mailing address is P.O. Box 1269, Santa Fe, New Mexico 87504-1269. An additional copy of all proposals, reports, comments, motions, notices and other materials filed in this docket shall be delivered or mailed to Title Insurance Hearing Officer, Insurance Division, Room 431, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

14. All submissions shall be deemed filed as of the date and time stamped by the Docketing Office.

15. Staff shall arrange for distribution and publication of this notice pursuant to NMSA 1978, Section 59A-4-16, and other applicable law.

16. Any 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, should contact Mariano Romero at (505) 827-4526 no later than **Wednesday, November 11, 2009**. Public documents, including the transcript, agenda or minutes, if any, can be provided in various accessible forms. Please contact Mariano Romero if a summary or other type of accessible form is needed.

**DONE AND ORDERED** this 2 day of July 2009.

\_\_\_\_\_  
**Morris J. Chavez**  
**Superintendent of Insurance**

**NEW MEXICO PUBLIC REGULATION COMMISSION  
INSURANCE DIVISION**

**BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE**

_____ )	
<b>IN THE MATTER OF:</b> )	
_____ )	
<b>THE 2009 BIENNIAL TITLE</b> )	<b>Docket No. 09-00250-IN</b>
<b>INSURANCE HEARING</b> )	
_____ )	

**NOTICE OF HEARING TO ADDRESS MATTERS RELATED TO THE  
REGULATION OF TITLE INSURANCE OTHER THAN THE PROMULGATION  
OF PREMIUM RATES AND PROCEDURAL ORDER**

**THIS MATTER** comes before the New Mexico Superintendent of Insurance (“Superintendent”) upon the Superintendent’s own motion, pursuant to the statutory mandate of NMSA 1978, Section 59A-30-8(A) (2009), requiring the Superintendent to hold a biennial hearing during November of each calendar year to consider promulgation of premium rates and any other matters related to the regulation of the business of title insurance deemed necessary by the Superintendent. The Superintendent, being fully advised in the premises, hereby issues the following notice and order:

1. A public hearing shall be held on Monday, **November 16, 2009, at 9:00 a.m.**, and continuing thereafter as necessary in the Public Regulation Commission Board Room, Third Floor (Ground Floor), P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico. The hearing shall be held for the purpose of adopting and/or amending regulations and forms, for determining the Insurance Fraud Fund assessment for title insurers pursuant to NMSA 1978, Section 59A-16C-14, and for addressing other matters related to the business of title insurance. The proceeding shall be informal within the meaning of NMSA 1978, Section 59A-4-18.

2. The staff of the Insurance Division (“Staff”) and all other persons wishing to submit proposals relating to adopting and/or amending regulations and forms, determining the insurance fraud fund assessment for title insurers pursuant to NMSA 1978, Section 59A-16C-14, and other matters related to the business of title insurance shall file the following items in this docket on or before **Tuesday October 13, 2009**: (a) written proposal(s) and an electronic version in *Microsoft Word* of each proposal; and (b) written comments and exhibits in support of their proposal(s). The electronic versions may be filed in the docket on a diskette or e-mailed to the Hearing Officer assigned to this matter. All written comments shall state and discuss the particular reasons for the proposal and where necessary or appropriate to effectuate the proposal, shall include specific language to implement the proposal.

3. All interested persons may testify at the hearing.

4. Written comments on proposals filed in this docket shall be filed on or before **Friday, October 23, 2009**.

5. All written comments suggesting changes to proposals shall state and discuss the particular reasons for the suggested changes and, where necessary or appropriate to effectuate the changes being suggested, shall include specific language for incorporation into the proposal.

6. The parties shall meet and confer to discuss the narrowing of issues to be addressed at the hearing and any other unresolved issues to be addressed at the hearing. The parties shall prepare and file a joint proposed hearing agenda regarding regulation of title insurance other than promulgation of premium rates on or before **Wednesday, November 11, 2009**.

7. A pre-hearing conference shall be held on **Wednesday, November 11, 2009, at 9:00 a.m.** at the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico. The Superintendent or his designated hearing officer shall preside at the pre-hearing conference. The purpose of the pre-hearing conference is to narrow the issues to be addressed at the hearing, to hear all pending motions related to the hearing, and to set the agenda for the

hearing.

8. Proposals and comments will be available for public inspection during regular business hours at the Public Regulation Commission’s docketing office. An original and two copies of all proposals, reports, comments, motions, notices and other materials to be filed shall be submitted in person or by mail to the docketing office, citing the above-referenced docket. The docketing office is located in Room 406, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico and its mailing address is P.O. Box 1269, Santa Fe, New Mexico 87504-1269. An additional copy of all proposals, reports, comments, motions, notices and other materials filed in this docket shall be delivered or mailed to Hearing Officer assigned to this matter at the following address: Title Insurance Hearing Officer, Insurance Division, Room 431, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

9. All submissions shall be deemed filed as of the date and time stamped by the docketing office.

10. Staff shall arrange for distribution and publication of this notice pursuant to NMSA 1978, Section 59A-4-16, and other applicable law.

11. Any 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, should contact Mariano Romero at (505) 827-4526 no later than **November 11, 2009**. Public documents, including the transcript, agenda or minutes, if any, can be provided in various accessible forms. Please contact Mariano Romero if a summary or other type of accessible form is needed.

12. Interested persons should contact the Docketing Office or Staff for confirmation of the hearing date, time and place because hearings are rescheduled on occasion.

**DONE AND ORDERED** this 2 day of July, 2009.

\_\_\_\_\_  
**Morris J. Chavez**  
**Superintndent of Insurance**

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
FINANCIAL INSTITUTIONS  
DIVISION**

Notice is hereby given that the Financial Institutions Division of the Regulation and Licensing Department proposes to: promulgate new rules, the Mortgage Loan Originator Requirements, 12.19.2 NMAC, pertaining to The New Mexico Mortgage Loan Originator Licensing Act; amend the General Provisions 12.19.1 NMAC, and the Mortgage Loan Company and Loan Broker Requirements, 12.19.8 NMAC, pertaining to Mortgage Loan Company Act and amend the Home Loan Protection Act - High Cost Loans: Repayment Ability, Financial Ratios and Guidelines, 12.15.4 NMAC, pertaining to the Home Loan Protection Act. The draft rules may be viewed at <http://www.rld.state.nm.us/FID/MortgageLending.html>. Interested person shall file their written comments on the proposed rules by no later than 5:00 P.M. August 12, 2009. Comments on the proposed rules shall be sent to:

Jackie Dalmy, Licensing Specialist  
Financial Institutions Division  
Toney Anaya Building,  
2550 Cerrillos Road, 3rd Floor  
Santa Fe, New Mexico 87505  
Phone # 505-476-4908  
Fax # 505-476-4670  
Email address: [Jackie.dalmy@state.nm.us](mailto:Jackie.dalmy@state.nm.us)

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**End of Notices and Proposed  
Rules Section**

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## Adopted Rules

### ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.42 NMAC, Sections 1, 2, and 5 through 13, effective 8/10/2009.

**20.11.42.1 ISSUING AGENCY:** Albuquerque-Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) [768-2600] 768-2601. [3/1/94. . .12/1/95; 20.11.42.1 NMAC - Rn, 20 NMAC 11.42.I.1, 10/1/02; A, 8/10/09]

**20.11.42.2 SCOPE:**  
**A. [Part 42] 20.11.42 NMAC sources:** Operating permits must be obtained from the department for the following sources:

(1) any major source;  
(2) any source, including an area source, subject to a standard or other requirement promulgated under Section 111 - *Standards of Performance for New Stationary Sources*, or Section 112 - *National Emission Standards for Hazardous Air Pollutants*, of the federal act, but not including any source which:

(a) is exempted under Subparagraph (b), of Paragraph (1), of Subsection C of [20.11.42] 20.11.42.2 NMAC; or

(b) would be required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r), *Prevention of Accidental Releases* of the federal act;

(3) any acid rain source; and  
(4) any source in a source category so designated by the administrator, in whole or in part, by regulation, after notice and comment.

**B. Requirement for a permit:**

(1) [Part 42] A 20.11.42 NMAC source may operate after the time that it is required to submit a timely and complete application under 20.11.42 NMAC only if:

(a) the source is in compliance with an operating permit issued by the department or EPA; or

(b) a timely permit (including permit renewal) application has been submitted consistent with Subsection A of 20.11.42.12 NMAC; the ability to operate under these circumstances shall cease if the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being needed to process the application.

(2) Revocation or termination of a permit by the department terminates the permittee's right to operate.

(3) The submittal of a complete operating permit application shall not protect any source from any applicable requirement, including any requirement that the source have a pre-construction permit under Title I of the federal act or board regulations.

**C. Source category exemptions and deferrals:**

(1) **The following source categories are exempted from the obligation to obtain an operating permit:**

(a) all sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA - *Standards of Performance for New Residential Wood Heaters*;

(b) all sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M - *National Emission Standard for Hazardous Air Pollutants for Asbestos*, Section 61.145, *Standard for Demolition and Renovation*;

(c) except as required under Section 20.11.42.14 NMAC, any source that would be required to obtain a permit solely because of emissions of radionuclides; and

(d) any source in a source category exempted by the administrator, by regulation, after notice and comment.

(2) Non-major sources, including those subject to Sections 111 or 112 of the federal act are exempt from the obligation to obtain a 20.11.42 NMAC permit until the administrator completes a rulemaking requiring such sources to obtain operating permits.

(3) Any source exempted from the requirement to obtain an operating permit may opt to apply for a permit under 20.11.42 NMAC.

**D. [Existing major sources, which are not required to have a permit under 20.11.41 NMAC:**

(1) Existing major sources which have not been required to have a permit under 20.11.41 NMAC, and wish to avoid designation as a major source under 20.11.42 NMAC, may apply for a permit under 20.11.41 NMAC to obtain federally enforceable conditions which restrict the potential to emit to non-major emission rates. Such conditions may include emissions limitations, process restrictions and/or limitations, restrictions on annual hours of operation, or other conditions which would reduce the facility's potential to emit.

(2) Any such source which has not been issued a 20.11.41 NMAC permit as described in Paragraph (1), of

Subsection D of 20.11.42.2 NMAC above prior to the application date required under Subparagraph (b), of Paragraph (2), of Subsection A of 20.11.42.12 NMAC shall be subject to the requirements of 20.11.42 NMAC] Reserved.

**E. Indian tribal jurisdiction:** The requirements of 20.11.42 NMAC do not apply to sources within Indian tribal jurisdiction. For the operation of sources in that jurisdiction, the applicant shall make such applications to the tribal authority or to the administrator, as appropriate.

[3/1/94. . .12/1/95; 20.11.42.2 NMAC - Rn, 20 NMAC 11.42.I.2, 10/1/02; A, 8/10/09]

**20.11.42.5 EFFECTIVE DATE:** [The effective date of 20.11.42 NMAC shall be the effective date of approval, by the administrator of the Albuquerque/Bernalillo County operating permit program, including approval of any partial or interim program] December 1, 1995, unless a later date is cited at the end of a section.

[3/1/94; 20.11.42.5 NMAC - Rn, 20 NMAC 11.42.I.5, 10/1/02; A, 8/10/09]

[The effective date for interim approval of the operating permit program for Albuquerque-Bernalillo County, by the administrator, is March 13, 1995]

**20.11.42.6 OBJECTIVE:** [The objective of this Part is] To assure that major air pollution sources within Bernalillo county obtain an operating permit setting forth minimum requirements and conditions of operation pursuant to Title V of the Clean Air Act Amendments of 1990 (42 U.S.C. 7401, et seq.).

[3/1/94. . .12/1/95; 20.11.42.6 NMAC - Rn, 20 NMAC 11.42.I.6, 10/1/02; A, 8/10/09]

**20.11.42.7 DEFINITIONS:** In addition to the definitions in 20.11.42.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.42 NMAC shall govern.

**A. "Acid rain source"** has the meaning given to "affected source" in the regulations promulgated under Title IV of the federal act, and includes all sources subject to Title IV.

**B. "Affected programs"** means the state of New Mexico and Indian tribes and pueblos that are within 50 miles of the source.

**C. "Air pollutant"** means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or

matter, which is emitted into or otherwise, enters the ambient air. Such term includes any precursors to the formation of any air pollutant; to the extent the administrator has identified such precursor or precursors for the purpose for which the term "air pollutant" is used. This excludes water vapor, nitrogen (N<sub>2</sub>), carbon dioxide (CO<sub>2</sub>), oxygen (O<sub>2</sub>), methane and ethane.

**D. "Air pollution control equipment"** means any device, equipment, process or combination thereof, the operation of which would limit, capture, reduce, confine, or otherwise control regulated air pollutants or convert for the purposes of control any regulated air pollutant to another form, another chemical or another physical state. This includes, but is not limited to, sulfur recovery units, acid plants, baghouses, precipitators, scrubbers, cyclones, water sprays, enclosures, catalytic converters, and steam or water injection.

**E. "Applicable requirement"** means all of the following, as they apply to emissions units at a 20.11.42 NMAC source (including requirements that have been promulgated or approved by the board or EPA through rulemaking at the time of permit issuance but have future-effective compliance dates):

(1) any standard or other requirement provided for in the New Mexico state implementation plan approved by EPA, or promulgated by EPA through rulemaking, under Title I of the federal act to implement the relevant requirements of the federal act, including any revisions to that plan promulgated in 40 CFR, Part 52;

(2) any term or condition of any pre-construction permit issued pursuant to regulations approved or promulgated through rulemaking under Title I, including Parts C or D, of the federal act, unless that term or condition is determined by the department to be no longer pertinent;

(3) any standard or other requirement under Section 111 of the federal act, including Section 111(d);

(4) any standard or other requirement under Section 112 of the federal act, including any requirement concerning accident prevention under Section 112(r)(7) of the federal act;

(5) any standard or other requirement of the acid rain program under Title IV of the federal act or the regulations promulgated thereunder;

(6) any requirements established pursuant to Section 504(b) or Section 114(a) (3) of the federal act;

(7) any standard or other requirement under Section 126(a)(1) and (c) of the federal act;

~~[(7)]~~(8) any standard or other requirement governing solid waste incineration under Section 129 of the federal act;

~~[(8)]~~(9) any standard or other requirement for consumer and commercial products, under Section 183(e) of the federal act;

~~[(9)]~~(10) any standard or other requirement for tank vessels under Section 183(f) of the federal act;

(11) any standard or other requirement of the program to control air pollution from outer continental shelf sources, under Section 328 of the federal act;

~~[(10)]~~(12) any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal act, unless the administrator has determined that such requirements need not be contained in a Title V permit;

~~[(11)]~~(13) any national ambient air quality standard, or

~~[(12)]~~ any increment or visibility requirement under Part C of Title I of the federal act, [applicable] but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the federal act; and

~~[(13)]~~(14) any regulation adopted by the board in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act, 74-2-5.B NMSA 1978.

**F. "Department"** means the Albuquerque environmental health department or its successor agency or authority, as represented by the department director or his or her designee.

**G. "Draft permit"** means a version of a permit, for which the department offers for public participation under Subsection B of 20.11.42.13 NMAC or affected program review under Subsection C of 20.11.42.13 NMAC.

**H. "Emission limitation"** means a requirement established by EPA, the board, or the department, that limits the quantity, rate or concentration, or combination thereof, of emissions of regulated air pollutants on a continuous basis, including any requirements relating to the operation or maintenance of a source to assure continuous reduction.

**I. "Emissions allowable under the permit"** means:

(1) any ~~[department or]~~ federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emission limit (including a work practice standard) ~~[requested by the applicant and approved by the department or determined at issuance or renewal to be an applicable requirement]~~; or

(2) any federally enforceable emissions cap that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject.

**J. "Emissions unit"** means any part or activity of a stationary

source that emits or has the potential to emit any regulated air pollutant or any air pollutant listed pursuant to Section 112(b) of the federal act. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the federal act.

**K. "Federal act"** means the federal Clean Air Act, as amended, 42 U.S.C. Section 7401, et seq.

**L. "Federally enforceable"** means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the New Mexico state implementation plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including 40 CFR 51.165 and 40 CFR 51.166.

**M. "Final permit"** means the version of an operating permit issued by the department that has met all review requirements of Section 20.11.42.13 NMAC.

**N. "Fugitive emissions"** are those emissions, which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**O. "General permit"** means an operating permit that meets the requirements of Subsection D of 20.11.42.12 NMAC.

**P. "Hazardous air pollutant"** means an air contaminant that has been classified as a hazardous air pollutant pursuant to the federal act.

**Q. "Insignificant activities"** means those activities listed by the department and approved by the administrator as insignificant on the basis of size, emissions or production rate.

**R. "Major source"** means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person(s)) in which all of the pollutant emitting activities at such source belong to the same major group (i.e., all have the same two-digit code), as described in the *standard industrial classification manual, 1987*, and that is described in paragraphs (1), (2), or (3) below.

(1) A major source under Section 112 of the federal act, which is defined as:

(a) for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons ~~[or more]~~ per year or more of any hazardous air pollutant which has been listed pursuant to Section 112 (b) of the federal act, 25 ~~[or more]~~ tons per year or more of any combination of such hazardous



air pollutants [(including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator)], or such lesser quantity as the administrator may establish by rule; notwithstanding the preceding sentence, [hazardous] emissions from any oil or gas exploration or production well (with its associated equipment) and [hazardous] emissions from any pipeline compressor or pump station shall not be aggregated with [hazardous] emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(b) for radionuclides, "major source" shall have the meaning specified by the administrator by rule.

(2) A major stationary source of air pollutants, as defined in Section 302 of the act, that directly emits or has the potential to emit, 100 [or more] tons per year or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of [this paragraph] Section 302(j) of the act, unless the source belongs to one of the following categories of stationary sources:

(a) coal cleaning plants (with thermal dryers);  
 (b) kraft pulp mills;  
 (c) portland cement plants;  
 (d) primary zinc smelters;  
 (e) iron and steel mills;  
 (f) primary aluminum ore reduction plants;  
 (g) primary copper smelters;  
 (h) municipal incinerators capable of charging more than 250 tons of refuse per day;

[(h)](i) hydrofluoric, sulfuric, or nitric acid plants;

[(i)](j) petroleum refineries;

[(j)](k) lime plants;

[(k)](l) phosphate rock processing plants;

[(l)](m) coke oven batteries;

[(m)](n) sulfur recovery plants;

[(n)](o) carbon black plants (furnace process);

[(o)](p) primary lead smelters;

[(p)](q) fuel conversion plant;

[(q)](r) sintering plants;

[(r)](s) secondary metal production plants;

[(s)](t) chemical process plants - the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

[(t)](u) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat

input;

[(u)](v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

[(v)](w) taconite ore processing plants;

[(w)](x) glass fiber processing plants;

[(x)](y) charcoal production plants;

[(y)](z) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

[(z)](aa) [AH] any other stationary source [categories] category, which as of August 7, 1980, is being regulated [by a standard promulgated] under Section 111 or 112 of the federal act.

(3) A major stationary source as defined in Part D of Title I of the federal act, including:

(a) for ozone non-attainment areas, sources with the potential to emit 100 tons [or more] per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate", 50 tons [or more] per year or more in areas classified as "serious", 25 tons [or more] per year or more in areas classified as "severe", and 10 tons [or more] per year or more in areas classified as "extreme"; except that the references in [this] Paragraph (3) of Subsection R of 20.11.42.7 NMAC to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the federal act, that requirements under Section 182(f) of the act do not apply;

(b) for ozone transport regions established pursuant to Section 184 of the federal act, sources with the potential to emit 50 tons [or more] per year or more of volatile organic compounds;

(c) for carbon monoxide non-attainment areas:

(i) that are classified as "serious"; and

(ii) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the administrator, sources with the potential to emit 50 tons [or more] per year or more of carbon monoxide; and

(d) for particulate matter (PM<sub>10</sub>) non-attainment areas classified as "serious", sources with the potential to emit 70 tons [or more] per year or more of PM<sub>10</sub>.

S. "Operating permit" or "permit" means any permit or group of permits covering a source that is issued, renewed, modified or revised pursuant to 20.11.42 NMAC.

T. "Operator" means the person(s) responsible for the overall operation of a facility.

U. "Owner" means the

person(s) who owns a facility or part of a facility.

V. [~~Part 42 source~~] means any source subject to the permitting requirements of this regulation, as provided in Section 20.11.42.2 NMAC] Reserved.

W. "Permit modification" means a revision to an operating permit that meets the requirements of significant permit modifications, minor permit modifications, or administrative permit amendments, as defined in Subsection E of 20.11.42.13 NMAC.

X. "Permittee" means the owner, operator or responsible official at a permitted 20.11.42 NMAC source, as identified in any permit application or modification.

Y. "Person" includes any individual, partnership, corporation, association, state or political subdivision of a state, and any agency, department or instrumentality of the United States, and any of their officers, agents or employees.

Z. "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

AA. "Proposed permit" means the version of a permit that the department proposes to issue and forwards to the administrator for review in compliance with Subsection C of 20.11.42.13 NMAC.

BB. "Regulated air pollutant" means the following:

(1) nitrogen oxides, total suspended particulate matter, or any volatile organic compounds;

(2) any pollutant for which a national ambient air quality standard has been promulgated;

(3) any pollutant that is subject to any standard promulgated under Section 111 of the federal act;

(4) any class I or II substance subject to any standard promulgated under or established by Title VI of the federal act; or

(5) any pollutant subject to a standard promulgated under Section 112 or any other requirements established under Section 112 of the federal act, including:

(a) any pollutant subject to requirements under Section 112(j) of the federal act; if the administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the federal act,

any pollutant for which a subject source would be a major source shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the federal act; and

(b) any pollutant for which the requirements of Section 112(g)(2) of the federal act have been met, but only with respect to the individual source subject to a Section 112(g)(2) requirement.

**CC. "Renewal"** means the process by which a permit is reissued at the end of its term.

**DD. "Responsible official"** means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(a) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(b) the delegation of authority to such representatives is approved in advance by the department.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, state, federal or other public agency: either a principal executive officer or ranking elected official. For the purposes of [this regulation] 20.11.42 NMAC, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA).

(4) For an acid rain source:

(a) the designated representative (as defined in Section 402(26) of the federal act) in so far as actions, standards, requirements, or prohibitions under Title IV of the federal act or the regulations promulgated thereunder are concerned; and

(b) the designated representative for any other purposes under 40 CFR, Part 70.

**EE. "Section 502(b)(10) changes"** are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

**FF. "Shutdown"** means the cessation of operation of any air pollution control equipment, process equipment or

process for any purpose.

**GG. "Startup"** means the setting into operation of any air pollution control equipment, process equipment or process for any purpose.

**HH. "Stationary source" or "source"** means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the federal act.

**II. "Subsidiary"** means a business concern which is owned or controlled by, or is a partner of, the applicant or permittee.

**JJ. "Title I modification"** means any modification under Sections 111 or 112 of the federal act and any physical change or change in method of operations that is subject to the pre-construction regulations promulgated under Parts C and D of the federal act.

[3/1/94. . .12/1/95; 20.11.42.7 NMAC - Rn, 20 NMAC 11.42.I.7, 10/1/02; A, 2/1/03; A, 8/10/09]

**20.11.42.8 VARIANCES:** In accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-8 NMSA 1978, applicants and permittee's may seek a variance from the non-federally enforceable provisions of [this Part] 20.11.42 NMAC.

[3/1/94. . .12/1/95; 20.11.42.8 NMAC - Rn, 20 NMAC 11.42.I.8, 10/1/02; A, 8/10/09]

**20.11.42.9 SAVINGS CLAUSE:** Any amendment to 20.11.42 NMAC, which is filed, with the state records center shall not affect actions pending for violation of a city or county ordinance, [or Board Regulation 41;] or 20.11.42 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or regulation section in effect at the time the violation was committed.

[12/16/94. . .12/1/95; 20.11.42.9 NMAC - Rn, 20 NMAC 11.42.I.9, 10/1/02; A, 8/10/09]

**20.11.42.10 SEVERABILITY:** If any section, paragraph, sentence, clause, or word of [this Part] 20.11.42 NMAC is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of [this Part] 20.11.42 NMAC.

[12/16/94. . .12/1/95; 20.11.42.10 NMAC - Rn, 20 NMAC 11.42.I.10, 10/1/02; A, 8/10/09]

**20.11.42.11 DOCUMENTS :** Documents incorporated and cited in [this—Part] 20.11.42 NMAC may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW,

Albuquerque, NM.

[12/1/95; 20.11.42.11 NMAC - Rn, 20 NMAC 11.42.I.11 & A, 10/1/02; A, 8/10/09]

## 20.11.42.12 PERMIT REQUIREMENTS:

### A. Permit applications:

(1) **Duty to apply.** For each 20.11.42 NMAC source, the owner or operator shall submit a timely and complete permit application in accordance with 20.11.42 NMAC.

### (2) Timely application.

#### (a) A timely application is:

(i) for first time applications, one that is submitted within [twelve] 12 months after the source commences operation as a 20.11.42 NMAC source, or as established in the transition schedule outlined in Subparagraph (b), of Paragraph (2), of Subsection A of 20.11.42.12 NMAC below;

(ii) for purposes of permit renewal, one that is submitted at least [twelve] 12 months prior to the date of permit expiration;

(iii) for the acid rain portion of permit applications for initial phase II acid rain sources under Title IV of the federal act, by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(b) **Transition schedule.** A timely application for a 20.11.42 NMAC source which is in operation on or before the effective date of 20.11.42 NMAC is one that is submitted:

(i) within six [(6)] months after the effective date for storage of gasoline in stationary containers having greater than 40,000 gallons capacity and loading of gasoline from loading racks having a 30-day throughput greater than 600,000 gallons;

(ii) within [twelve] 12 months after the effective date for other sources.

### (3) Completeness of application.

(a) To be deemed complete, an application must provide all information required pursuant to Paragraph (4), of Subsection A of 20.11.42.12 NMAC, except that applications for permit modifications need supply such information only if it is related to the proposed change.

(b) If, while processing an application, regardless of whether it has been determined or deemed to be complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

(c) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit

application or in a supplemental submittal shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide further information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(d) The applicant's ability to operate without a permit, as set forth in Subparagraph (b), of Paragraph (1), of Subsection B of 20.11.42.2 NMAC, shall be in effect from the date a timely application is submitted until the final permit is issued or disapproved, provided that the applicant adequately submits any requested additional information by the deadline specified by the department.

**(4) Content of application.**

Any person seeking a permit under 20.11.42 NMAC shall do so by filing a written application with the department. The applicant shall submit three [(3)] copies of the permit application, or more, as requested by the department. An applicant may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under 20.11.2 NMAC, [Permit] Fees. Fugitive emissions shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. All applications shall:

(a) be made on forms furnished by the department, which for the acid rain portions of permit applications and compliance plans shall be on nationally-standardized forms to the extent required by regulations promulgated under Title IV of the federal act;

(b) state the company's name and address (and, if different, plant name and address), together with the names and addresses of the owner(s), responsible official and the operator of the source, any subsidiaries or parent companies, the company's state of incorporation or principal registration to do business and corporate or partnership relationship to other permittee's subject to [this Part] 20.11.42 NMAC, and the telephone numbers and names of the owners' agent(s) and the site contact(s) familiar with plant operations;

(c) state the date of the application;

(d) include a description of the source's processes and products (by standard industrial classification code) including any associated with alternative scenarios identified by the applicant, and a map, such as the 7.5 minute topographic quadrangle map published by the United States geological survey or the most detailed map available

showing the exact location of the source; the location shall be identified by latitude and longitude or by UTM coordinates;

(e) for all emissions of all air pollutants for which the source is major and all emissions of regulated air pollutants, provide all emissions information, calculations and computations for the source and for each emissions unit, except for insignificant activities (as defined in Subsection Q of 20.11.42.7 NMAC); this shall include:

(i) a process flow sheet of all components of the facility which would be involved in routine operations and emissions;

(ii) identification and description of all emission points in sufficient detail to establish the basis for fees and applicability of requirements of the state and federal acts;

(iii) emissions rates in tons per year, pounds per hour and other terms necessary to establish compliance consistent with the applicable standard reference test method;

(iv) specific information such as that regarding fuels, fuel use, raw materials, or production rates, to the extent it is needed to determine or regulate emissions;

(v) identification and full description, including all calculations and the basis for all control efficiencies presented, of air pollution control equipment and compliance monitoring devices or activities;

(vi) the maximum and standard operating schedules of the source, as well as any work practice standards or limitations on source operation which affect emissions of regulated pollutants;

(vii) an operational plan defining the measures to be taken to mitigate source emissions during startups, shutdowns and emergencies;

(viii) other relevant information as the department may reasonably require or which are required by any applicable requirements (including information related to stack height limitations developed pursuant to Section 123 of the federal act); and

(ix) for each alternative operating scenario identified by the applicant, all of the information required in Items (i) through (viii) above, as well as additional information determined to be necessary by the department to define such alternative operating scenarios;

(f) provide a list of insignificant activities (as defined in Subsection Q of 20.11.42.7 NMAC) at the source, their emissions, to the extent required by the department, and any information necessary to determine applicable requirements;

(g) provide a citation and

description of all applicable air pollution control requirements, including:

(i) sufficient information related to the emissions of regulated air pollutants to verify the requirements that are applicable to the source; and

(ii) a description of or reference to any applicable test method for determining compliance with each applicable requirement;

(h) provide an explanation of any proposed exemptions from otherwise applicable requirements;

(i) provide other specific information that may be necessary to implement and enforce other requirements of the state or federal acts or to determine the applicability of such requirements, including information necessary to collect any fees owed under 20.11.2 NMAC, [Permit] Fees;

(j) for applications which:

(i) are required pursuant to the transition schedule in Subparagraph (b), of Paragraph (2), of Subsection A of 20.11.42.12 NMAC; or

(ii) for subsequent applications or modifications, where emissions or anticipated emissions have increased since modeling for a modification or new source construction was reviewed under 20.11.41 NMAC or 20.11.42 NMAC: submit a dispersion modeling analysis, using EPA approved models and procedures, showing whether emissions from the source would cause air pollutant concentrations in excess of any New Mexico ambient air quality standard for nitrogen oxides, sulfur oxides, total suspended particulates or non-methane hydrocarbons, or any national ambient air quality standard; air pollutants that are not emitted in significant amounts (as defined in 40 CFR 52.21(b)(23)(i)) during routine operations need not be modeled; the department may waive modeling with respect to ozone if the department determines that emissions from the source are not likely to cause ozone concentrations in excess of the national ambient air quality standard;

(k) provide certification of compliance, including:

(i) a certification, by a responsible official consistent with Paragraph (5), of Subsection A of 20.11.42.12 NMAC of the source's compliance status for each applicable requirement;

(ii) a statement of methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods;

(iii) a statement that the source will continue to be in compliance with applicable requirements for which it is in compliance, and will, in a timely manner or at such schedule expressly required by the applicable requirement, meet additional

applicable requirements that become effective during the permit term;

(iv) a schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the department; and

(v) a statement indicating the source's compliance status with any enhanced monitoring and compliance certification requirements of the federal act;

(1) for sources that are not in compliance with all applicable requirements at the time of permit application, provide a compliance plan that contains:

(i) a description of the compliance status of the source with respect to all applicable requirements;

(ii) a narrative description of how the source will achieve compliance with such requirements for which it is not in compliance;

(iii) a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with such applicable requirements; the schedule of compliance shall be at least as stringent as that contained in any consent decree or administrative order to which the source is subject, and the obligations of any consent decree or administrative order shall not be in any way diminished by the schedule of compliance; any such schedule of compliance shall be supplemental to, and shall not prohibit the department from taking any enforcement action for noncompliance with, the applicable requirements on which it is based;

(iv) a schedule for submission of certified progress reports no less frequently than every six [(6)] months; and

(v) for the portion of each acid rain source subject to the acid rain provisions of Title IV of the federal act, the compliance plan content requirements specified in this paragraph, except as specifically superseded by regulations promulgated under Title IV of the federal act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(5) **Certification.** Any document, including any application form, report, or compliance certification, submitted pursuant to 20.11.42 NMAC shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this regulation shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

## **B. Confidential information protection:**

(1) All confidentiality claims made regarding material submitted to the department under [this Part] 20.11.42 NMAC shall be reviewed in accordance with the provisions of the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-11 NMSA 1978 and the New Mexico Inspection of Public Records Act, Section 14-2-1, et seq. NMSA 1978.

(2) In the case where an applicant or permittee has submitted information to the department under a claim of confidentiality, the department may also require the applicant or permittee to submit a copy of such information directly to the administrator.

(3) An operating permit is a public record, and not entitled to protection under Section 114(c) of the federal act.

## **C. Permit content:**

### **(1) Permit conditions.**

(a) The department shall specify conditions upon a permit, including emission limitations and sufficient operational requirements and limitations, to assure compliance with all applicable requirements at the time of permit issuance or as specified in the approved schedule of compliance. The permit shall:

(i) for major sources, include all applicable requirements for all relevant emissions units in the major source;

(ii) for any non-major source subject to Section 20.11.42.2 NMAC, include all applicable requirements which apply to emissions units that cause the source to be subject to 20.11.42 NMAC;

(iii) specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based;

(iv) include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit; and

(v) include a provision to ensure that the permittee pays fees to the department consistent with the fee schedule in 20.11.2 NMAC, [Permit] Fees;

(vi) for purposes of the permit shield, identify any requirement specifically identified in the application or significant permit modification that the department has determined is not applicable to the source, and state the basis for any such determination.

(b) Each permit issued shall, additionally, include provisions stating that:

(i) the permittee shall comply with all terms and conditions of the permit; any permit noncompliance is

grounds for enforcement action; in addition, noncompliance with federally enforceable permit conditions constitutes a violation of the federal act;

(ii) it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;

(iii) the permit may be modified, reopened and revised, revoked and reissued, or terminated for cause in accordance with Subsection F of 20.11.42.13 NMAC;

(iv) the filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay any permit condition;

(v) the permit does not convey any property rights of any sort, or any exclusive privilege;

(vi) within the period specified by the department, the permittee shall furnish any information that the department may request in writing to determine whether cause exists for reopening and revising, revoking and reissuing, or termination of the permit or to determine compliance with the permit; upon request, the permittee shall also furnish to the department copies of records required by the permit to be maintained.

(c) The terms and conditions for all alternative operating scenarios identified in the application and approved by the department:

(i) shall require that the permittee maintain a log at the permitted facility which documents, contemporaneously with any change from one operating scenario to another, the scenario under which the facility is operating; and

(ii) shall, for each such alternative scenario, meet all applicable requirements and the requirements of 20.11.42 NMAC [regulation].

(d) The department may impose conditions regulating emissions during startup and shutdown.

(e) All permit terms and conditions which are required under the federal act or under any of its applicable requirements, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal act. The permit shall specifically designate as not being federally enforceable under the federal act any terms or conditions included in the permit that are not required under the federal act or under any of its applicable requirements.

(f) The issuance of a permit, or the filing or approval of a compliance plan,

does not relieve any person from civil or criminal liability for failure to comply with the provisions of the Air Quality Control Act, the federal act, federal regulations thereunder, any applicable regulations of the board, and any other applicable law or regulation.

(g) The department may include part or all of the contents of the application as terms and conditions of the permit or permit modification. The department shall not apply permit terms and conditions upon emissions of regulated pollutants for which there are no applicable requirements, unless the source is major for that pollutant.

(h) Fugitive emissions from a source shall be included in the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(i) The acid rain portion of operating permits for acid rain sources shall:

(i) state that, where an applicable requirement of the federal act is more stringent than an applicable requirement of regulations promulgated under Title IV of the federal act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator;

(ii) contain a permit condition prohibiting emissions exceeding any allowances that the acid rain source lawfully holds under Title IV of the federal act or the regulations promulgated thereunder; no permit modification under this regulation shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit modification under any other applicable requirement; no limit shall be placed on the number of allowances held by the acid rain source; the permittee may not use allowances as a defense to noncompliance with any other applicable requirement; any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the federal act.

(2) **Permit duration.** The department shall issue operating permits for a fixed term not to exceed five [~~(5)~~] years.

(3) **Monitoring.**

(a) Each permit shall contain all emissions monitoring requirements, and analysis procedures or test methods, required to assure and verify compliance with the terms and conditions of the permit and applicable requirements, including any procedures and methods promulgated by the administrator.

(b) Where the applicable requirement does not require periodic testing or instrumental or non-instrumental

monitoring (which may consist of record keeping designed to serve as monitoring), the permit shall require periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to Paragraph (5), of Subsection C of 20.11.42.12 NMAC. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.

(c) The permit shall also contain specific requirements concerning the use, maintenance, and, when appropriate, installation of monitoring equipment or methods.

(4) **Record keeping.**

(a) The permit shall require record keeping sufficient to assure and verify compliance with the terms and conditions of the permit, including:

(i) the date, place as defined in the permit, and time of sampling or measurements;

(ii) the date(s) analyses were performed;

(iii) the company or entity that performed the analyses;

[~~(vi)~~](iv) the analytical techniques or methods used;

(v) the results of such analyses; and

(vi) the operating conditions existing at the time of sampling or measurement.

(b) Records of all monitoring data and support information shall be retained for a period of at least five [~~(5)~~] years from the date of the monitoring sample, measurement, report, or application. Supporting information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(5) **Reporting.** The permit shall require reporting sufficient to assure and verify compliance with the terms and conditions of the permit and all applicable requirements, including:

(a) submittal of reports of any required monitoring at least every six [~~(6)~~] months; the reports shall be due to the department within [~~(forty-five)~~] 45 days of the end of the permittee's reporting period; all instances of deviations from permit requirements, including emergencies, must be clearly identified in such reports; all required reports must be certified by a responsible official consistent with Paragraph (5), of Subsection A of 20.11.42.12 NMAC;

(b) prompt reporting of all deviations (including emergencies) from permit requirements, including the date, time, duration and probable cause of such deviations, the quantity and pollutant type

of excess emissions resulting from the deviation, and any corrective actions or preventive measures taken; such reports shall include telephone, verbal or facsimile communication within [~~(twenty-four)~~] 24 hours of the start of the next business day and written notification within [~~(ten)~~] 10 days;

(c) submittal of compliance certification reports at least every [~~(twelve)~~] 12 months (or more frequently if so specified by an applicable requirement) certifying the source's compliance status with all permit terms and conditions and all applicable requirements relevant to the source, including those related to emission limitations or work practices; the reports shall be due to the department within [~~(thirty)~~] 30 days of the end of the permittee's reporting period; such compliance certifications shall be submitted to the administrator as well as to the department and shall include:

(i) the identification of each term or condition of the permit that is the basis of the certification;

(ii) the compliance status of the source;

(iii) whether compliance was continuous or intermittent;

(iv) the method(s) used for determining the compliance status of the source, currently and during the reporting period identified in the permit; and

(v) such other facts as the department may require to determine the compliance status of the source;

(d) such additional provisions as may be specified by the administrator to determine the compliance status of the source.

(6) **Compliance.** To assure and verify compliance with the terms and conditions of the permit and with 20.11.42 NMAC, permits shall also:

(a) require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized representatives of the department to perform the following:

(i) enter upon the permittee's premises where a source is located or emission related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) have access to and copy any records that must be kept under the conditions of the permit;

(iii) inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) sample or monitor any substances or parameters for the purpose of assuring compliance with the permit or applicable requirements or as otherwise authorized by the federal act;

(b) require that sources required

under Subparagraph (k), of Paragraph (4), of Subsection A of 20.11.42.12 NMAC to have a schedule of compliance submit progress reports to the department at least semiannually, or more frequently if specified in the applicable requirement or by the department; such progress reports shall be consistent with the schedule of compliance and requirements of Subparagraph (k), of Paragraph (4), of Subsection A of 20.11.42.12 NMAC, and shall contain:

(i) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(c) include such other provisions as the department may require.

**(7) Operational flexibility.**

**(a) Section 502(b)(10) changes.**

(i) The permittee may make Section 502(b)(10) changes, as defined in Section 20.11.42.7 NMAC, without applying for a permit modification, if those changes are not Title I modifications and the changes do not cause the facility to exceed the emissions allowable under the permit (whether expressed as a rate of emissions or in terms of total emissions).

(ii) For each such change, the permittee shall provide written notification to the department and the administrator at least seven [(7)] days in advance of the proposed changes. Such notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(iii) The permittee and department shall attach each such notice to their copy of the relevant permit.

(iv) If the written notification and the change qualify under this provision, the permittee is not required to comply with the permit terms and conditions it has identified that restrict the change. If the change does not qualify under this provision, the original terms of the permit remain fully enforceable.

**(b) Emissions trading within a facility.**

(i) The department shall, if an applicant requests it, issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit in addition to any applicable requirements. Such terms and conditions shall include all terms

and conditions required under Subsection C of 20.11.42.12 NMAC to determine compliance. If applicable requirements apply to the requested emissions trading, permit conditions shall be issued only to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval.

(ii) The applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The department shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall require compliance with all applicable requirements.

(iii) For each such change, the permittee shall provide written notification to the department and the administrator at least seven [(7)] days in advance of the proposed changes. Such notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(iv) The permittee and department shall attach each such notice to their copy of the relevant permit.

**(8) Off-permit changes.**

(a) Permittees are allowed to make, without a permit modification, changes that are not addressed or prohibited by the operating permit, if:

(i) each such change meets all applicable requirements and shall not violate any existing permit term or condition;

(ii) such changes are not subject to any requirements under Title IV of the federal act and are not Title I modifications;

(iii) such changes are not subject to permit modification procedures under Subsection E of 20.11.42.13 NMAC; and

(iv) the permittee provides contemporaneous written notice to the department and EPA of each such change, except for changes that qualify as insignificant activities; such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted and any applicable requirement that would apply as a result of the change.

(b) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

**(9) Permit shield.**

(a) Except as provided in 20.11.42 NMAC, the department shall expressly include in a 20.11.42 NMAC permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(i) such applicable requirements are included and are specifically identified in the permit; or

(ii) the department, in acting on the permit application or significant permit modification, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(b) A 20.11.42 NMAC permit that does not expressly state that a permit shield exists for a specific provision shall be presumed not to provide a shield for that provision.

(c) Nothing in ~~[this section]~~ 20.11.42.12 NMAC or in any 20.11.42 NMAC permit shall alter or affect the following:

(i) the provisions of Section 303 of the federal act - *Emergency Powers*, including the authority of the administrator under ~~[that section]~~ Section 303, or the provisions of the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act, 74-2-10 NMSA 1978;

(ii) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) the applicable requirements of the acid rain program, consistent with Section 408(a) of the federal act;

(iv) the ability of EPA to obtain from a source pursuant to Section 114 of the federal act, or the department to obtain information in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act 74-2-13 NMSA 1978.

(d) The permit shield shall remain in effect if the permit terms and conditions are extended past the expiration date of the permit pursuant to Paragraph (4), of Subsection A of 20.11.42.13 NMAC.

(e) The permit shield may extend to terms and conditions that allow emission increases and decreases as part of emissions trading within a facility pursuant to Subparagraph (b), of Paragraph (7), of Subsection C of 20.11.42.12 NMAC, and to all terms and conditions under each operating scenario included pursuant to Subparagraph (e), of Paragraph (1), of Subsection C of 20.11.42.12 NMAC.

(f) The permit shield shall not extend to *administrative permit amendments*

under Paragraph (1), of Subsection E of 20.11.42.13 NMAC, to *minor permit modifications* under Paragraph (2), of Subsection E of 20.11.42.12 NMAC, to *section 502(b)(10) changes* under Subparagraph (a), of Paragraph (7) of Subsection C of 20.11.42.12 NMAC, or to permit terms or conditions for which notice has been given to reopen or revoke all or part under Subsection F of 20.11.42.13 NMAC.

**D. General permits:**

**(1) Issuance of general permits.**

(a) The department may, after notice and opportunity for public participation and EPA and affected program review, issue a general permit covering numerous similar sources. Such sources shall be generally homogenous in terms of operations, processes and emissions, subject to the same or substantially similar requirements, and not subject to case-by-case standards or requirements.

(b) Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit.

**(2) Authorization to operate under a general permit.**

(a) The owner or operator of a 20.11.42 NMAC source which qualifies for a general permit must:

(i) apply to the department for coverage under the terms of the general permit;

(ii) apply for an operating permit consistent with Subsection A of 20.11.42.12 NMAC.

(b) The department may, in the general permit, provide for applications which deviate from the requirements of Paragraph (4), of Subsection A of 20.11.42.12 NMAC, provided that such applications meet the requirements of the federal act and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The department shall review the application for authorization to operate under a general permit for completeness within [thirty] 30 days after its receipt of the application.

(c) The department shall authorize qualifying sources which apply for coverage under the general permit to operate under the terms and conditions of the general permit. The department shall take final action on a general permit authorization request within [ninety] 90 days of deeming the application complete.

(d) The department may grant a request for authorization to operate under a general permit without repeating the public participation procedures required under Subsection B of 20.11.42.13 NMAC. Such an authorization shall not be a permitting action for purposes of administrative review under the joint air quality control board

ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-7.H NMSA 1978.

(e) Authorization to operate under a general permit shall not be granted for acid rain sources unless provided for in regulations promulgated under Title IV of the federal act.

(f) The permittee shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit.

**E. Emergency provision:**

(1) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the permittee, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, or careless or improper operation.

(2) An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the permittee has demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) an emergency occurred and that the permittee can identify the cause(s) of the emergency;

(b) the permitted facility was at the time being properly operated;

(c) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and

(d) the permittee fulfilled notification requirements under Subparagraph (b), of Paragraph (5), of Subsection C of 20.11.42.12 NMAC; this notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(3) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(4) This provision is in addition to any emergency or upset provision contained in any applicable requirement, except that 20.11.42 NMAC sources shall not be subject to the provisions of 20.11.90.12 NMAC for permit terms and conditions issued under 20.11.42 NMAC.

[3/1/94. . .12/1/95; 20.11.42.12 NMAC - Rn, 20 NMAC 11.42.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.42.II.1, 10/1/02; A, 8/10/09]

**20.11.42.13 P E R M I T PROCESSING:**

**A. Action on permit applications:**

(1) A permit (including permit renewal) or permit modification shall only be issued if all of the following conditions have been met:

(a) the department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under Subsection D of 20.11.42.12 NMAC;

(b) except for administrative and minor permit modifications, the department has complied with the requirements for public participation procedures under Subsection B of 20.11.42.13 NMAC;

(c) except for administrative amendments, the department has complied with the requirements for notifying and responding to affected programs under Subsection C of 20.11.42.13 NMAC;

(d) the conditions of the permit provide for compliance with all applicable requirements; and

(e) the administrator has received a copy of the proposed permit and any notices required under Subsection C of 20.11.42.13 NMAC, and has not objected to issuance of the permit within the time period specified within that subsection.

(2) The department shall, within [sixty] 60 days after its receipt of an application for a permit or significant permit modification, review such application for completeness. Unless the department determines that an application is not complete, requests additional information or otherwise notifies the applicant of incompleteness within [sixty] 60 days of receipt of an application, the application shall be deemed complete. When additional information is requested by the department prior to ruling an application complete, receipt of such information shall be processed as a new application for purposes of [this section] 20.11.42.13 NMAC. If the application is judged complete, a certified letter to that effect shall be sent to the applicant. If the application is judged incomplete a certified letter shall be sent to the applicant stating what additional information or points of clarification are necessary to judge the application complete.

(3) The department shall take final action on each permit application (including a request for permit renewal) within [twelve] 12 months after an application is ruled complete by the department, except that:

(a) for sources in operation on or before the effective date of 20.11.42 NMAC and which submit to the department timely and complete applications in accordance with Subsection A of 20.11.42.12 NMAC,

the department shall take final action on one-third of such applications annually over a period not to exceed three [(3)] years after such effective date;

(b) any complete permit application containing an early reduction demonstration under Section 112(i)(5) of the federal act shall be acted on within nine [(9)] months of deeming the application complete; and

(c) the acid rain portion of permits for acid rain sources shall be acted upon in accordance with the deadlines in Title IV of the federal act and the regulations promulgated thereunder.

(4) If a timely and complete application for a permit renewal is submitted, consistent with Subsection A of 20.11.42.12 NMAC, but the department has failed to issue or disapprove the renewal permit before the end of the term of the previous permit, then the permit shall not expire and all the terms and conditions of the permit shall remain in effect until the renewal permit has been issued or disapproved.

(5) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected program, and EPA review that apply to initial permit issuance.

(6) The department shall state within the draft permit the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions with dates of latest amendments).

(7) The department shall grant or disapprove the permit based on information contained in the department's administrative record. The administrative record shall consist of the application, any additional information submitted by the applicant, any evidence or written comments submitted by interested persons, any other evidence considered by the department, and, if a public hearing is held, the evidence submitted at the hearing.

(8) If the department grants or disapproves a permit or permit modification, the department shall notify the applicant by certified mail of the action taken and the reasons therefore. If the department grants a permit or modification, the department shall mail the permit or modification, including all terms and conditions, to the applicant by certified mail.

(9) **Voluntary discontinuation.** Upon request by the permittee, the department shall permanently discontinue a [Part-42] 20.11.42 NMAC permit. Permit discontinuance terminates the permittee's right to operate the source under the permit. The department shall confirm the permit discontinuance by certified letter to the permittee.

(10) No permit shall be issued by failure of the department to act on an

application or renewal.

**B. Public participation:**

(1) Proceedings for all permit issuances (including renewals), significant permit modifications, reopenings, revocations and terminations, and all modifications to the department's list of insignificant activities, shall include public notice and provide an opportunity for public comment. The department shall provide [thirty] 30 days for public and affected program comment. The department may hold a public hearing on the draft permit for any reason it deems appropriate, and shall hold such a hearing in the event of significant public interest. The department shall give notice of any public hearing at least [thirty] 30 days in advance of the hearing.

(2) Public notice and notice of public hearing shall be given by publication in a newspaper of general circulation, to persons on a mailing list developed by the department (including those who request in writing to be on the list), and by other means if necessary to assure adequate notice to the affected public.

(3) The public notice shall identify:

- (a) the affected facility;
- (b) the names and addresses of the applicant or permittee and its owners;
- (c) the name and address of the department;
- (d) the activity or activities involved in the permit action;
- (e) the emissions change(s) involved in any permit modification;
- (f) the name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, and relevant supporting materials;
- (g) a brief description of the comment procedures required by the department; and
- (h) as appropriate, a statement of procedures to request a hearing, or the time and place of any scheduled hearing.

(4) Notice of public hearing shall identify:

- (a) the affected facility;
- (b) the names and addresses of the applicant or permittee and its owners;
- (c) the name and address of the department;
- (d) the activity or activities involved in the permit action;
- (e) the name, address and telephone number of a person from whom interested persons may obtain additional information;
- (f) a brief description of hearing procedures; and
- (g) the time and place of the scheduled hearing.

(5) The time, date, and place

of the hearing shall be determined by the department. The department shall appoint a hearing officer. A transcript of the hearing shall be made at the request of either the department or the applicant and at the expense of the person requesting the transcript. At the hearing, all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

(6) The department shall keep a record of the commenters and also of the issues raised during the public participation process so that the administrator may fulfill his or her obligation under Section 505(b) (2) of the federal act to determine whether a citizen petition may be granted. Such records shall be available to the public upon request.

(7) The department shall provide such notice and opportunity for participation by affected programs as is provided for by Subsection C of 20.11.42.13 NMAC.

**C. Review by the administrator and affected programs:**

(1) **Notification.** The department shall not issue an operating permit (including permit renewal or reissuance), minor permit modification, or significant permit modification until affected programs and the administrator have had an opportunity to review the proposed permit as required under [~~this section~~] 20.11.42.13 NMAC. Permits for source categories waived by the administrator from this requirement and any permit terms or conditions, which are not required under the federal act or under any of its requirements, are not subject to administrator review or approval.

(a) Within five [(5)] days of notification by the department that the application has been determined complete, the applicant shall provide a copy of the complete permit application (including the compliance plan and all additional materials submitted to the department) directly to the administrator. The permit or permit modification shall not be issued without certification to the department of such notification. The department shall provide to the administrator a copy of each draft permit, each proposed permit, each final operating permit, and any other relevant information requested by the administrator.

(b) The department shall provide notice of each draft permit to any affected program on or before the time that the department provides this notice to the public under Subsection B of 20.11.42.13 NMAC, except to the extent that minor permit modification procedures require the timing of the notice to be different.

(c) The department shall keep for five [(5)] years such records and submit to the administrator such information as the administrator may reasonably require



in order to ascertain whether the program complies with the requirements of the federal act or related applicable requirements.

(2) **Responses to objections.**

(a) No permit for which an application must be transmitted to the administrator under ~~[this Part]~~ 20.11.42 NMAC shall be issued by the department if the administrator, after determining that issuance of the proposed permit would not be in compliance with applicable requirements, objects to such issuance in writing within ~~[forty-five]~~ 45 days of receipt of the proposed permit and all necessary supporting information.

(b) If the administrator does not object in writing under Subparagraph (a) above, any person may, within ~~[sixty]~~ 60 days after the expiration of the administrator's 45-day review period, petition the administrator to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in Subsection B of 20.11.42.13 NMAC, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the administrator objects to the permit as a result of a petition filed under this subparagraph, the department shall not issue the permit until the administrator's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to the administrator's objection.

(c) The department, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under Paragraph (2), of Subsection E of 20.11.42.13 NMAC), shall notify the administrator and any affected program in writing of any refusal by the department to accept all recommendations for the proposed permit that the affected program submitted during the public or affected program review period. The notice shall include the department's reasons for not accepting any such recommendation. The department is not required to accept recommendations that are not based on federally enforceable applicable requirements.

**D. Petitions for review of final action:**

(1) **Hearing before the board.**

(a) Any person who participated in a permitting action before the department and who is adversely affected by such permitting action may file a petition for hearing before the board. For the purposes of ~~[this section]~~ 20.11.42.13 NMAC, permitting action shall include the failure of the department to take final action on an

application for a permit (including renewal) or permit modification within the time specified in 20.11.42 NMAC.

(b) The petition shall be made in writing to the board within ~~[thirty]~~ 30 days from the date notice is given of the department's action and shall specify the portions of the permitting action to which the petitioner objects, certify that a copy of the petition has been mailed or hand-delivered as required by this subparagraph, and attach a copy of the permitting action for which review is sought. Unless a timely request for hearing is made, the decision of the department shall be final. The petition shall be copied simultaneously to the department upon receipt of the appeal notice. If the petitioner is not the applicant or permittee, the petitioner shall mail or hand-deliver a copy of the petition to the applicant or permittee. The department shall certify the administrative record to the board.

(c) If a timely request for hearing is made, the board shall hold a hearing within ~~[ninety]~~ 90 days of receipt of the petition in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-7 NMSA 1978.

(2) **Judicial review.**

(a) Any person who is adversely affected by an administrative action taken by the board pursuant to Paragraph (1), of Subsection D of 20.11.42.13 NMAC may appeal to the court of appeals in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-9 NMSA 1978. Petitions for judicial review must be filed no later than ~~[thirty]~~ 30 days after the administrative action.

(b) The judicial review provided for by Subsection D of 20.11.42.13 NMAC shall be the exclusive means for obtaining judicial review of the terms and conditions of the permit.

**E. Permit modifications:**  
(1) **Administrative permit amendments.**

(a) An administrative permit amendment is one that:

(i) corrects typographical errors;

(ii) provides for a minor administrative change at the source, such as a change in the address or phone number of any person identified in the permit;

(iii) incorporates a change in the permit solely involving the retiring of an emissions unit;

(iv) requires more frequent monitoring or reporting by the permittee; or

(v) any other type of change which has been determined by the department and the administrator to be

similar to those in this paragraph.

(b) Changes in ownership or operational control of a source may be made as administrative amendments provided that:

(i) a written agreement, containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee, has been submitted to the department, and either the department has determined that no other change in the permit is necessary, or changes deemed necessary by the department have been made;

(ii) the new owners have submitted the application information required in Subparagraph (b), of Paragraph (4), Subsection A of 20.11.42.12 NMAC;

(iii) no grounds exist for permit termination, as set out in Items (ii) and (iii), of Subparagraph (c), of Paragraph (1), of Subsection F of 20.11.42.13 NMAC; and

(iv) the permittee has published a public notice of the change in ownership of the source in a newspaper of general circulation in the area where the source is located.

(c) The department may incorporate administrative permit amendments without providing notice to the public or affected programs, provided that it designates any such permit modifications as administrative permit amendments and submits a copy of the revised permit to the administrator.

(d) The department shall take no more than ~~[sixty]~~ 60 days from receipt of a request for an administrative permit amendment to take final action on such request. The permittee may implement the changes outlined in Items (i) through (iv), of Subparagraph (a), of Paragraph (1), of Subsection E of 20.11.42.13 NMAC immediately upon submittal of the request for the administrative amendment. The permittee may implement the changes outlined in Item (v), of Subparagraph (a), of Paragraph (1), of Subsection E of 20.11.42.13 NMAC or Subparagraph (b), of Paragraph (1), Subsection E of 20.11.42.13 NMAC above upon approval of the administrative amendment by the department.

(2) **Minor permit modifications.**

(a) Minor permit modification procedures may be used only for those permit modifications that:

(i) do not violate any applicable requirement;

(ii) do not involve relaxation of existing monitoring, reporting, or record keeping requirements in the permit;

(iii) do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject; such terms and conditions include any federally enforceable emissions cap assumed to avoid classification as a Title I modification and any alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the federal act;

(v) are not Title I modifications; and

(vi) are not required by the department to be processed as a significant modification pursuant to Paragraph (3), Subsection E of 20.11.42.13 NMAC.

(b) A permittee shall not submit multiple minor permit modification applications that may conceal a larger modification that would not be eligible for minor permit modification procedures. The department may, at its discretion, require that multiple related minor permit modification applications be submitted as a significant permit modification.

(c) An application requesting the use of minor permit modification procedures shall meet the requirements of Paragraphs (3) and (4), of Subsection A of 20.11.42.12 NMAC and shall include:

(i) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) the applicant's suggested draft permit;

(iii) certification by a responsible official, consistent with Paragraph (5), of Subsection A of 20.11.42.12 NMAC, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(iv) if the requested permit modification would affect existing compliance plans or schedules, related progress reports, or certification of compliance requirements, an outline of such effects.

(d) The department shall, within [thirty] 30 days after its receipt of an application for a minor permit modification, review such application for completeness. Unless the department determines that an application is not complete, requests additional information or otherwise notifies the applicant of incompleteness within [thirty] 30 days of receipt of an application, the application shall be deemed complete. If the application is judged complete, a certified letter to that effect shall be sent to the applicant. If the application is judged incomplete a certified letter shall be sent

to the applicant stating what additional information or points of clarification are necessary to judge the application complete.

(e) Within five [~~5~~] working days of notification by the department that the minor permit modification application has been ruled complete, the applicant shall meet its obligation under Paragraph (1), of Subsection C of 20.11.42.13 NMAC to notify the administrator and affected programs of the requested permit modification. The department promptly shall send any notice required under Subparagraph (b), of Paragraph (1), of Subsection C of 20.11.42.13 NMAC and Paragraph (2), of Subsection C of 20.11.42.13 NMAC to the administrator and affected programs.

(f) The permittee may make the change proposed in its minor permit modification application immediately after such application is deemed complete. After the permittee makes the change allowed by the preceding sentence, and until the department takes any of the actions specified in Subparagraph (g), of Paragraph (2), of Subsection E of 20.11.42.13 NMAC below, the permittee must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the permittee need not comply with the existing permit terms and conditions it seeks to modify. If the permittee fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) The department may not issue a final minor permit modification until after the administrator's 45-day review period of the proposed permit modification or until EPA has notified the department that the administrator will not object to issuance of the permit modification, although the department may approve the permit modification prior to that time. Within [ninety] 90 days of ruling the application complete under minor permit modification procedures or within [fifteen] 15 days after the end of the administrator's 45-day review period under, whichever is later, the department shall:

(i) issue the permit modification as it was proposed;

(ii) disapprove the permit modification application;

(iii) determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(iv) revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by Paragraph (1), of Subsection C of 20.11.42.13 NMAC.

(3) **Significant permit**

**modifications.**

(a) A significant permit modification is:

(i) any revision to an operating permit that does not meet the criteria under the provisions for administrative permit amendments under Paragraph (1), of Subsection E of 20.11.42.13 NMAC or for minor permit modifications under Paragraph (2), of Subsection E of 20.11.42.13 NMAC above;

(ii) any modification that would result in any relaxation in existing monitoring, reporting or record keeping permit terms or conditions;

(iii) any modification for which action on the application would, in the judgment of the department, require decisions to be made on significant or complex issues; and

(iv) changes in ownership which do not meet the criteria of Subparagraph (b), of Paragraph (1), of Subsection E of 20.11.42.13 NMAC.

(b) For significant modifications which are not required to undergo pre-construction permit review and approval, changes to the source which qualify as significant permit modifications shall not be made until the department has issued the operating permit modification.

(c) For significant modifications which have undergone pre-construction permit review and approval, the permittee shall:

(i) before commencing operation, notify the department in writing of any applicable requirements and operating permit terms and conditions contravened by the modification, emissions units affected by the change, and allowable emissions increases resulting from the modification; and

(ii) within [twelve] 12 months after commencing operation, file a complete operating permit modification application.

(d) Where an existing operating permit would specifically prohibit such change, the permittee must obtain an operating permit modification before commencing operation or implementing the change.

(e) Significant permit modifications shall meet all requirements of 20.11.42 NMAC for permit issuance, including those for applications, public participation, review by affected programs and review by the administrator.

(f) The department shall complete review on the majority of significant permit modification applications within nine [~~9~~] months after the department rules the applications complete.

(4) **Modifications to acid rain sources.** Administrative permit amendments and permit modifications for purposes of

the acid rain portion of the permit shall be governed by regulations promulgated by the administrator under Title IV of the federal act.

**F. Permit reopening, revocation or termination:**

**(1) Action by the department.**

(a) Each permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised for any of the following, and may be revoked and reissued for (iii) or (iv) of the following:

(i) additional applicable requirements under the federal act become applicable to a major source with a remaining permit term of three [~~3~~] or more years; such a reopening shall be completed not later than [~~eighteen~~] 18 months after promulgation of the applicable requirement; no such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms or conditions have been extended past the expiration date of the permit pursuant to Paragraph (4), Subsection A of 20.11.42.13 NMAC;

(ii) additional requirements (including excess emissions requirements) become applicable to a source under the acid rain program promulgated under Title IV of the federal act; upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit;

(iii) the department or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit; or

(iv) the department or the administrator determines that the permit must be revised or revoked and reissued to assure compliance with the applicable requirements.

(b) Proceedings to reopen and revise, or revoke and reissue, a permit shall affect only those parts of the permit for which cause to reopen or revoke exists. Units for which permit conditions have been revoked shall not be operated until permit reissuance. Reopenings shall be made as expeditiously as practicable.

(c) A permit, or an authorization to operate under a general permit, may be terminated when:

(i) the permittee fails to meet the requirements of an approved compliance plan;

(ii) the permittee has been in significant or repetitious non-compliance with the operating permit terms or conditions;

(iii) the applicant or permittee has exhibited a history of willful

disregard for environmental laws of any state or tribal authority, or of the United States;

(iv) the applicant or permittee has knowingly misrepresented a material fact in any application, record, report, plan, or other document filed or required to be maintained under the permit;

(v) the permittee fails to pay fees required under the fee schedule in 20.11.2 NMAC;

(vi) the permittee falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under the permit;

(vii) the administrator has found that cause exists to terminate the permit.

(d) The department shall, by certified mail, provide a notice of intent to the permittee at least [~~thirty~~] 30 days in advance of the date on which a permit is to be reopened or revoked, or terminated, except that the department may provide a shorter time period in the case of an emergency.

**(2) Action by the administrator.**

Within [~~ninety~~] 90 days, or longer if the administrator extends this period, after receipt of written notification that the administrator has found that cause exists to terminate, modify or revoke and reissue a permit the department shall forward to the administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. Within [~~ninety~~] 90 days from receipt of an administrator objection to a proposed determination, the department shall address and act upon the administrator's objection.

**(3) Compliance orders.**

Notwithstanding any action which may be taken by the department or the administrator under Paragraph (1) and (2), of Subsection F of 20.11.42.13 NMAC, a compliance order issued in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-12 NMSA 1978 may include a suspension or revocation of any permit or portion thereof.

**[F:]G. Citizen suit:** Pursuant to Section 304 of the federal act, 42 USC 7604, any person may commence certain civil actions under the federal act.

**[G:]H. Enforcement:** Notwithstanding any other provision in the New Mexico state implementation plan approved by the administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such plan.

**(1) Presumptively credible evidence.** Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at the source:

(a) a monitoring method approved for the source pursuant to 20.11.42

NMAC and incorporated into an operating permit; or

(b) compliance methods specified in the applicable plan.

**(2) Presumptively credible testing, monitoring, or information gathering methods.** The following testing, monitoring or information gathering methods are presumptively credible testing, monitoring or information gathering methods:

(a) any federally enforceable monitoring or testing methods, including those in 40 CFR parts 51, 60, 61 and 75; and

(b) other testing, monitoring or information gathering methods that produce information comparable to that produced by any method in Paragraphs (1) or (2), of Subsection H of 20.11.42.13 NMAC.

[3/1/94. . .12/1/95; 20.11.42.13 NMAC - Rn, 20 NMAC 11.42.II.2, 10/1/02; A, 8/10/09]

**NEW MEXICO CHILDREN,  
YOUTH AND FAMILIES  
DEPARTMENT  
ADMINISTRATIVE SERVICES  
DIVISION**

This is an amendment to 8.8.3 NMAC, Sections 2, 6 through 14 and 16, effective July 31, 2009.

**8.8.3.2 SCOPE:** This rule has general applicability to operators, volunteers, including student interns, staff and employees, and prospective operators, staff and employees, of child-care facilities, including every facility [~~or program having~~], CYFD contractor, program receiving CYFD funding or reimbursement, or other program that has or could have primary custody of children for twenty hours or more per week, juvenile treatment facilities, and direct providers of care for children in including, but not limited to the following settings: Children's behavioral health services and licensed and registered child care, including shelter care.

[8.8.3.2 NMAC - Rp, 8.8.3.2 NMAC, 03/31/06; A, 07/31/09]

**8.8.3.6 OBJECTIVE:**

A. The purpose of these regulations is to set out general provisions regarding background checks and employment history verification required by the children, youth and families department.

B. Background checks are conducted in order to identify information in applicants' backgrounds bearing on whether they are eligible to provide services [~~to children~~] in settings to which these regulations apply.

C. Abuse and neglect screens are conducted by licensing authority staff in order to identify those persons who

pose a continuing threat of abuse [and/or] or neglect to minors or adults in [their care] settings to which these regulations apply.

[8.8.3.6 NMAC - Rp, 8.8.3.6 NMAC, 03/31/06; A 07/31/09]

### 8.8.3.7 DEFINITIONS:

A. ADMINISTRATIVE REVIEW means an informal process of reviewing a decision that may include an informal conference [and/or] or hearing [and/or] or a review of written records.

B. ADMINISTRATOR means the adult in charge of the day-to-day operation of a facility. The administrator may be the licensee or an authorized representative of the licensee.

C. ADULT means a person who has a chronological age of 18 years or older, except for persons under medicaid certification as set forth in Subsection I below.

D. APPEAL means a review of a determination made by the children, youth and families department, which may include an administrative review.

E. APPLICANT means any person who is required to obtain a background check under these rules and NMSA 1978, Section 32A-15-3 (1999).

F. ARREST means notice from a law enforcement agency about an alleged violation of law.

G. BACKGROUND CHECK means a screen of the department's information databases, state and federal criminal records and any other reasonably reliable information about an applicant.

H. CARE RECIPIENT means any person under the care of a licensee.

I. CHILD means a person who has a chronological age of less than 18 years, and persons under applicable medicaid certification up to the age of 21 years.

J. CONDITIONAL EMPLOYMENT means a period of employment status for a new applicant prior to the licensing authority's final disposition of the applicant's background check.

K. CRIMINAL HISTORY means information possessed by law enforcement agencies of [an adult's] arrests, indictments, or other formal charges, as well as dispositions arising from these charges.

L. DIRECT, PHYSICAL SUPERVISION means continuous visual contact or live video observation by a direct provider of care who has been found eligible by a background check of an applicant during periods when the applicant is in immediate physical proximity to care recipients. [~~This requirement applies only to settings licensed by the child care services bureau or certified or licensed by the children's behavioral health and community services bureau.~~]

M. DIRECT PROVIDER

OF CARE means any individual who, as a result of employment or, contractual service or volunteer service has direct care responsibilities or [~~routine and~~] potential unsupervised physical access to any care recipient in the settings to which these regulations apply.

N. EMPLOYMENT HISTORY means a written summary of the most recent three-year period of employment with names, addresses and telephone numbers of employers, including dates of employment, stated reasons for leaving employment, and dates of all periods of unemployment with stated reasons for periods of unemployment, and verifying references.

O. LICENSED means authorized to operate by the children, youth and families department by issuance of an operator's license or certification certificate.

P. LICENSEE means the holder of, or applicant for, a license, certification, or registration pursuant to 7.20.11 NMAC, 7.20.12 NMAC, 8.16.2 NMAC, 7.8.3 NMAC; 8.17.2 NMAC.

Q. LICENSING AUTHORITY means the children, youth and families department.

R. MORAL TURPITUDE means an intentional crime that is wanton, base, vile or depraved and contrary to the accepted rules of morality and duties of a person within society. In addition, because of the high risk of injury or death created by, and the universal condemnation of the act of driving while intoxicated, a crime of moral turpitude includes a second or subsequent conviction for driving while intoxicated [~~regardless of degree or punishment.~~] or any crime involving the use of a motor vehicle, the elements of which are substantially the same as driving while intoxicated. The record name of the second conviction shall not be controlling; any conviction subsequent to an initial one may be considered a second conviction.

S. RELEVANT CONVICTION means a plea, judgment or verdict of guilty, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in a conviction for a crime in a court of law in New Mexico or any other state. The term RELEVANT CONVICTION also includes decrees adjudicating juveniles as serious youthful offenders or youthful offenders, or convictions of children who are tried as adults for their offenses. Successful or pending completion of a conditional discharge under NMSA 1978, Section 31-20-13 (1994), or NMSA 1978, Section 30-31-28 (1972), or a comparable provision of another state's law, is not a relevant conviction for purposes of these regulations, unless or until such time as the conditional discharge is revoked or rescinded by the issuing court. The term RELEVANT

CONVICTION does not include any of the foregoing if a court of competent jurisdiction has overturned the conviction or adjudicated decree and no further proceedings are pending in the case or if the applicant has received a legally effective pardon for the conviction. The burden is on the applicant to show that the applicant has [~~successfully fulfilled the terms and conditions~~] a pending or successful completion of any conditional discharge or consent decree, or that the relevant conviction has been overturned on appeal, or has received a legally effective pardon.

T. UNREASONABLE RISK means the quantum of risk that a reasonable person would be unwilling to take with the safety or welfare of care recipients. [8.8.3.7 NMAC - Rp, 8.8.3.7 NMAC, 03/31/06; A, 07/31/09]

8.8.3.8 APPLICABILITY: These regulations apply to all licensees and direct providers of care in the following settings:

- A. behavior management skills development;
- B. case management services;
- C. group home services;
- D. day treatment services;
- E. residential treatment services;
- F. treatment foster care services agency staff;
- G. licensed child care homes;
- H. licensed child care centers;
- I. registered child care homes;
- J. licensed shelter care;
- K. licensed before and after school care;

L. non-licensed or exempt after school programs participating in the at risk component of the child and adult care food program;

M. comprehensive community support services;

N. CYFD contractors and any other programs receiving CYFD funding or reimbursement.

[8.8.3.8 NMAC - Rp, 8.8.3.8 NMAC, 03/31/06; A, 07/31/09]

8.8.3.9 NON - APPLICABILITY:

A. These regulations do not apply to the following settings, except when otherwise required by applicable Certification Requirements for Child and Adolescent Mental Health Services 7.20.11 NMAC or to the extent that such a program receives funding or reimbursement from CYFD:

- (1) hospitals or infirmaries;

- (2) intermediate care facilities;  
 (3) children's psychiatric centers;  
 (4) home health agencies;  
 (5) diagnostic and treatment centers;  
 (6) unlicensed ~~[and/or]~~ or unregistered child care homes.

B. These regulations do not apply to the following adults:

- (1) treatment foster care parents;  
 (2) relative care providers who are not otherwise required to be licensed or registered;  
 (3) foster grandparent volunteers;  
 (4) volunteer parents of an enrolled child if the parent is under direct physical supervision;  
 (5) all other volunteers at a licensed or registered facility if the volunteer spends less than six hours per week at the facility, is under direct physical supervision, and is not counted in the facility ratio.  
 [8.8.3.9 NMAC - Rp, 8.8.3.9 NMAC, 03/31/06; A, 07/31/09]

#### 8.8.3.10 COMPLIANCE:

A. Compliance with these regulations is a condition of licensure, registration, certification ~~[and/or]~~ or renewal, ~~[and/or]~~ or continuation of same.

B. The licensee is required to:

- (1) submit two completed FBI-approved fingerprint cards for all direct providers of care by the end of the next day following of commencement of service, whether employment or, contractual, or volunteer; EXCEPTION: In the case of licensed child care homes, the licensee must submit fingerprint cards, within five working days, for any adult who resides in the home or any persons residing in the home who reaches 18 years of age;  
 (2) submit the FBI-approved fingerprint cards to CYFD along with the specified fee;  
 (3) submit the name, address, date of birth and any aliases of the direct care provider for a child abuse and neglect screen;  
 (4) verify the employment history of any potential direct provider of care the verification shall include contacting references and prior employers/agencies to elicit information regarding the reason for leaving prior employment or service; the verification shall be documented and available for review by the licensing authority; EXCEPTION: Verification of employment history is not required for registered home providers, child care homes licensed for six (6) or fewer children, or relative care providers;  
 (5) ~~[submit similar documentation for household members in settings in which such household members~~

~~would have regular unsupervised contact with care recipients; and] submit an adult household member written statement form for each adult household member in a registered home setting in order to conduct criminal history and child abuse and neglect screens on such household members; an adult household member is an adult living in the household or an adult that spends a significant amount of time in the home;~~

(6) provide such other information department staff determines to be necessary; and

(7) maintain documentation of all applications, correspondence and clearances relating to the background checks required; in the event that the licensee does not have a copy of an applicant's clearance documentation and upon receipt of a written request for a copy, the department may issue duplicate clearance documentation to the original licensee; the request for duplicate clearance documentation must be made within one year of the applicant's clearance date.

C. If there is a need for any further information from an applicant at any stage of the process, the department shall request the information in writing from the applicant. If the department does not receive the requested information within fifteen calendar days of the date of the request, the department shall deny the application.

[8.8.3.10 NMAC - Rp, 8.8.3.10 NMAC, 03/31/06; A, 07/31/09]

#### 8.8.3.11 COMPLIANCE EXCEPTIONS:

A. An applicant may not begin providing ~~[care]~~ services prior to obtaining a background eligibility unless all of the following requirements are met:

(1) the licensee may not be operating under a corrective action plan (childcare), sanctions, or other form of licensing disciplinary serious violations;

(2) until receiving background eligibility the applicant shall at all times be under direct physical supervision; this provision does not apply to registered child care home applicants;

(3) by the end of the next day after the applicant begins providing ~~[care]~~ services, the applicant shall send the licensing authority a completed application form and fingerprint cards;

(4) within fifteen days after the applicant begins providing ~~[care]~~ services, the applicant shall provide the licensing authority with all information necessary for the background check; and

(5) no more than 45 days shall have passed since the date of the initial application unless the department documents good cause shown for an extension.

B. If a direct provider has a break in employment or transfers

employment more than 180 days after ~~[receiving a]~~ the date of an eligibility letter from the licensing authority the direct care provider must re-comply with 8.8.3.10 NMAC. A direct care provider may transfer employment for a period of 180 days after ~~[receiving a]~~ the date of an eligibility letter from the licensing authority without complying with 8.8.3.10 NMAC only if the direct care provider submits a preliminary application that meets the following conditions:

(1) the direct provider submits a statement swearing under penalty of perjury that he or she has not ~~[committed]~~ been arrested or charged with any crimes, has not been ~~[a]~~ an alleged perpetrator of abuse or neglect and has not been a respondent in a domestic violence petition;

(2) the direct care provider submits an application that describes the prior and subsequent ~~[positions]~~ places of employment, registration or certification with sufficient detail to allow the licensing authority to determine if further background checks or a new application is necessary; and

(3) the licensing authority determines within 15 days that the direct care provider's prior background check is sufficient for the employment or position the direct care provider is going to take.

[8.8.3.11 NMAC - Rp, 8.8.3.11 NMAC, 03/31/06; A, 04/15/08; A, 07/31/09]

#### 8.8.3.12 PROHIBITIONS:

A. Any licensee who violates these regulations is subject to revocation, suspension, sanctions, or denial of licensure, certification, or registration.

B. Licensure, certification, or registration is subject to receipt by the licensing authority of a satisfactory background check for the licensee ~~[and/or]~~ or the licensee's administrator.

C. Except as provided in 8.8.3.13 NMAC below, licensure, certification or registration may not be granted by the licensing authority if a background check of the licensee ~~[and/or]~~ or the licensee's administrator reveals an unreasonable risk.

D. A licensee may not retain employment, volunteer service or contract with any direct provider of care for whom a background check reveals an unreasonable risk. The department shall deliver one copy of the notice of unreasonable risk to the facility or program by U.S. mail and to the appropriate licensing staff at the department by facsimile transmission or hand delivery.

E. ~~[Except as provided 8.8.3.15 NMAC below, a]~~ A licensee shall be in violation of these regulations if it retains a direct provider of care for more than [fifteen] ten working days following the mailing of a notice [verifying relevant

convictions] of background check denial for failure to respond by the licensing authority. ~~[The notice shall be mailed or hand-delivered as evidenced by a receipt signed by the recipient. EXCEPTION: in emergency situations the department shall deliver one copy to the facility by facsimile transmission or hand delivery and one copy to the appropriate licensing staff at the department.]~~

F. A licensee shall be in violation of these regulations if it retains any direct provider of care inconsistent with Subsection A of 8.8.3.11 NMAC.

G. A licensee shall be in violation of these regulations if it hires, contracts with, uses in volunteer service, or retains any direct provider of care for whom information received from any source including the direct provider of care, indicates the provider of care poses an unreasonable risk to the department or to care recipients.

H. Any firm, person, corporation, individual or other entity that violates this section shall be subject to appropriate disciplinary action up to and including immediate emergency revocation of license or registration pursuant to the regulations applicable to that entity.

[8.8.3.12 NMAC - Rp, 8.8.3.12 NMAC, 03/31/06; A, 07/31/09]

### **8.8.3.13 A R R E S T S , CONVICTIONS AND REFERRALS:**

A. For the purpose of these regulations, the following information shall result in a conclusion that the applicant is an unreasonable risk:

(1) a conviction for a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to whether the applicant can provide a safe, responsible and morally positive setting for care recipients;

(2) a conviction for a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to whether the applicant can provide a safe, responsible and morally positive setting for care recipients if the department determines that the applicant so convicted has not been sufficiently rehabilitated;

(3) a conviction, regardless of the degree of the crime or the date of the conviction, of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse; or

(4) a substantiated referral, regardless of the date, for sexual abuse or for neglect characterized by a failure to protect against sexual abuse.

B. A disqualifying conviction may be proven by:

(1) a copy of the judgment of conviction from the court;

(2) a copy of a plea agreement

filed in court in which a defendant admits guilt;

(3) a copy of a report from the federal bureau of investigation, criminal information services division, or the national criminal information center, indicating a conviction;

(4) a copy of a report from the state of New Mexico, department of public safety, or any other agency of any state or the federal government indicating a conviction;

(5) any writing by the applicant indicating that such person has been convicted of the disqualifying offense, provided, however, that if this is the sole basis for denial, the applicant shall be given an opportunity to show that the applicant has successfully completed or is pending completion of a conditional discharge for the disqualifying conviction.

C. If a background check shows pending charges for a felony offense, any misdemeanor offense involving domestic violence or child abuse, an arrest but no disposition for any such crime, or a pending referral with the department, there shall be a determination of unreasonable risk. An arrest or criminal charge for any felony offense or for any misdemeanor offense involving domestic violence or child abuse shall result in the immediate suspension of the applicant's background check status until such time as the charges are disposed of. It is the duty of the administrator of a facility or the licensee, upon learning of any such arrest or criminal charge, to notify the licensing authority immediately. A suspension of background check status shall have the same effect as a determination of unreasonable risk until the charges are disposed of. If an arrest or criminal charge results in a conviction, the applicant may reapply for background check eligibility and shall be subject to all applicable criminal records check provisions and may be determined to be an unreasonable risk. If an arrest or criminal charge results in an acquittal, conditional discharge, suspension of proceedings based on participation in a pre-prosecution diversion program or dismissal of the charges, or any other disposition that is not a criminal conviction, the applicant may thereafter again reapply and be considered for a determination that the applicant is eligible.

D. If a background check shows that an applicant is wanted for any offense by any law enforcement agency due to a warrant having been issued, or if the applicant is shown to have failed to appear for any pending criminal court proceeding, there shall be a determination of unreasonable risk. If such information shall be reported to the licensing authority after an initial determination that the applicant is eligible, the applicant's background check status shall be suspended until such time as

the matter is disposed of. ~~[If the case results in a conviction] After the matter has been disposed of, the applicant shall be subject to all of the background check provisions set forth in Subsections A, B, and C above. [For the purposes of this section a second conviction for driving while intoxicated, or any crime the elements of which are substantially the same as driving while intoxicated, shall be considered a crime of moral turpitude. The record name of the second conviction shall not be controlling; any conviction subsequent to an initial one may be considered a second conviction.]~~

[8.8.3.13 NMAC - Rp, 8.8.3.13 NMAC, 03/31/06; A, 07/31/09]

### **8.8.3.14 UNREASONABLE RISK:**

A. The department may, in its discretion, weigh the evidence about an applicant to determine whether the applicant poses an unreasonable risk to the department or care recipients. The department may also consult with ~~[staff]~~ legal staff, treatment, assessment or other professionals in the process of determining whether the cumulative weight of credible evidence establishes unreasonable risk.

B. ~~[In making this determination ]~~ In determining whether an applicant poses an unreasonable risk, the department need not limit its reliance on formal convictions or substantiated referrals, but nonetheless must only rely on evidence with indicia of reliability such as:

(1) reliable disclosures by the applicant or a victim of abuse or neglect;

(2) domestic violence orders that allowed an applicant notice and opportunity to be heard and that prohibits or prohibited them from injuring, harassing or contacting another;

(3) circumstances indicating the applicant is or has been a victim of domestic violence;

~~[(3)]~~ (4) child or adult protection investigative evidence that indicates a likelihood that an applicant engaged in inappropriate conduct but there were reasons other than the credibility of the evidence to not substantiate; or

~~[(4)]~~ (5) any other evidence with similar indicia of reliability.

[8.8.3.14 NMAC - N, 03/31/06; A, 07/31/09]

### **8.8.3.16 APPEAL RIGHTS:**

A. Any licensee who is denied licensure, certification, or registration or is sanctioned pursuant to these regulations or a previously cleared provider of care whose eligibility has been suspended may appeal that decision to the children, youth and families department. If a licensee or a previously cleared direct provider of care alleges facts in good faith that demonstrate a conclusion of unreasonable

risk will substantially affect a present vested right such as current employment or other similar currently vested rights the licensee shall be entitled to a hearing. The request for appeal shall be in writing and the party requesting the appeal shall cause the department to receive it within fifteen days of the date of the department's written notice of a determination of unreasonable risk.

B. Any direct provider of care who is found ineligible after completion of background check may request ~~[a hearing]~~ an administrative review from the children, youth and families department. The request for ~~[hearing]~~ an administrative review shall be in writing and the party requesting the appeal shall cause the department to receive it within fifteen days of the date of the department's written notice of a determination of unreasonable risk.

C. ~~[The appeal that is the]~~ The administrative review [under this section] shall be completed by a review of the record by a hearing officer designated by the cabinet secretary. The hearing officer's review is limited to: (1) whether the licensing authority's conclusion of unreasonable risk is supported by any section of these regulations; and (2) whether the applicant has been erroneously identified as a person with a relevant conviction or substantiated referral. The review will be completed on the record presented to the hearing officer ~~[- The written statement and relevant evidence are considered by the hearing officer:]~~ and includes the applicant's written request for an administrative review and other relevant evidence provided by the applicant. The hearing officer conducts the administrative review and submits a recommendation to the cabinet secretary ~~[on the appeal a soon as reasonably practicable]~~ no later than 60 days after the date the request for administrative review is received unless the department and the applicant agree otherwise. The appeal that is a hearing under this section shall be pursuant to the department's administrative hearing regulations at 8.8.4 NMAC. [8.8.3.16 NMAC - Rp, 8.8.3.15 NMAC 03/31/06; A, 07/31/09]

**NEW MEXICO CHILDREN,  
YOUTH AND FAMILIES  
DEPARTMENT  
YOUTH AND FAMILY SERVICES  
DIVISION**

8.14.2 NMAC, Probation and Aftercare, filed December 16, 2005, is repealed effective July 31, 2009 and replaced by 8.14.2 NMAC, Probation and Aftercare Services, effective July 31, 2009.

**NEW MEXICO CHILDREN,  
YOUTH AND FAMILIES  
DEPARTMENT  
YOUTH AND FAMILY SERVICES  
DIVISION**

**TITLE 8 SOCIAL SERVICES  
CHAPTER 14 JUVENILE JUSTICE  
PART 2 PROBATION AND  
AFTERCARE SERVICES**

**8.14.2.1 ISSUING AGENCY:** New Mexico Children, Youth and Families Department. [8.14.2.1 NMAC - Rp, 8.14.2.1 NMAC, 07/31/2009]

**8.14.2.2 SCOPE:** This rule applies to the youth and family services (YFS) employees of the children, youth and families department (CYFD) charged with the supervision and planning functions of probation and aftercare/ services for youth released from juvenile justice facilities. These employees are known as juvenile probation officers (JPO). [8.14.2.2 NMAC - Rp, 8.14.2.2 NMAC, 07/31/2009]

**8.14.2.3 STATUTORY AUTHORITY:** Chapters 32A-1-1, et seq., 32A-2-1 et seq., 32A-3-1, et seq., 32A-3A-1 et seq., 32A-4-1 et seq., 32A-6-1 et seq., 32A-7-1 et seq., 32A-9-1 et seq., 32A-10-1 et seq., 32A-11-1 et seq., 32A-12-1 et seq., 32A-13-1 et seq., 32A-17-1 et seq., 32A-21-1 et seq. NMSA 1978 Comp., as amended. Supreme Court Rules: 10-201, 10-202, 10-203, 10-206, 10-207, 10-208, 10-209, 10-211, 10-229, 10-231. [8.14.2.3 NMAC - Rp, 8.14.2.3 NMAC, 07/31/2009]

**8.14.2.4 DURATION:** Permanent. [8.14.2.4 NMAC - Rp, 8.14.2.4 NMAC, 07/31/2009]

**8.14.2.5 EFFECTIVE DATE:** July 31, 2009 unless a later date is cited at the end of a section.

[8.14.2.5 NMAC - Rp, 8.14.2.5 NMAC, 07/31/2009]

**8.14.2.6 OBJECTIVE:** To provide for a coordinated continuum of services for the client and family and to establish guidelines for juvenile probation and aftercare services for youth exiting a juvenile justice facility requiring supervision. [8.14.2.6 NMAC - Rp, 8.14.2.6 NMAC, 07/31/2009]

**8.14.2.7 DEFINITIONS:**

**A. Absconder** refers to a client on probation or supervised release that leaves the jurisdiction without permission or an escapee or runaway from a placement.

**B. Adjudication** refers to a judicial determination that a juvenile has committed a delinquent act.

**C. Adjudicatory hearing** refers to children's court hearing to decide whether the evidence supports the allegations of a petition, i.e., whether a delinquent act has been committed.

**D. Affidavit for warrant** refers to a sworn statement submitted to the court detailing the basis for the warrant request including information regarding efforts to locate the subject of the warrant.

**E. Aftercare** refers to supervised release case management provided to clients released from juvenile justice facilities and treatment programs.

**F. Arrest warrant** refers to a warrant issued from district court ordering that a client be taken into custody.

**G. Children's court attorney (CCA)** refers to each district attorney who is the children's court attorney for the judicial district (Section 32A-1-6A NMSA 1978).

**H. Classification** refers to an assessment of the client's risk, needs and strengths to determine the level of supervision of clients receiving community supervision.

**I. Client family baseline assessment** refers to a written report by the juvenile probation officer that identifies the client's delinquent history and the strengths and needs of the client and family.

**J. Conditional release** refers to a client's release from detention under court ordered requirements related to behavior, activities or movement.

**K. Delinquent act** refers to an act committed by a juvenile that would be designated as a crime under the law if committed by an adult.

**L. Detention** refers to the temporary care of juveniles alleged to be delinquent who require secure custody in facility certified for that purpose by the department (Section 32A-2-4 NMSA 1978).

**M. Electronic monitoring (EM)** refers to the use of an electronic device

to monitor the movement and location of an individual.

**N. Facility release panel (panel)** is the departmental secretary-designated releasing authority that considers juveniles for supervised release.

**O. A FINS** refers to families in need of services (Section 32A-3A-2 NMSA 1978).

**P. Family automated client tracking (FACTS)** refers to the CYFD computer database in which client information is maintained.

**Q. Informal probation** refers to a period of voluntary non-judicial supervision that does not exceed a specified duration. Conditions for successful completion of the period of informal supervision are defined in the individualized plan of care.

**R. Intake** refers to the assessment of services and supervision required for an individual referred to youth and family services and those activities associated with placing a client on probation, supervised release or receiving a client at a juvenile justice facility.

**S. Interstate compact on juveniles** refers to a voluntary agreement between the states and territories of the United States to provide for the welfare and protection of juveniles and the public with respect to supervision of delinquent juveniles on probation or supervised release, the return of delinquent juveniles who have escaped or absconded, the return of non-delinquent juveniles who have run away from home, and additional measures for the protection of juveniles and the public (Section 32A-10-1, NMSA, 1978).

**T. Juvenile probation** refers to a court-ordered sanction and disposition which places an adjudicated client under the supervision and care of a juvenile probation officer

**U. Juvenile probation officer (JPO)** refers to a department staff person whom provides court-ordered and informal supervision for clients.

**V. Supervised release** refers to the release of a juvenile, whose term of commitment has not expired, from a facility for the care and rehabilitation of adjudicated delinquent children, with specified conditions to protect public safety and promote successful transition and reintegration into the community. A juvenile on supervised release is subject to monitoring by the department until the term of commitment has expired, and may be returned to custody for violating conditions of release.

**W. Petition** refers to a legal document in which the state formally alleges the client to be a delinquent or a youthful offender due to the commission of a delinquent act(s), or of a family subject to

FINS.

**X. Plan of care** refers to a plan for treatment or supervision of clients in the custody of, or under the supervision of, CYFD.

**Y. Preliminary inquiry (PI)** refers to a conference between the JPO, client, and parent or guardian to assess whether a referral to the CCA should be made to file a delinquency petition.

**Z. Probation** refers to a court-ordered sanction and disposition that places an adjudicated client under the, supervision and care of a juvenile probation officer.

**AA. Referral** refers to a report alleging delinquency or families in need of services (FINS) that comes from law enforcement, schools, department facilities, parents or citizens.

**BB. Retake warrant** refers to the document issued by youth and family services directed to law enforcement and department staff, to detain a client alleged to have violated conditions of supervised release and return the client to a detention facility.

**CC. Supervision plan** refers to the probation or supervised release agreement and the plan of care.

**DD. Triage** refers to a case staffing between the assigned JPO, JPO supervisor, and community behavioral health clinician (CBHC). The purpose of the case staffing is to review placement options and develop a treatment plan for clients that are at risk of out of home placement. The statewide entity managing behavioral health contracts (OptumHealth or its successor) are invited to attend triage meetings. [8.14.2.7 NMAC - Rp, 8.14.2.7 NMAC, 07/31/2009]

**8.14.2.8 SUPERVISION OF FIELD STAFF:** The department provides court ordered conditional release, probation, and supervised release services 24 hours a day, seven days a week.

[8.14.2.8 NMAC - Rp, 8.14.2.8 NMAC, 07/31/2009]

**8.14.2.9 INTAKE AND DETENTION:**

**A.** Youth and family services (YFS) staff screen, assess, and recommend disposition on referrals to the appropriate authority. Supervisors review staff referral decisions.

(1) YFS staff date stamps the referral when the office receives the referral from law enforcement.

(2) If the client is not detained, the (PI) shall be conducted within thirty calendar days of receipt of the referral from law enforcement. The thirty calendar day time period may be extended upon determination by the department that an

extension is necessary to conduct a thorough preliminary inquiry and that the extension is not prejudicial to the best interests of the client. Within two business days of the completion of the preliminary inquiry, probation services shall forward information therein to the children's court attorney.

(3) If the client is detained prior to conducting a (PI), the juvenile probation staff gives reasonable notice to the client's parent, guardian or custodian and/or the child's attorney and an opportunity to be present at the preliminary inquiry.

**B.** At the commencement of the preliminary inquiry, the juvenile probation officer shall advise the client, parent, guardian, or custodian of the client's basic rights.

(1) The client has the right to remain silent. If the client is questioned, the client has the right to refuse to answer any questions and may stop answering questions at any time.

(2) A child alleged to be a delinquent or in need of supervision has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications, either oral or written, between the child, parent, guardian or custodian and a juvenile probation officer which is made during the course of a preliminary inquiry (Rules of Evidence 11-509B NMRA).

(3) The client has the right to be represented by an attorney present at the PI and have an attorney present at all court proceedings against the client. If the client does not have an attorney for court proceedings, an attorney will be appointed.

(4) If the client is thirteen years or older, a statement made by the client can be used against the client only if their constitutional rights have been explained to the client, and the client knowingly and voluntarily waived their constitutional rights.

(5) The state is not entitled to use or introduce in court against the client a statement made out of court which is constitutionally inadmissible; evidence illegally seized or obtained or a statement or admission made out of court, unless it is corroborated by other evidence; and any confession, statements, or admissions on the allegation of the petition against a child under the age of thirteen (13) years.

(6) If the client is under the age of thirteen (13) years and is charged or adjudicated as a delinquent child, the client may not be finger printed or photographed for identification purposes, without a court order.

(7) If the client does not have a parent, guardian or custodian appearing on the client's behalf or the client's interest are in conflict with his/her parent, guardian or custodian, the client may request



appointment of a guardian by the court.

(8) If the child is taken into custody and detained, the client has a right to a judicial determination of probable cause by a judge, special master, or magistrate court within forty-eight (48) hours including Saturdays, Sundays and legal holidays.

(9) The client may introduce evidence on his/her own behalf, confront and cross-examine witnesses testifying against him, have witnesses of his/her choosing subpoenaed, and may admit or deny the charges in the petition.

**C.** After the completion of the preliminary inquiry on a delinquency complaint involving a misdemeanor, probation services may notify the children's court attorney and recommend an appropriate disposition for the case. If the child has been referred for three or more prior misdemeanors within two years of the instant offense, juvenile probation services shall notify the children's court attorney and recommend an appropriate disposition for the case.

**D.** Youth and family services shall notify the children's court attorney of the receipt of any complaint involving an act that constitutes a felony under the applicable criminal law (Section 32A-2-5, NMSA, 1978). Youth and family services shall also recommend a disposition to the children's court attorney.

**E.** An Indian child's tribe is notified when an Indian child is referred to the department. Staff consults and exchanges information with the tribe when preparing reports or when placement of an Indian child is contemplated or ordered.

**F.** Staff may provide informal probation supervision for clients.

**G.** The use of detention is limited to cases involving protection of the public, prevention of self injury, transfer to another jurisdiction, or the risk of the client absconding (Sections 32A-2-11 and 32A-2-12, NMSA 1978). If a child under the age of eleven poses a substantial risk to harm to themselves or others, a peace officer may transport the child for an emergency mental health evaluation and care. If the child is over the age of eleven and detained.

(1) Staff utilize the detention screening tool.

(2) Staff notifies the parents/guardians/custodians of a child's detention within 24 hours of detention and the children's court within 48 hours of detention.

(3) Staff releases a client from detention within the time frame and conditions defined in supreme court rules and state statute.

(4) If the client is detained prior to conducting a preliminary inquiry, the juvenile probation officer gives reasonable notice to the client's parent, guardian or custodian and the child's attorney and an

opportunity to be present at the preliminary inquiry.

(5) Clients ordered detained are placed in department certified juvenile detention facilities.

(6) At the detention hearing, staff recommends conditional or unconditional release from detention for a client for whom the district attorney/children's court attorney has filed a petition.

(7) Staff reviews the need for continued detention of a client and makes recommendations to the children's court regarding the release of the client when detention is no longer required.

(8) JPO staff visits clients remaining in detention at least weekly. Such contacts are made in person, whenever possible, and documented.

(9) Release from detention is based on client needs, available resources and any applicable conditions.

[8.14.2.9 NMAC - Rp, 8.14.2.9 NMAC, 07/31/2009]

**8.14.2.10 ELECTRONIC MONITORING:** Juvenile probation staff provides supervision and assistance to a child placed on electronic monitoring by a court order /supervised released youth as ordered by the department or probation/supervised release violators that meet graduation sanctions criteria approved by the chief juvenile probation officer/designee.  
[8.14.2.10 NMAC - N, 07/31/2009]

**8.14.2.11 FAMILIES IN NEED OF SERVICES:** Juvenile probation staff accesses available department and local resources for providing FINS services.  
[8.14.2.11 NMAC - Rp, 8.14.2.10 NMAC, 07/31/2009]

**8.14.2.12 PREDISPOSITION INVESTIGATION AND BASELINE ASSESSMENT:**

**A.** After a petition has been filed and either a finding with respect to the allegations of the petition has been made or a notice of intent to admit the allegations has been filed, the court may direct youth and family services or an appropriate agency designated by the court to write a predisposition study and report. Juvenile probation staff provides court ordered predisposition reports to the parties and the court five business days before the actual disposition or sentencing (Section 32A-2-17, NMSA 1978). A predisposition report contains timely and accurate data.

**B.** The department shall prepare a predisposition report for:

(1) a serious youthful offender who is convicted of an offense other than first degree murder;

(2) a youthful offender concerning the youthful offender's

amenability to treatment; or

(3) a delinquent offender when ordered by the court.

**C.** If the court does not order a pre-disposition report, juvenile probation may prepare a client family baseline assessment (CFBA) in circumstances outlined in procedures.

**D.** Baseline assessments, or any other reports used for compiling and reporting predisposition information, are not initiated until the client has been adjudicated delinquent, unless the client, with the advice of counsel, consents to the investigation prior to adjudication. Information from the report is not disclosed to the court before the adjudicatory hearing.

**E.** Documents not available in FACTS are delivered promptly to department when a client is committed. Whenever possible, staff accesses FACTS to obtain the most recent client information. Follow-up information such as home studies or updates is submitted to the facility at the earliest possible time after request.

**F.** Assessments, evaluations and other reports are confidential and released only as allowed for by law (Section 32A-2-32, NMSA 1978).

**G.** Staff other than juvenile probation staff may be used to collect information in the preparation of the predisposition report.

[8.14.2.12 NMAC - Rp, 8.14.2.11 NMAC, 07/31/2009]

**8.14.2.13 SUPERVISION OF PROBATION AND SUPERVISED RELEASE CLIENTS:**

**A.** The juvenile probation officer supervises and provides assistance to a child placed on probation by a court order or on supervised release as ordered by the department.

**B. Classification of clients:**

(1) Classification determines the level of supervision.

(2) Cases are reviewed at regular intervals and reclassified as warranted.

(3) In cases in which probation is a primary or alternative recommendation for disposition, staff identifies any special conditions needed to provide a rehabilitative supervision plan for the client and family, and recommends that the conditions be included along with the generally imposed conditions of probation.

**C. Supervision plan:**

(1) Supervision plans are developed by staff and include the input of the client and the parents/guardians/custodians, and are considered part of the baseline assessment.

(2) The conditions of probation are furnished in writing to the client and his/her parent/guardian/custodian, and are

acknowledged in writing.

(3) Clients are supervised by field staff according to the court order, probation /supervised release agreement, the classification tool, and the plan of care. The plan of care is developed by staff, together with the client and his/her family, when possible.

(4) Supervisors review cases and document the review.

(5) The client's parent/guardian/custodian is notified in advance of a decision to institute a major change to the plan of care, unless emergency conditions necessitate immediate implementation of the changes.

(6) Reasonable efforts are made to utilize local services prior to recommending institutionalization to the court.

(7) Staff provides information to law enforcement agencies in apprehending juveniles known or suspected of being involved in delinquent or criminal activity.

**D. Community placement programs:**

(1) Staff refers clients to appropriate community programs for services identified in the plan of care, determine the availability of the treatment services and inform the court or department when services are unavailable.

(2) Juvenile probation officers meet regularly with treatment providers to review client progress.

**E. Out of home placements:**

(1) Staff recommends out-of-home placements to the court after efforts have been made to maintain or return the client to his home, or if required, to protect the community. Every reasonable effort is made to involve the client and the parent/guardian/custodian in any discussion regarding out-of-home placement.

(2) The department facilitates transition to the home.

(3) Staff continues face-to-face contact with clients who are in out-of-home placement, as long as necessary.

**F. Termination of client supervision:**

(1) Recommendations for early release or termination of supervision of a client under supervision are reviewed and approved by the chief juvenile probation officer or designee with notice to the courts or the department. Early termination of supervision may be recommended in the following cases:

(a) when progress toward rehabilitation is made and the goals as set forth in the plan of care are completed;

(b) when probation or supervised release is unsuccessful and because of age or status, commitment to a department facility is of no benefit to the client; or

(c) when public safety is not expected to be compromised by the

termination or early release from supervision.

(2) Staff summarizes in writing client performance during the period of supervision and provides the report to the court or department.

(3) As a part of the plan of care, the juvenile probation officer develops, in collaboration with the client and service providers, a discharge plan. Juvenile probation staff invites the parent/guardian/custodian to participate. The discharge plan is prepared prior to the client's termination from supervision.

[8.14.2.13 NMAC - Rp, 8.14.2.12 NMAC, 07/31/2009]

**8.14.2.14 SEARCHES:**

**A.** Authorized department personnel are allowed to conduct searches of a client's person and of property used by the client or under the client's control as provided for in orders of the court or department and as further provided for in procedures, where not inconsistent with orders of the court, the department, or federal or state law.

**B.** JPO staff conducting client searches must be the same gender as that of the client.

**C.** In accordance with procedures, all contraband that is prohibited material by an order of the court or department that is discovered during searches is confiscated, inventoried, and stored until it is no longer needed as evidence.

(1) The chief juvenile probation officer designates an evidence custodian to maintain contraband or prohibited material in accordance with procedures.

(2) Final disposition or destruction of contraband or prohibited material is performed in accordance with procedures.

(3) If staff confiscates or discovers a weapon or illegal drug, staff immediately informs the chief juvenile probation /supervised release officer and contacts law enforcement with jurisdiction. For weapons and illegal drugs that are seized by law enforcement, the staff member confiscating or discovering the contraband documents the item on the department approved chain of custody form and retains a copy of the chain of custody form.

(4) Juvenile probation shall not assist with searches by law enforcement officers of persons or their property who are not JPO clients. Juvenile probation officers may assist with searches by law enforcement of probation clients, their residences or their property only when such searches are specifically and directly related to the order of the court or department relating to the juvenile client.

(5) Each chief juvenile probation officer superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department

approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

[8.14.2.14 NMAC - Rp, 8.14.2.12 NMAC, 07/31/2009]

**8.14.2.15 TRANSFER:**

**A.** Transfer of client supervision between counties can occur as defined in procedure PR8.14.2.13.8.

**B.** Client transfers to and from out of state jurisdictions occur; transfers are done according to the interstate compact on juveniles.

[8.14.2.15 NMAC - Rp, 8.14.2.12 NMAC, 07/31/2009]

**8.14.2.16 PROBATION OR SUPERVISED RELEASE REVOCATION:**

**A.** Clients alleged to have violated the conditions of supervision may be placed in detention, provided the detention screening tool so indicates and the criteria for detention in state statute are met.

**B.** Staff investigates arrests, complaints, and alleged violations of conditions of supervision.

**C.** Staff make and document recommendations to the district attorney/children's court attorney, department, and the court to revoke the client's probation or supervised release when the client has failed to comply with any part of the probation or supervised release agreement and it is in the best interest of the client's rehabilitation and the public safety to do so.

**D.** Staff utilize community resources and intervention measures before recommending out of home placements.

**E.** Staff aid in the location and recovery of absconders by initiating arrest or retake warrants, and notifying law enforcement authorities of the possible locations of absconders.

**F.** A recovered absconder who has not committed a new delinquent act, and who is not viewed as a danger to the community may be restored to active supervision.

**G.** When a client violates supervised release conditions, a preliminary supervised release revocation hearing is conducted by YFS, unless the client waives his/her right to the hearing. The hearing officer records and prepares a written summary of the major issues, findings and decisions of that hearing. The summary is provided to clients and the facility release panel.

**H.** Prior to initiating a preliminary hearing based upon alleged violations of supervised release conditions which are a manifestation of the juvenile's disability, the JPO makes a written finding that mental health services in the community

that are available and appropriate to deal with the juvenile's mental disabilities were ineffective.

[8.14.2.16 NMAC - Rp, 8.14.2.12 NMAC, 07/31/2009]

**8.14.2.17 SUPERVISED RELEASE:** Juvenile probation services provides supervision and services to supervised released youth and provides client information to the department in a timely manner.

[8.14.2.17 NMAC - Rp, 8.14.2.13 NMAC, 07/31/2009]

#### **HISTORY OF 8.14.2 NMAC:**

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

NMYA/CSD 89-I-5, Juvenile Probation Services, filed 12/28/89.

NMYA/CSD 89-I-9, Illegal Aliens, filed 12/28/89.

NMYA/CSD 89-I-6, Juvenile Parole Services, filed 12/28/89.

NMYA/CSD 89-I-11, Taking into Custody, filed 12/28/89.

NMYA/CSD 89-I-12, Search and Seizure, filed 12/28/89.

NMYA/CSD 89-I-14, Use of Clients as Informants, filed 12/28/89.

NMYA/CSD 89-III-1, Intake, Preliminary Inquiry, Predisposition Report/Preadjudicatory Report, JPO Role in Final Court Disposition, CHINS Process, Traffic Law Violations, filed 12/28/89.

NMYA/CSD 89-IV-6, Restitution, filed 12/28/89.

NMYA/CSD 89-IV-10, Probation Revocation, filed 12/28/89.

NMYA/CSD 89-IV-11, Probation Warrants, filed 12/28/89.

NMYA/CSD 89-IV-18, Substance Abuse Screening (Probation and Parole), filed 12/28/89.

NMYA/CSD 89-IV-19, Pre-Parole Planning, Home Study, Parole Intake, filed 12/28/89.

NMYA/CSD 89-IV-21, Parole Warrants and Parole Detention, filed 12/28/89.

NMYA/CSD 89-IV-22, Parole Revocation, filed 12/28/89.

NMYA/CSD 89-IV-23, Parole Termination, filed 12/28/89.

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

8 NMAC 14.2, Probation and Aftercare, filed 11/2/98 - Repealed effective 12/30/2005.

8 NMAC 14.2, Probation and Aftercare, filed - Repealed effective 7/31/2009.

## **NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

This is an amendment to 20.2.77 NMAC Sections 2, 9 and 11, effective 08/17/09.

**20.2.77.2 SCOPE:** Any stationary source constructing or modifying and which is subject to the requirements of 40 CFR Part 60, as amended through [~~November 30, 2006~~] January 31, 2009.

[06/16/95, 11-19-97, 9-8-99; 20.2.77.2 NMAC - Rn 20 NMAC 2.77.101 & A, 06/23/00; A, 02/18/02; A, 06/13/03; A, 06/15/07; A, 08/17/09]

**20.2.77.9 ADOPTION OF 40 CFR PART 60:** Except as otherwise provided, the new source performance standards as promulgated by the United States environmental protection agency, 40 CFR Part 60, as amended in the Federal Register through [~~November 30, 2006~~] January 31, 2009 are hereby incorporated into this part [20.2.77 NMAC].

[06/16/95, 08/02/96, 11/19/97, 09/08/99; 20.2.77.9 NMAC - Rn 20 NMAC 2.77.107 & A, 06/02/00; A, 02/18/02; A, 06/13/03; A, 06/15/07; A, 08/17/09]

**20.2.77.11 DOCUMENTS :** Documents incorporated and cited in this Part may be viewed at the New Mexico environment department, air quality bureau, [~~2044 Galisteo, 1190 Santa Fe, NM 87502~~] 1301 Siler Road, Building B, Santa Fe NM, 87507.

[06/16/95; 20.2.77.11 NMAC - Rn, 20 NMAC 2.77.109 06/23/00; A, 08/17/09]

## **NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

This is an amendment to 20.2.78 NMAC Sections 2, 9 and 11, effective 08/17/09

**20.2.78.2 SCOPE:** All sources emitting hazardous air pollutants which are subject to the requirements of 40 CFR Part 61, as amended through [~~November 30, 2006~~] January 31, 2009.

[06/16/95, 11/19/97, 09/08/99; 20.2.78.2 NMAC - Rn 20 NMAC 2.78.101 & A, 06/23/00; A, 02/18/02; A, 06/08/07; A, 08/17/09]

**20.2.78.9 ADOPTION OF 40 CFR PART 61:** Except as otherwise provided, the national emission standards for hazardous air pollutants as promulgated by

the United States environmental protection agency, 40 CFR Part 61, as amended in the Federal Register through [~~November 30, 2006~~] January 31, 2009 are hereby incorporated into this part [20.2.78 NMAC]. [06/16/95, 08/02/96, 11/19/97, 09/08/99; 20.2.78.9 NMAC - Rn 20 NMAC 2.78.107 & A, 06/23/00; A, 02/18/02; A, 06/08/07; A, 08/17/09]

**20.2.78.11 DOCUMENTS :** Documents incorporated and cited in this part may be viewed at the New Mexico environment department, air quality bureau, [~~2044 Galisteo, Santa Fe, NM 87502~~] 1301 Siler Road, Building B, Santa Fe NM, 87507.

[06/16/95; 20.2.78.11 NMAC - Rn, 20 NMAC 2.78.109 06/23/00; A, 08/17/09]

## **NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

This is an amendment to 20.2.82 NMAC Sections 2, 8 and 11, effective 08/17/09

**20.2.82.2 SCOPE:** All sources emitting hazardous air pollutants, which are subject to the requirements of 40 CFR Part 63, as amended through [~~November 30, 2006~~] January 31, 2009.

[Rn, 20 NMAC 2.82.2, 08/14/98; A, 08/14/98, 09/08/99; 20.2.82.2 NMAC - Rn 20 NMAC 2.82.101 & A, 06/23/00; A, 02/18/02; A, 06/13/03; A, 06/08/07; A, 08/17/09]

**20.2.82.8 ADOPTION OF 40 CFR PART 63:** Except as otherwise provided in section 20.2.82.10 NMAC (below), the national emission standards for hazardous air pollutants for source categories as promulgated by the US EPA, 40 CFR Part 63, as amended in the Federal Register through [~~November 30, 2006~~] January 31, 2009 are hereby incorporated into this part (20.2.82 NMAC).

[Rn, 20 NMAC 2.82.7, 08/14/98; A, 08/14/98, 09/08/99; 20.2.82.8 NMAC - Rn 20 NMAC 2.82.106 & A, 06/23/00; A, 02/18/02; A, 06/13/03; A, 06/08/07; A, 08/17/09]

**20.2.82.11 DOCUMENTS :** Documents incorporated and cited in this part may be viewed at the New Mexico environment department, air quality bureau, [~~2044 Galisteo, Santa Fe, NM 87502~~] 1301 Siler Road, Building B, Santa Fe NM, 87507.

[08/14/98; 20.2.82.11 NMAC - Rn, 20 NMAC 2.82.110 06/23/00; A, 08/17/09]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

This is an amendment to 19.30.14 NMAC, Sections 7, 8, 9, 10 and 11, effective July 31, 2009.

**19.30.14.7 DEFINITIONS:**

**A. "Department"** shall mean the New Mexico department of game and fish.

**B. "Director"** shall mean the director of the New Mexico department of game and fish.

**C. "Warning tag"** as used herein, shall mean a document issued by the department or other state or federal agency that prevents a conveyance or equipment from entering into a water body until being properly decontaminated or otherwise approved for [re-enter] re-entry.

**D. "Impound"** shall mean to detain or subject to temporary control of the state a conveyance or equipment until the owner or person in control thereof shall meet all conditions for release of such conveyance or equipment.

[19.30.14.7 NMAC - N/E, 05-29-2009; A, 07-31-2009]

**19.30.14.8 WARNING TAG:** The director [of the department] shall prescribe and procure the printing of warning tags to be used for the state to identify any conveyance or equipment known or believed to contain an aquatic invasive species[;] or a conveyance or equipment leaving an infested water body without being decontaminated.

**A.** Any conveyance or equipment identified by trained personnel as known or believed to contain aquatic invasive species or leaving designated infested water shall have a warning tag immediately affixed to the hull.

**B.** Each warning tag shall be affixed on boats and other similar vessels within 12" of the boat number on the port (left) side only. In cases where no boat number is found the warning tag shall still be affixed in the same general location.

**C.** Each warning tag shall be individually affixed to all other conveyances and equipment in the most visible manner possible.

**D.** No warning tag may be removed except by trained personnel or a person or entity certified by the director and only if the respective personnel, person or entity is acting in their official capacity and has inspected the conveyance or equipment, satisfied that proper decontamination or elimination of aquatic invasive species has occurred.

[19.30.14.8 NMAC - N/E, 05-29-2009; A, 07-31-2009]

**19.30.14.9 IMPOUNDMENT OF CONVEYANCE OR EQUIPMENT:**

**A.** Any law enforcement officer may impound any conveyance or equipment [~~, if a warning tag is visible~~] if warning tagged and the conveyance or equipment is currently in or entering a water body.

**B.** Any law enforcement officer may impound any conveyance or equipment known or believed to contain aquatic invasive species if such conveyance or equipment is currently in a water body or the person operating or in control of such conveyance or equipment fails to follow the enforcement officer's command to immediately prevent such from entering or remaining in a water body.

**C.** A warning tag shall be immediately affixed to any conveyance or equipment impounded pursuant to the provision above.

**D.** Any impounded conveyance or equipment shall only be released from impoundment:

(1) upon receipt of satisfactory proof that decontamination requirements as prescribed by the director have been met; or

(2) upon receipt of a conditional release from the director wherein the owner or person responsible for the conveyance or equipment agrees to the specific terms and conditions that require immediate decontamination followed by an inspection to verify decontamination has occurred.

**E.** It shall be the responsibility of the owner of any conveyance or equipment impounded to pay all costs, including storage fees, decontamination charges and towing associated with the impoundment and to reimburse any agency that incurs expenditures for the [~~same~~] impoundment.

[19.30.14.9 NMAC - N/E, 05-29-2009; A, 07-31-2009]

**19.30.14.10 [DIRECTOR'S DECLARATION:**

**A.** ~~The provisions of this rule shall apply to any species declared by the director as an aquatic invasive species.~~

**B.** ~~The provisions of this rule shall apply to any water body declared by the director as an infested water body.]~~

**LIMITED TRANSPORT:** The provisions of paragraph G. (1) of House Bill 467, 2009 regular session shall not apply to any contractor with the department or the energy, minerals and natural resources department, or state or federal agencies or their employees, while performing their duties or contractual obligations when temporarily having in their custody AIS for monitoring or transporting for purposes of testing, decontamination or disposal. The department may take temporary custody of

a contaminated conveyance or equipment and authorize its owner to transport to a designated location for decontamination.

[19.30.14.10 NMAC - N/E, 05-29-2009; Repealed, 07-31-2009; 19.30.14.10 NMAC - N, 07-31-2009]

**19.30.14.11 WAIVER AND**

**RELEASE OF LIABILITY:** Prior to being eligible for decontamination by the state or its designee the owner or person in control of a warning tagged conveyance or equipment shall sign and deliver to the department a release of liability in a form approved by the director.

[19.30.14.11 NMAC - N, 07-31-2009]

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

**This is an amendment to 8.102.100 NMAC section 7; effective 08/01/2009.**

**8.102.100.7 DEFINITIONS:**

**A. Definitions A-L:**

(1) **Applicant:** means person applying for cash assistance on behalf of a benefit group.

(2) **Application:** means a written request, on the appropriate ISD form, signed by or on behalf of an individual or family, for assistance.

(3) **Attendant:** means an individual needed in the home for medical, housekeeping, or child care reasons.

(4) **Authorized representative:** means an adult who is designated in writing by the applicant who is sufficiently knowledgeable about the applicant/ benefit group's circumstances to complete the application form correctly and represent the benefit group.

(5) **Basic needs:** include food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.

(6) **Beginning month:** means the first month for which a benefit group is certified after a lapse in certification of at least one calendar month in any project area. A benefit group is budgeted prospectively in a beginning month. A beginning month is also an initial month.

(7) **Benefit group:** means a pregnant woman or a group of people that includes a dependant child, all of that dependant child's full, half, step- or adopted siblings living with the dependant child's parent or relative within the fifth degree of relationship and the parent with whom the children live.

(8) **Benefit month:** means the month for which cash assistance benefits have been issued. This term is synonymous with issuance month defined below.

(9) **Budget month:** means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.

(10) **Capital gains:** means proceeds from the sale of capital goods or equipment.

(11) **Cash assistance:** means cash payments funded by the temporary assistance for needy families (TANF) block grant pursuant to the federal act and by state funds; or state funded cash assistance in the general assistance program.

(12) **Caretaker relative:** means an individual who assumes parental control over a child living in the home.

(13) **Certification:** means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.

(14) **Certification period:** means the time period assigned to a benefit group that is approved to receive cash assistance benefits. The certification period shall conform to calendar months.

(15) **Collateral contact:** means an individual or agency designated by the benefit group to provide information concerning eligibility.

(16) **Conciliation process:** means a 30- day process during which the department and the individual have the opportunity to address barriers to compliance or to correct whatever failure has generated the noncompliance determination. Prior to imposing the first sanction, if the department determines that a participant is not complying with the work participation requirement or child support requirements, the participant shall be required to enter into a conciliation process established by the department to address the noncompliance and to identify good cause for noncompliance or barriers to compliance. The conciliation process shall occur only once prior to the imposition of the sanction.

(17) **Date of admission:** means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

(18) **Date of entry:** means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

(19) **Department:** means the human services department.

(20) **Dependent child:** means a natural child, adopted child, stepchild or ward who is:

(a) seventeen years of age or younger; or

(b) eighteen years of age and is enrolled in high school; or

(c) between eighteen and twenty-two years of age and is receiving

special education services regulated by the public education department.

(21) **Director:** means the director of the income support division.

(22) **Diversions payment:** means a lump sum payment, which will enable the applicant to keep job or to accept a bona fide offer of employment.

(23) **Documentation:** means a written statement entered in the case record regarding the type of verification used and a summary of the information obtained to determine eligibility.

(24) **Earned income:** means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services.

(25) **Education works program (EWP):** provides state-funded cash assistance to a benefit group where at least one individual is enrolled in a post secondary institution. The applicant or recipient benefit group must be otherwise eligible for NMW cash assistance, but chooses to participate in the education works cash assistance program.

(26) **Emancipated:** means an individual under the age of 18 years who is legally recognized as no longer under parental control due to marriage or by a decision of a court.

(27) **Encumbrance:** means debt owed on property.

(28) **Equity value:** means the fair market value of property, less any encumbrances owed on the property.

(29) **Expedited services:** means the process by which benefit groups reporting little or no income or resources will be provided an opportunity to participate in the food stamp program.

(30) **Expungement:** means the permanent deletion of cash benefits from an EBT account that is stale.

(31) **Fair hearing:** means an administrative proceeding which a claimant or his representative may request if:

(a) an application is not acted on within a reasonable time after the filing of the application;

(b) an application is denied in whole or in part; or

(c) the cash assistance or services are modified, terminated or not provided.

(32) **Fair market value (FMV):** means the amount an item can be expected to sell for on the open market at the prevailing rate of return. For vehicles, the term FMV means the amount a dealer would buy a vehicle for wholesale or offer as a trade-in. It is not the amount the dealer would sell the vehicle for at retail.

(33) **Federal act:** means

the federal Social Security Act and rules promulgated pursuant to the Social Security Act.

(34) **Federal fiscal year:** October 1 through September 30 of the calendar year.

(35) **Federal means-tested public benefit:** means benefits from the food stamp program; the food assistance block grant programs in Puerto Rico, American Samoa and the commonwealth of the Northern Mariana Islands, supplemental security income (SSI), and the TANF block grant program under Title IV of the Social Security Act; medicaid and SCHIP.

(36) **Federal poverty guidelines:** means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services.

(37) **Five-year bar:** means the federally imposed prohibition on receiving federal means-tested public benefits for certain qualified aliens who entered the United States (U.S.) on or after August 22, 1996, until they continuously lived in the U.S. for five years. The count for the five year bar begins on the date the non-citizen attains qualified alien status.

(38) **Food Stamp Act:** the Food Stamp Act of 1977 (P.L. 95-113), and subsequent amendments.

(39) **General assistance (GA) benefit group:** means a benefit group in which all members receive cash assistance financed by state or local funds.

(40) **Government entity:** includes any federal, state, tribal or local unit of government as well as any non-government entity which receives public funds for the purpose of meeting the housing needs of its clientele.

(41) **Gross income:** means the total amount of income that a benefit group is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the benefit group, but diverted by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-employment income, and income excluded by federal law.

(42) **Gross income test (85 percent test):** for the benefit group to be eligible, the gross earned income of the benefit group must be less than 85 percent of the federal poverty guidelines as determined in 8.102.500.8 NMAC.

(43) **Head of household:** means the payee who is the responsible case head for the benefit group. The payee may be the parent, guardian, sole adult member, specified relative, pregnant woman, a GA

recipient, or caretaker.

(44) **Immigrant:** means a non-citizen or an alien within the meaning found in Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(45) **Immigration and naturalization service (INS):** a division of the U.S. department of justice.

(46) **Impairment:** means a condition resulting from anatomical, physiological, or psychological abnormalities evidenced by medically acceptable clinical and laboratory diagnostic techniques. Impairment has to do only with the medical, psychiatric, or both processes. To evaluate both physical and mental impairment, medical evidence consisting of signs, symptoms and objective findings must be obtained.

(47) **Individual development account program:** means an account created for eligible individuals which is established and maintained by an authorized financial institution to be used for individual development.

(48) **Individual development program:** means a program that establishes and administers individual development accounts and reserve accounts in order to provide financial training required by the division for account owners.

(49) **Ineligible alien:** means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

(50) **Initial month:** means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified following a break in participation of one calendar month or longer.

(51) **Inquiry:** means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application.

(52) **Institution of higher education:** means any education institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

(53) **Institution of post-secondary education:** means an institution of post-secondary education, any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located, regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an

educational program beyond secondary education in the state or a program of training to prepare students for gainful employment.

(54) **Irrevocable trust funds:** means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

(55) **Issuance month:** means the calendar month for which cash assistance is issued. In prospective budgeting, the budget and issuance months are the same.

(56) **Legal guardian:** means a judicially or parental created relationship between a child and appointed adult.

#### B. Definitions M-Z:

(1) **Medicaid:** medical assistance under title XIX of the Social Security Act, as amended.

(2) **Minor unmarried parent:** means an unmarried parent under the age of 18 years or is age 18 and enrolled in high school.

(3) **Month of approval:** means the month the action to approve a benefit group for cash assistance is taken.

(4) **Net income tests:** means for the benefit group to be eligible, the benefit group's net earned income must be less than the standard of need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

(5) **Net monthly income:** means gross non-exempt income minus the allowable deductions. It is the income figure used to determine eligibility and cash assistance benefit amount.

(6) **Non-benefit group members:** means persons residing with a benefit group who are specifically excluded by regulation from being included in the benefit group certification.

(7) **Non-citizen U.S. national:** means a person who is not an U.S. citizen but was born in an outlying possession of the U.S. on or after the date the U.S. acquired the possession, or a person whose parents are non-citizen U.S. nationals. A person who resides on one of the following U.S. island territories is a non-citizen U.S. national: American Samoa, Swains island or the Northern Mariana islands.

(8) **Notice of adverse action (NOAA):** means a written notice that includes a statement of the action the department has taken or intends to take, the reason for the action, the benefit group's right to a fair hearing, who to contact for additional information, the availability of continued benefits, and liability of the benefit group for any overissuance received if the hearing decision is adverse to the benefit group. This notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. Recipients have 13 days

from the mailing date of the notice to request a fair hearing and to have benefits restored to their previous level.

(9) **Overissuance:** means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

(10) **Parent:** means natural parent, adoptive parent, or stepparent [or legal guardian].

(11) **Participant:** means a recipient of cash assistance or services or a member of a benefit group who has reached the age of majority.

(12) **Payment standard:** means the amount of the cash assistance payment, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group's standard of need, and prior to reduction by sanction, recoupment or both.

(13) **Permanent total disability:** means an individual must have a physical or mental impairment, expected to last at least 12 months, that prevents gainful employment in any employment position within the individual's current employment capacity.

(14) **Person:** means an individual.

(15) **Project area:** means the geographic area designated to a county office that is responsible for the administration of the department's programs.

(16) **Prospective budgeting:** means the computation of a benefit group's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

(17) **Qualified alien status:** means a person lawfully admitted into the United States under INA guidelines as defined in PROWRA of 1996.

(18) **Real property:** means land, affixed improvements, and structures which include mobile homes. Grazing permits are also considered real property.

(19) **Recertification:** means a complete review of all conditions of eligibility which are subject to change and a redetermination of the amount of assistance payment for an additional period of time.

(20) **Recipient:** means a person receiving cash assistance benefits.

(21) **Refugee:** means a lawfully admitted individual granted conditional entry into the United States.

(22) **Regular reporting:** means a reporting requirement that requires a participating household to report a change within ten days of the date a change becomes known to the household.

(a) A financial change becomes known to the household when the household receives the first payment attributed to an income or resource change, or when the

first payment is made for a change in an allowable expense.

**(b)** A non-financial change including but not limited to, a change in household composition or a change in address, becomes known to the household on the date the change takes place.

**(23) Resource standard:** means the financial standard with respect to resources and property, \$2,000 for non-liquid resources and \$1500 for liquid resources.

**(24) Retrospective budgeting:** means the computation of a benefit group's benefits for an issuance month based on actual income and circumstances that existed in the previous month.

**(25) Resource planning session:** means a planning session to ascertain the applicant's immediate needs and to assess the applicant's financial and non-financial options.

**(26) School age:** means any dependent child who turns six years prior to September first and is under 18 years of age.

**(27) Secretary:** means the secretary of the department.

**(28) Self-employed:** means an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income.

**(29) Semiannual reporting:** means a reporting requirement that allows up to a 12-month certification period and requires a household to submit a report in the sixth month of a 12-month certification period or in the same month a food stamp semiannual report is due.

**(30) Services:** means child-care assistance; payment for employment-related transportation costs; job search assistance; employment counseling; employment; education and job training placement; one-time payment for necessary employment-related costs; case management; or other activities whose purpose is to assist transition into employment.

**(31) Shelter for battered women and children:** means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

**(32) Single-parent benefit group:** means any benefit group which does not include both parents of a child included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

**(33) Sponsor:** means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission to the United States as a permanent resident.

**(34) Sponsored alien:** means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Sections 101(a)(15) and 101(a)(2) of the Immigration and Nationality Act.

**(35) Stale:** means EBT accounts which have not been accessed, no withdrawal activity, by the household in the last 90 days from the most recent date of withdrawal.

**(36) Standard of need:** means an amount which is based on the number of individuals included in the benefit group and allows for financial standard and basic needs.

**(37) State-funded alien eligible:** means an alien who entered the United States on or after August 22, 1996, as one of the classes of aliens described in Subsection B of 8.102.410.10 NMAC, is eligible with respect to citizenship requirements for state-funded assistance under NMW and GA without regard to how long the alien has been residing in the United States.

**(38) Supplemental security income (SSI):** means monthly cash payments made under the authority of:

**(a)** Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;

**(b)** Section 1616(a) of the Social Security Act; or

**(c)** Section 212(a) of P.L. 93-66.

**(39) Temporary total disability:** means a physical or mental impairment, expected to last at least 30 days from date of determination, but less than one year from the date of application, that prevents gainful employment in any employment position within the individual's current employment capacity.

**(40) Two-parent benefit group:** means a benefit group which is considered to exist when both parents of any child included in the benefit group live in the home with the child and are included in the benefit group.

**(41) Term limits:** means NMW assistance (cash benefits and supportive services) is not provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime.

**(42) Unearned income:** means old age, survivors, and disability insurance payments (social security), railroad retirement benefits, veterans administration compensation or pension payments, military retirement and allotments, pensions, annuities and retirement benefits; lodge or fraternal benefits, any other public or private disability or retirement benefit or pension, shared shelter payments, Individual Indian Money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's

compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

**(43) Vehicle:** means a conveyance used for the transportation of individuals to or from employment, for the activities of daily living or for the transportation of goods; vehicle does not include any boat, trailer or mobile home used as the principal place of residence.

**(44) Verification:** means the use of third-party information or documentation to establish the accuracy of statements on the application.

**(45) Vocational education:** means an organized education program that is directly related to the preparation of a person for employment in a current or emerging occupation requiring training other than a baccalaureate or advance degree. Vocational education must be provided by an educational or training organization, such as a vocational-technical school, community college, or post-secondary institution or proprietary school.

**(46) Wage subsidy program:** means a subsidized employment opportunity through which a TANF cash assistance recipient is hired into full-time employment. [8.102.100.7 NMAC - N, 07/01/2001; A, 02/14/2002, A, 05/15/2003; A, 1/1/2004; A, 02/28/2007; A/E, 07/16/2007; A, 10/31/2007; A, 08/01/2009]

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## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

**This is an amendment to 8.102.400 NMAC sections 10 & 11; effective 08/01/2009.**

**8.102.400.10 MANDATORY MEMBERS:** Certain participants must be included in the dependent child assistance group, provided they meet the eligibility requirements.

**A.** Include the dependent child who is the natural child, adopted child, or stepchild who is 17 years of age or younger or who are 18 years of age and enrolled in high school.

**B.** Include all of that dependent child's full, half, step-siblings or adopted siblings living with the dependent child.

**C.** Include the natural parent, adoptive parent, or stepparent [or legal guardian] of the dependent child for whom assistance is being requested.

**D.** Include in the benefit group the parent of any child included in the budget group and the spouse of the parent, if living in the home.

[8.102.400.10 NMAC - Rp 8.102.400.10

NMAC, 07/01/2001; A, 11/15/2007; A, 08/01/2009]

**8.102.400.11 O P T I O N A L MEMBERS:** NMW dependent child benefit groups may include in the benefit group:

- A. any unrelated dependent child living in the home;
- B. the specified relative who is a caretaker and who is within the fifth degree of relationship and the specified relative's spouse, if the parent is not living in the home;
- C. any dependent child who is within the fifth degree of relationship and not full, half, step or adopted sibling of the dependent child whom the assistance is requested;
- D. the legal guardian(s) of the dependent child.

[8.102.400.11 NMAC - Rp 8.102.400.11 NMAC, 07/01/2001; A, 11/15/2007; A, 08/01/2009]

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

This is an amendment to 8.102.500 NMAC section 8; effective 08/01/2009.

**8.102.500.8 G E N E R A L REQUIREMENTS:**

**A. Need determination process:** Eligibility for NMW and EWP cash assistance based on need requires a finding that:

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

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

- (1) Income eligibility limits are revised and adjusted each year in October.
- (2) The gross income limit for

the size of the benefit group is as follows:

- (a) one person \$ 737
- (b) two persons \$ 992
- (c) three persons \$1,247
- (d) four persons \$1,502
- (e) five persons \$1,757
- (f) six persons \$2,012
- (g) seven persons \$2,267
- (h) eight persons \$2,522
- (i) add \$255 for each additional person.

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

- (1) one person \$ 867
- (2) two persons \$1,167
- (3) three persons \$1,467
- (4) four persons \$1,767
- (5) five persons \$2,067
- (6) six persons \$2,367
- (7) seven persons \$2,667
- (8) eight persons \$2,967
- (9) add \$300 for each additional person.

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

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

(3) The financial standard includes approximately \$91 per month for each participant in the benefit group.

(4) The standard of need for the NMW, and EWP cash assistance benefit group is:

- (a) one person \$ 266
- (b) two persons \$ 357
- (c) three persons \$ 447
- (d) four persons \$ 539
- (e) five persons \$ 630
- (f) six persons \$ 721
- (g) seven persons \$812
- (h) eight persons \$ 922
- (i) add \$91 for each additional person.

**E. Special needs:** (1) **Special clothing allowance:**

In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$100 for the months of August and January subject to the availability of state or federal funds.

- (a) For purposes of determining eligibility for the clothing allowance, a child

is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b) The clothing allowance shall be allowed for each school-age child who is included in the NMW, or EWP cash assistance benefit group for the months of August and January subject to the availability of state or federal funds.

(c) The clothing allowance is not allowed in determining eligibility for NMW, or EWP cash assistance.

(2) **Layette:** A one-time layette allowance of \$25 is allowed upon the birth of a child who is included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

(3) **Special circumstance:** Dependent upon the availability of funds and in accordance with the federal act, the HSD secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation. This cash assistance program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.

**F. Non-inclusion of legal guardian in benefit group:** Based on the availability of state and federal funds, the department may limit the eligibility of a benefit group due to the fact that a legal guardian is not included in the benefit group. [8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 11/15/2007; A, 01/01/2008; A/E, 10/01/2008; A, 08/01/2009]



## NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.3 NMAC Sections 8, 9, 10, 11, 12, 13 and 14, effective 8/1/09.

**16.20.3.8 ISSUANCE OF LICENSES:** The board may issue a license to an applicant who fulfills the following requirements:

- A. Answers the application in full.
- B. Have the application form notarized.
- C. Include a passport photograph taken within one (1) year prior to filing the application.
- D. Pays the non-refundable application fee in full.
- E. Provides the board with documentation of graduation from an accredited educational program, evidenced by:

(1) official college and/or universities transcripts from a program approved by the commission on accreditation in physical therapy education (CAPTE);

(2) if official transcripts are not available because of school closure, destroyed records, etc., the applicant must provide satisfactory evidence to the board of meeting the required physical therapy educational program by submitting a certificate of proficiency or a statement of official transcript that the curriculum has been completed as required by Section 61-12-10; the aforementioned documents must be signed by the director of the program or the registrar of the school; the board shall consider such documentation on a case-by-case basis:

(a) for applicants that graduated after January 1, 2002, documentation of graduation with a post-baccalaureate degree in physical therapy from an educational program accredited by CAPTE;

(b) for applicants that graduated prior to January 1, 2002, documentation of graduation with a baccalaureate degree in physical therapy or a certificate in physical therapy from an educational program accredited by CAPTE;

(c) for physical therapist assistant applicants, documentation of graduation from an accredited physical therapist assistant program accredited by CAPTE and approved by the board.

F. For foreign-educated applicants, an applicant must meet all requirements in, 16.20.9 NMAC, Education Criteria for Foreign-Educated Applicants.

G. Successful completion of the national physical therapy licensure examination (NPTE) and the jurisprudence exam (as specified in 16.20.2.8 NMAC). If

the applicant has previously taken the NPTE, the resulting scores shall be sent directly to the board from the testing contractor. Scores will not be accepted from individuals, other state boards, or organizations:

H. For applicants who have not practiced since his or her graduation from a physical therapy education program, or who have not practiced as a physical therapist or physical therapist assistant for a period of more than three (3) consecutive years, full licensure requires the following documentation:

(1) A completed application form as required by this section.

(2) Passing of the jurisprudence exam.

(3) Twenty (20) continuing education contact hours for each year the applicant was not practicing as a physical therapist or physical therapist assistant (coursework to be pre-approved by the board).

(4) The board may require the applicant to provide or demonstrate additional evidence of his or her competency to practice (e.g. passage of the national exam, APTA courses, university sponsored courses, supervision or mentorship).

I. Questions of felony convictions or misdemeanor convictions involving moral turpitude directly related to employment in the profession have to be satisfactorily resolved. The board may require proof that the person has been sufficiently rehabilitated to warrant the public trust if the prior conviction does not relate to employment in the profession. Proof of sufficient rehabilitation may include, but not limited to: certified proof of completion of probation or parole supervision, payment of fees, community service or any other court ordered sanction.

J. A licensee requesting a name change must submit proof of name change, the original license, and a duplicate license fee.]

### **16.20.3.8 APPLICATION FOR LICENSE.**

A. The board may issue a license to an applicant, other than one applying for licensure by endorsement, who fulfills the following requirements:

(1) completes the application;

(2) includes a passport-size photograph taken within the preceding twelve months and affixes it to the application;

(3) pays the non-refundable application fee in full as provided in Part 5;

(4) passes the jurisprudence exam (as specified in 16.20.2.10) and pays the non-refundable exam fee as provided in Part 5;

(5) official college or university transcripts from a program approved by the

commission on accreditation in physical therapy education (CAPTE) verifying one of the following:

(a) post-baccalaureate degree in physical therapy;

(b) associate degree in physical therapy assistant.

(6) if official transcripts are not available because of school closure or destruction of the records, e.g., the applicant must provide satisfactory evidence of meeting the required physical therapy educational program by submitting documentation that will be considered on a case-by-case basis by the board and pursuant to the following:

(a) for applicants who graduated after January 1, 2002, documentation of graduation with a post-baccalaureate degree in physical therapy from an educational program accredited by CAPTE;

(b) for applicants who graduated prior to January 1, 2002, documentation of graduation with a baccalaureate degree in physical therapy or a certificate in physical therapy from an educational program accredited by CAPTE;

(c) for physical therapist assistant applicants, documentation of graduation from an accredited physical therapist assistant program accredited by CAPTE and approved by the board;

(7) passes the national physical therapy licensure examination (NPTE) (as specified in 16.20.2.8 NMAC); if the applicant has previously taken the NPTE, the testing entity shall send the test scores directly to the board; test scores sent by individuals, organizations or other state boards will not be accepted.

B. For applicants who have not practiced since graduating from a physical therapy education program, or who have not practiced as a physical therapist or physical therapist assistant for a period of more than three (3) consecutive years, full licensure requires fulfilling the following requirements:

(1) satisfactory completion of all application requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC;

(2) provides proof of having taken fifteen (15) continuing education contact hours for each year the applicant was not practicing as a physical therapist or physical therapist assistant (coursework to be pre-approved by the board);

(3) provides evidence of additional competency to practice as required by the board.

C. Felony or misdemeanor convictions involving moral turpitude directly related to employment in the profession have to be satisfactorily resolved. The board may require proof that the person has been sufficiently rehabilitated to warrant

the public trust if the prior conviction does not relate to employment in the profession. Proof of sufficient rehabilitation may include, but is not limited to: certified proof of completion of probation or parole supervision, payment of fees, community service or any other court ordered sanction.

D. A licensee requesting a name change must submit proof of name change, the original license and a replacement license fee.

E. Foreign educated applicants must meet all requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC as well as those requirements listed in 16.20.9 NMAC.

[16.20.3.8 NMAC - Rp, 16.20.3.8 NMAC, 11-01-04; A, 03-02-06; A, 1-12-08; A, 8/1/09]

### **16.20.3.9 B I E N N I A L LICENSING AS OF AUGUST 2009 FOR NEW APPLICANTS:**

A. Initial Licensure:

(1) for an applicant whose first physical therapy or physical therapist assistant license is issued between August 1, 2009, and January 31, 2010, that license will be valid until February 1, 2011;

(2) for an applicant whose first physical therapy or physical therapist license is issued between February 1, 2010, and July 31, 2010, that license will be valid until February 1, 2012;

(3) no license will be issued for a period exceeding 24 months;

(4) this section expires on July 31, 2010.

B. License renewals will be done in accordance with the requirements set forth in 16.20.8 NMAC and 16.20.5 NMAC. [16.20.3.9 NMAC - Rp, 16.20.3.9 NMAC, 11-01-04; A, 03-02-06; A, 1-12-08; 16.20.3.9 NMAC - N, 8/1/09]

### **~~16.20.3.9~~ 16.20.3.10 REINSTATEMENT OF LICENSURE:**

A. To reinstate a New Mexico physical therapist or physical therapist assistant license that has lapsed for less than one year one must:

(1) complete the renewal form;  
(2) pay the late fee;  
(3) pay the current year renewal fee;

(4) submit proof of the required continuing education contact hours; and

(5) submit a notarized statement by the therapist that they have not practiced physical therapy in the state of New Mexico while their physical therapy license was expired.

B. To reinstate a New Mexico physical therapist or physical therapist assistant license that has lapsed for more than one (1) year, where there is evidence of continued practice with an

unrestricted license in another state one must:

(1) complete the initial application;

(2) pay the application fee;

(3) pay the jurisprudence exam fee;

(4) submit verification of all licenses from other U.S. jurisdictions; verifications may be sent to the board via regular mail, electronic mail, or facsimile; verifications must be signed and dated by an official of the agency licensing the applicant and must include the following:

(a) name and address of the applicant;

(b) license number and date of issuance;

(c) current status of the license;

(d) expiration date of the license;

(e) a statement as to whether the applicant was denied a license by the agency;

(f) a statement as to whether any disciplinary action is pending or has been taken against the applicant;

~~[(5) verification of employment from the applicant's most recent physical therapy employer must be included and submitted on the board approved verification of employment form;]~~

~~(5) submit verification of employment from the applicant's most recent physical therapy employer; the applicant must use the board approved verification of employment form;~~

(6) pass the jurisprudence examination; and

~~[(7) the continuing education requirement, whether one is enforced or not, in the state of practice during the period of lapse, will satisfy the New Mexico requirement;]~~

~~(7) meet the continuing education requirement in the state of practice during the period of lapse.~~

C. To reinstate a New Mexico physical therapist or physical therapist assistant license that has lapsed for more than one year, where there is no evidence of continued practice with an unrestricted license in another state one must:

(1) complete the initial application;

(2) pay the application fee;

(3) pay the jurisprudence exam fee;

(4) submit verification of all licenses from other U.S. jurisdictions; verifications may be sent to the board via regular mail, electronic mail, or facsimile; verifications must be signed and dated by an official of the agency licensing the applicant and must include the following:

(a) name and address of the applicant;

(b) license number and date of issuance;

(c) current status of the license;

(d) expiration date of the license;

(e) a statement as to whether the applicant was denied a license by the agency;

(f) a statement as to whether any disciplinary action is pending or has been taken against the applicant;

(5) pass the jurisprudence examination; and

(6) take continuing education hours in the amount of ~~[20 ceu's]~~ 15 CEU's for each year the New Mexico license had lapsed.

D. To reinstate a New Mexico physical therapist or physical therapist assistant license that has lapsed for more than three years, where there is no evidence of practice in another state one must:

(1) complete and submit a new application form satisfying all requirements for original licensure pursuant to 16.20.3.8 NMAC;

(2) pay the required late fees;

(3) the board may also require an additional course of study or continuing education, on a case-by-case basis, to ensure competence and fitness to practice.

[16.20.3.10 NMAC - Rp, 16.20.3.10 NMAC, 11-01-04; A, 03-02-06; A, 1-12-08; 16.20.3.10 NMAC - Rn, 16.20.3.9 NMAC & A, 8/1/09]

### **~~16.20.3.10~~ 16.20.3.11 LICENSURE BY ENDORSEMENT:**

A. A license may be issued to a physical therapist or physical therapist assistant who provides verification of all licenses from other U.S. jurisdictions, and meets all the requirements in 16.20.3.8 NMAC. The board will accept verifications via regular mail, electronic mail, or facsimile. Verifications must be signed and dated by an official of the agency licensing the applicant and must include the following:

(1) name and address of the applicant;

(2) license number and date of issuance;

(3) current status of the license;

(4) expiration date of the license;

(5) national examination scores received directly from the reporting jurisdiction;

(6) a statement as to whether the applicant was denied a license by the agency;

(7) a statement as to whether any disciplinary action is pending or has been taken against the applicant.

B. A license may be issued to a foreign-educated physical therapist who has a valid unrestricted license from another U.S. jurisdiction provided that the applicant

meets all of the requirements in 16.20.3.8 NMAC and 16.20.9 NMAC.

[16.20.3.11 NMAC - N/E, 11-16-2005; Repr, 03-02-06; A, 1-12-08; 16.20.3.11 NMAC - Rn, 16.20.3.10 NMAC, 8/1/09]

~~16.20.3.11~~ **16.20.3.12**  
**PROVISIONS FOR EMERGENCY LICENSURE:**

A. Physical therapists and physical therapist assistants currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster upon:

(1) completing a signed and notarized application accompanied by proof of identity, which may consist of a copy of a driver's license, passport or other photo identification issued by a governmental entity;

(2) submitting documentation of graduation from an accredited (CAPTE) educational program, proof of successful completion of the national physical therapy examination (NPTE) and jurisprudence exam as specified in 16.20.3.8 NMAC, of these rules (verification may be obtained by email, online verification from the testing agency or university, mail or by fax);

(3) verification of licenses held in other states and verification of employment if applicable (verification may be sent to the board by mail, fax or email, through online verification from the state of licensure);

(4) proof or documentation of residency and or employment in the area of the federal disaster.

B. The board may waive the following requirements for licensure:

(1) application fee's prorated for four months;

(2) the specific forms required under 16.20.3.8 if the applicant is unable to obtain documentation from the federal declared disaster areas.

C. Nothing in this section shall constitute a waiver of the requirements for licensure contained in the board's rules and regulations.

D. Licenses issued under (this emergency provision) shall expire four months following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before February 1, following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

[16.20.3.12 NMAC - N/E, 11-16-2005; Repr & A, 03-02-06; 16.20.3.12 NMAC - Rn, 16.20.3.11 NMAC, 8/1/09]

~~16.20.3.13~~ **16.20.3.13** E M E R G E N C Y  
**LICENSURE TERMINATION:**

A. The emergency license shall terminate upon the following circumstances:

(1) the issuance of a permanent license under 16.20.3.8 NMAC; or

(2) proof that the emergency license holder has engaged in fraud, deceit, misrepresentation in procuring or attempting to procure a license under this section.

B. Termination of an emergency license shall not preclude application for permanent licensure.

[16.20.3.13 NMAC - N, 03/06/09; 16.20.3.13 NMAC - Rn, 16.20.3.12 NMAC, 8/1/09]

~~16.20.3.13~~ **16.20.3.14** I N A C T I V E  
**LICENSE:**

A. A license in good standing may be transferred to inactive status upon written request to the board. Such request shall be made prior to the expiration of the license.

B. Until the inactive license has been reactivated, the licensee may not practice physical therapy in New Mexico unless employed by the federal government.

C. An annual inactive fee must be submitted to the board as set forth in 16.20.5.8 NMAC.

D. A licensee may reactivate the license upon submission of the following:

(1) the renewal form for the year in which the licensee wishes to reactivate;

(2) payment of the annual renewal fee for the year in which the licensee wishes to reactivate;

(3) proof of continuing education units for each year of inactive status;

(4) additional proof of competency as requested and prescribed by the board will be required after five (5) years of an inactive license;

(5) passage of the jurisprudence examination;

(6) completion of a verification of employment form for licensees that have practiced outside New Mexico while on inactive status.

[16.20.3.14 NMAC - Rn, 16.20.3.13 NMAC, 8/1/09]

**NEW MEXICO PHYSICAL THERAPY BOARD**

**This is an amendment to 16.20.4NMAC Sections 8 and 9, effective 8/1/09.**

**16.20.4.8 T E M P O R A R Y LICENSURES FOR U.S. TRAINED APPLICANTS:**

A. Upon receipt of an application form which evidences satisfactory completion of all application requirements for licensure as provided in Section 61-12-10 NMSA, of the Physical Therapy Act except passage of the NPTE, the registrar of the board may issue to the applicant a non-renewable temporary license to practice physical therapy in New Mexico.

B. Under no circumstance will the non-renewable temporary license be valid for a period longer than ~~[one year.]~~ 180 days.

C. Issuance of a temporary license may be denied if:

(1) the applicant has worked as a physical therapist or physical therapist assistant without a license in New Mexico;

(2) the applicant has violated the code of ethics of the American physical therapy association; or

(3) the applicant has failed the licensure examination in any state.

D. The holder of a temporary license must sit for the NPTE within 180 days after issuance of the temporary license. Failure to sit for the examination within 180 days, automatically voids the temporary license. Where the holder of the temporary license is a foreign national, the 180 days begin to run once the foreign national has entered the United States.

E. The holder of a temporary license may work only under the direct supervision of a New Mexico unrestricted licensed physical therapist who is on-site. The supervising physical therapist may not hold a temporary license. ~~[(See 16.20.6.7 NMAC.)]~~ The supervising physical therapist shall be licensed in New Mexico with a minimum of six months experience in a clinical setting. ~~[(See Subsection A of 16.20.6.7 NMAC.)]~~ Prior to the issuance of an applicant's temporary license, the supervising physical therapist shall file with the board a written statement assuming full responsibility for the temporary licensee's professional activities. Filing is effective upon receipt by the board. This statement shall remain in effect until licensure of the temporary licensee, or until expiration of the temporary license.

F. The temporary licensee may not provide physical therapy services until the temporary license is received and is posted in a conspicuous place at the

temporary licensee's principle place of practice.

G. No supervising physical therapist shall be responsible for the simultaneous supervision of more than two temporary licensees.

H. The supervising physical therapist shall co-sign all evaluations, progress notes, and discharge summaries written by the temporary licensee.

I. The temporary license shall state the name and address of the licensee's place of employment. Should the place of employment and/or the employer change during the period of temporary licensure, the temporary licensee must notify the board of any such change within five (5) work days of termination of employment. A new temporary supervisory form from the new employer will be required before a revised temporary license is issued. The board will issue a revised temporary license as per the fee schedule as set forth in 16.20.5 NMAC, for each issuance; however, the date of issue and expiration will remain the same as the first temporary license.

J. The temporary supervisory form may be obtained from the board office.  
[03-29-83; 02-19-88; 08-01-89; 09-03-92; 02-01-95; Rn & A, 16 NMAC 20.4, 10-15-97; 16.20.4.8 NMAC - Rn & A, 16 NMAC 20.4.8, 08-31-00; A, 03-02-06; A, 1-12-08; A, 8/1/09]

**16.20.4.9 TEMPORARY LICENSES FOR FOREIGN-TRAINED APPLICANTS:** Foreign-trained applicants for temporary licenses must fulfill all application requirements provided in [~~16.20.8~~] 16.20.3 NMAC, "Issuance of Licenses" and 16.20.9 NMAC, "Education Criteria for [~~Foreign-trained~~] Foreign-Educated Applicants", and subject to the requirements of 16.20.4.8 NMAC, "Temporary Licenses for U.S. Trained Applicants".

[03-29-83; 02-19-88; 08-01-89; 09-03-92; 06-04-94; 09-30-95; 11-30-95; Rn, 16 NMAC 20.5, 10-15-97, 10-15-97; 16.20.4.9 NMAC - Rn, 16 NMAC 20.4.9, 08-31-00; A, 03-02-06; A, 8/1/09]

## NEW MEXICO PHYSICAL THERAPY BOARD

**This is an amendment to 16.20.5 NMAC Section 8, effective 8/1/09.**

**16.20.5.8 SCHEDULE OF FEES:** The following fees shall be nonrefundable.

A. Application for full licensure:  
(1) physical therapist: [~~\$110.00~~] \$250.00;

(2) physical therapist assistant: [~~\$100.00~~] \$200.00.

B. Request for temporary license: [~~\$25.00~~] \$35.00; revised temporary license: \$10.00.

C. Jurisprudence exam: [~~\$10.00~~] \$25.00; applicants who fail to pass this exam will need to pay the fee for each subsequent exam taken.

D. National physical therapy examination: contact the board for the current fees set by the testing contractor for both physical therapists and physical therapist assistants.

E. [~~Annual~~] Biennial renewal:  
(1) physical therapist: [~~\$80.00~~] \$160.00;

(2) physical therapist assistant: [~~\$60.00~~] \$120.00.

F. Penalty for late renewal:  
(1) physical therapist: [~~\$80.00~~] \$250.00;

(2) physical therapist assistant: [~~\$60.00~~] \$200.00.

G. [~~Duplicate~~] Replacement license: \$25.00; a [~~duplicate~~] replacement license may be [~~requested in the event of loss of the original license or name change;~~] provided subject to administrative review.

H. Mailing list (paper copy): [~~\$200.00~~] \$250.00.

I. Electronic list: \$250.00.

J. Verification of licensure by endorsement: \$30.00.

K. Continuing education approval for course provider: [~~\$45.00~~] to be determined by board designee.

L. Copy charge for public records (per page): \$0.25.

M. Returned check charge (per check): \$25.00.

N. Other administrative [~~fees;~~] fees, i.e., credit card transactions, bank fees.

O. Inactive status fees:

(1) [~~initial~~] inactive status fee: \$20.00

[~~(2)~~] annual inactive status fee: \$20.00]

[~~(3)~~] (2) reactivation fee for physical therapists: [~~\$80.00~~] \$160.00;

[~~(4)~~] (3) reactivation fee for physical therapist assistants: [~~\$60.00~~] \$120.00.

[10-15-97; 16.20.5.8 NMAC - Rn & A, 16 NMAC 20.5.8, 08-31-00; A, 11-01-04; A, 03-02-06; A, 1-12-08; A, 8/1/09]

## NEW MEXICO PHYSICAL THERAPY BOARD

**This is an amendment to 16.20.7 NMAC Sections 7, 8, and 9, effective 08/1/09.**

**16.20.7.7 DEFINITIONS:** [RESERVED]

[A. ~~—"On-site supervision" means that a physical therapist shall continuously be on-site and actually present in the same building where the assistive personnel are performing services.~~

B. ~~—"Maintaining continued involvement" means that the supervising physical therapist or the physical therapist assistant shall personally contact the patient each treatment day to assess and monitor the patient's response to treatment. The licensed personnel shall sign all permanent records.~~ [10-15-97; 16.20.7.7 NMAC - Rn, 16 NMAC 20.7.7, 08-31-00; A, 1-12-08; A, 08/01/09]

**16.20.7.8 SUPERVISION OF LICENSED PERSONNEL:**

A. A physical therapist may not be responsible for the direction and supervision of more than two full-time physical therapist assistants, or two FTE's (full-time equivalency totaling eighty (80) work hours per week) requiring supervision, including temporary physical therapists, temporary physical therapist assistants, and licensed physical therapist assistants.

B. A physical therapist may supervise two or more physical therapist assistants provided combined FTE's do not exceed more than eighty (80) hours per week.

C. When supervising another licensee, a physical therapist planning an absence from work (vacation, leave of absence, continuing education) must arrange for another physical therapist to supervise the licensee in his place.

D. A physical therapist supervising a temporary licensee must notify the New Mexico physical therapy licensing board, in writing, when they are no longer responsible for supervision of a temporary licensee.

E. The referring physical therapist must hold documented conferences with the [PTA] physical therapist assistant regarding the patient. The [PT] physical therapist is responsible for determining the frequency of the conferences consistent with accepted standards of practice.

[10-15-97; 16.20.7.8 NMAC - Rn, 16 NMAC 20.7.8, 08-31-00; A, 03-02-06; A, 1-12-08; A, 08/01/09]

[~~16.20.7.9 SUPERVISION OF UNLICENSED ASSISTIVE PERSONNEL:~~ Each licensed FTE providing care-giving assistance may only

supervise two unlicensed FTE's (full-time equivalency, totaling eighty (80) work hours per week) of care-giving assistive personnel. Each licensed FTE may supervise more than two unlicensed FTE's, provided combined FTE's do not exceed more than eighty (80) hours per week.}]

#### **16.20.7.9 SUPERVISION OF UNLICENSED PHYSICAL THERAPY AIDES:**

A licensed physical therapist may only supervise unlicensed aides working as care-giving assistive personnel, provided the assistive personnel's combined full time equivalency does not exceed 80 hours per week.

[10-15-97; 16.20.7.9 NMAC - Rn, 16 NMAC 20.7.9, 08-31-00; A, 1-12-08; A, 08/01/09]

### **NEW MEXICO PHYSICAL THERAPY BOARD**

This is an amendment to 16.20.8 NMAC. Also included are a name change to Part 8; amendments to Sections 8 and 9; new Sections as 10 and 11; and the renumber of 16.20.8.9 NMAC to 16.20.8.12 NMAC, effective 08/01/09.

#### **PART 8 R E N E W A L REQUIREMENTS AND CONTINUING EDUCATION**

##### **16.20.8.8 CONTINUING EDUCATION AND RENEWAL REQUIREMENTS:**

A. Every licensed physical therapist and physical therapist assistant shall earn twenty (20) continuing education contact hours per year during each year of licensure. The first year during which 20 (twenty) contact hours must be earned is the year beginning on February 1 following license issuance and ending on the following January 31. Continuing education contact hours shall be prorated during the first year of licensure according to the month licensed as follows:

- (1) March: 18 contact hours
- (2) April: 17 contact hours
- (3) May: 15 contact hours
- (4) June: 13 contact hours
- (5) July: 12 contact hours
- (6) August: 10 contact hours
- (7) September: 8 contact hours
- (8) October: 6 contact hours
- (9) November: 5 contact hours
- (10) December: 3 contact hours.

B. Anyone licensed during the month of January will be issued a license through February 1 of the following year.

C. The licensee is responsible to retain all documentation of attendance for a minimum of three (3) years immediately preceding the current renewal.

D. The board office will mail a renewal notice to each licensee at

least 30 days prior to the expiration date of the license.

E. Each licensee is responsible for submitting the required renewal fee by the expiration date whether or not a renewal notice is received by the licensee and licensee shall not practice if license is expired.

F. All license renewals postmarked after February 1 will be subject to a late fee. (Refer to Part 6, Schedule of Fees.)

G. The board shall audit a percentage of renewal applications each year to verify the continuing education requirement. The licensee should maintain a file that includes the continuing education course documentation up to three (3) years.

(1) If a NOTICE OF AUDIT letter is received with the annual renewal form, evidence of continuing education hours earned during the last three (3) years must be submitted to the board as requested and as required in the Physical Therapy Act and by this rule (there has to be at least 60 hours within a three (3) year period).

(2) If the licensee is NOT AUDITED, the licensee will have to sign an affidavit attesting to the completion of the required hours of continuing education and all documentation of attendance and agendas should be retained by the licensee for a minimum of three (3) years immediately preceding the current renewal.

(3) The board reserves the right to audit continuing education attendance certificates whenever there is reasonable doubt the courses submitted, dates, or hours may be incorrect.

H. The board will allow a maximum of twenty (20) continuing education contact hours to be carried over into the next licensing year.

I. Credit will be given for programs attended between the renewal due date (January 15) and the license expiration date (February 1) providing that the program was not submitted for credit for the prior year.

J. Licensees serving in the armed forces reserve or national guard:

(1) The license of a physical therapist or physical therapist assistant who do not earn the required continuing education contact hours as provided in this section due to his or her call to active duty in the armed forces reserves or the New Mexico national guard, will not lapse for failure to earn continuing education hours.

(2) A physical therapist or physical therapist assistant who was or is called to active duty in the armed forces reserves or New Mexico national guard are required to provide official documentation that the licensee is a member of the armed forces reserves or the national guard and was or is being called to active duty:

(3) Upon the physical therapist or physical therapist assistant's return to civilian status, the licensee shall pay the license renewal fee and resume earning continuing education contact hours prorated according to the licensee's months of service as required to maintain his or her licensure as a physical therapist or physical therapist assistant.}]

#### **16.20.8.8 R E N E W A L REQUIREMENT:**

A. Renewal of license.  
(1) A licensed physical therapist and a physical therapist assistant shall apply for license renewal and pay the renewal fee as set forth in 16.20.5 NMAC, Schedule of Fees.

(2) Licenses that expire February 1, 2010 will be renewed according to the following schedule:

(a) if the last digit of the license number ends in an even number, the license will expire on February 1, 2012 and biennially thereafter;

(b) if the last digit of the license number ends in an odd number, the license will expire on February 1, 2011 and biennially thereafter; the renewal fee will be prorated.

B. The board office will mail a renewal notice to each licensee no later than December 15 at the address on record. Timely renewal of license is the full and complete responsibility of the licensee. If the renewal form is not received by the licensee within a reasonable time after December 15, it is the responsibility of the licensee to contact the board office. Non-receipt of the renewal form by the licensee will not exempt licensure expiration or late penalty fees.

C. Each licensee is responsible for submitting the required renewal fee by the expiration date whether or not a renewal notice is received by the licensee and licensee shall not practice if license is expired.

D. All license renewals postmarked after February 1 will be subject to a late fee. (Refer to 16.20.5 NMAC, Schedule of Fees.)

[10-15-97; 16.20.8.8 NMAC - Rn & A, 16 NMAC 20.8.8, 08-31-00; A, 02-15-04; A, 11-01-04; A, 03-02-06; A, 1-12-08; A, 08/01/09]

#### **16.20.8.9 CONTINUING EDUCATION REQUIREMENT:**

Continuing education is required for license renewal of physical therapists and physical therapist assistants in order to ensure that New Mexico licensees are providing the highest quality professional services.

A. Thirty (30) hours of continuing education will be required biennially. All continuing education hours

must be earned during the current two (2) year renewal period of February 1 through January 31.

B. The licensee is responsible to retain all documentation of attendance for a minimum of two (2) years immediately preceding the current renewal.

C. The board shall audit a percentage of renewal applications each year to verify the continuing education requirement. If the licensee is audited, proof of participation in or presentation of continuing education activity must be submitted along with a renewal form.

(1) If a **notice of audit** is received with the annual renewal notice, the licensee must submit evidence of continuing education hours earned during the current biennial renewal cycle to the board as requested and as required in the Physical Therapy Act and by this rule.

(2) If the licensee is **not audited**, the licensee will have to sign an affidavit attesting to the completion of the required hours of continuing education and all documentation of attendance and agendas should be retained by the licensee for a minimum of two (2) years immediately preceding the current renewal.

(3) The board reserves the right to audit continuing education attendance certificates whenever there is reasonable doubt the courses submitted, dates, or hours may be incorrect.

D. Licensees serving in the armed forces reserve or national guard.

(1) The license of a physical therapist or physical therapist assistant who does not earn the required continuing education contact hours as provided in this section due to his or her call to active duty in the armed forces reserves or the New Mexico national guard, will not lapse for failure to earn continuing education hours.

(2) A physical therapist or physical therapist assistant who was or is called to active duty in the armed forces reserves or New Mexico national guard is required to provide official documentation that the licensee is a member of the armed forces reserves or the national guard and was or is being called to active duty.

(3) Upon the physical therapist or physical therapist assistant's return to civilian status, the licensee shall pay the license renewal fee and resume earning continuing education contact hours prorated according to the licensee's months of service as required to maintain his or her licensure as a physical therapist or physical therapist assistant.

[10-15-97; 16.20.8.9 NMAC - Rn & A, 16 NMAC 20.8.9, 08-31-00; A, 02-15-04; A, 03-02-06; A, 1-12-08; 16.20.8.9 NMAC - Rn, 16.20.8.8 NMAC & A, 08/01/09]

#### **16.20.8.10 CONTINUING**

#### **EDUCATION CREDIT CARRYOVER:**

No carryover hours will be permitted. Thirty (30) continuing education hours must be earned during the current two (2) year renewal period of February 1 thru January 31.

[10-15-97; 16.20.8.10 NMAC - Rn & A, 16 NMAC 20.8.10, 08-31-00; Repealed, 03-02-06; 16.20.8.10 NMAC - N, 08/01/09]

#### **16.20.8.11 FAILURE TO MEET CONTINUING EDUCATION REQUIREMENTS:**

Failure to meet continuing education requirements will cause the board to refuse to renew the physical therapist or physical therapist assistant license in accordance with the Uniform Licensing Act.

[16.20.8.11 NMAC - N, 08/01/09]

#### **16.20.8.12 APPROVAL OF CONTINUING EDUCATION CONTACT HOURS:**

A. Programs must follow the criteria and guidelines established by the board as follows to receive continuing education credit on courses that have not received prior approval from the board:

(1) each program adheres to the board's American physical therapy association (APTA) definition for continuing professional education;

(2) each program addresses needs (problems and issues) faced by physical therapists and physical therapist assistants;

(3) each program has specific written learning outcomes (objectives) based on identified needs;

(4) each program is planned and conducted by qualified individuals;

(5) program content and instructional methods for each program are based on learning objectives; and

(6) participants demonstrate their attainment of the learning outcomes, (i.e., various methods can be used such as: questions, discussions, written oral exercises, problems, case studies, etc.); and

(7) the same program may be provided more than one time and at different locations within the calendar year in which the fee was paid without the payment of additional fees.

B. Prior approval of continuing education is not required; however, prior approval may be obtained upon request by the licensee.

C. Programs approved by the APTA will be automatically accepted by the board. Prior approval is not required.

D. Credit screening procedures as follows:

(1) the board or its designee, must approve each request for continuing education credit;

(2) the party requesting

approval will be informed of the board's determination within sixty (60) calendar days of receipt of the request; and

(3) an individual whose request has been denied may appear at the next board meeting following notice of denial to ask the board to reconsider its determination.

E. Final determination of values of continuing education will remain at the discretion of the board.

F. Programs considered appropriate for continuing education, include, but are not limited to those listed below.

(1) In the case of **university or college courses** taken for credit, provide the board with:

(a) name of course;

(b) number of course credit

hours;

(c) inclusive dates of attendance;

(d) name of instructor and

instructor's credentials;

(e) published course description

from college or university;

(f) completed transcript or grade

report with a passing grade of "C" or better;

(g) name of institution; and

(h) brief course summary

demonstrating the course's relationship to physical therapy; (maximum twenty (20) contact hours are awarded for each 3 credit course).

(2) **Physician in-service programs** or regular physical therapy staff in-service programs, provide the board with:

(a) name of program;

(b) number of hours spent in

program;

(c) inclusive dates of attendance;

(d) name of instructor or

supervisor of program; documentation of instructor background and expertise;

(e) name of institution;

(f) brief course summary

demonstrating the course's relationship to physical therapy; (maximum allowed per year is four (4) contact hours).

(3) **Management courses:** (Maximum allowed per year is ten (10) contact hours.)

(4) **Published works**, includes abstracting for professional journal, awarded on an individual basis, provide the board the following:

(a) provide a copy of the publication written which will be returned to the licensee upon request; and

(b) publication must be published in the year for which the contact hours are requested; (maximum allowed per year is twenty (20) contact hours).

(5) **Preparation and/or presentation of a workshop/in-service**, awarded on a case by case basis for any one given presentation, by providing the board the following:

(a) proof of preparation may be an outline, copy of handouts, copy of overheads or transparencies, and

(b) a copy of the agenda showing name of licensee as presenter; (maximum allowed per year is ten (10) contact hours);

(c) contact hours for the presenter will be calculated at three (3) times the number of hours of audience participation (e.g., a two hour workshop equals 6 hours for the presenter).

(6) **Certificate courses for an advanced specialty**, provide the board a certificate of completion signed by the program sponsor. (Maximum allowed per year is twenty (20) contact hours.)

(7) **Video tapes, cassettes, or satellite programs**, provide the board the following:

- (a) name of video;
- (b) name of instructor;
- (c) instructor's credentials;
- (d) number of minutes;
- (e) summary (subject of video, what was learned, and how it related to the physical therapy scope of practice or the licensee's position; and

(f) signature (the licensee's and a supervisor's); (maximum allowed per year is ten (10) contact hours).

(8) **Reading a book**, provide the board the following:

- (a) name of book;
- (b) author and author's credentials';
- (c) number of pages;
- (d) summary (subject of book, what was learned, and how it relates to the physical therapy scope of practice or the licensee's position; and

(e) signature (the licensee's and a supervisor's); (maximum allowed per book is two (2) contact hours); (maximum allowed per year is four (4) contact hours).

(9) **Conducting physical therapy research**, provide the board the following:

(a) title and description of research project, including brief timeline;

(b) names of other persons involved in project (i.e., co-investigators or supervisors);

(c) a brief statement indicating how participation in the project is related to the licensee's present or future position in the field of physical therapy;

(d) a brief statement indicating how participation in the project is benefiting the applicant's therapy skills or research skills; and

(e) provide a copy of the research report (if project has been completed); (if report is incomplete), credit will be allowed by providing the listed information or by receipt of the college transcript; (the board will determine the number of contact hours allowed).

(10) **Home study courses**, provide the board a copy of the certificate of completion provided by the program provider.

(11) **Internet courses**, provide the board a copy of the certificate of completion provided by the program provider.

(12) **Alternative medicine seminars**, provide the board a letter from the licensee explaining how the course relates to the physical therapy scope of practice. The board will approve these courses on a case by case basis.

(13) **Courses where certificates of attendance are not issued**, provide the board the following:

(a) a canceled check for the course registration fee (submit copy of front and back of check);

(b) proof of transportation (i.e., copy of plane ticket and hotel receipt); and

(c) list of courses attended and hours attended (i.e., copy descriptions of courses and hours from program agenda).

(14) **Credit for supervising a student in clinical education**, provide the board with a copy of the cover and signature page (with student's name blacked out to maintain confidentiality) of the student evaluation completed by the licensee-supervisor. One (1) continuing education contact hour may be approved for each forty (40) contact hours of supervision in clinical education. The maximum number of continuing education contact hours approved for supervision in clinical education is ten (10) contact hours per year. A licensee may receive credit for clinical supervision under this provision only one time throughout the licensee's practice as a physical therapist or physical therapist assistant in the state of New Mexico.

(15) **Residencies, Fellowships, and Examinations.**

(a) Successful completion of a specialty examination may be submitted for continuing education consideration. A list of the specialty examinations that qualify for continuing education will be maintained by the board. The maximum number of continuing education contact hours is thirty (30) per year.

(b) Successful completion of an American physical therapy association (APTA) credentialed residency or fellowship program may be submitted for continuing education consideration. The maximum number of continuing education contact hours is thirty (30) per year.

(c) Successful completion of an examination of the federation of state boards of physical therapy pertaining to continued competence may be submitted for continuing education consideration. The maximum number of continuing education contact hours is fifteen (15) per year.

G. **Ineligible activities** include, but are not limited to:

(1) orientation and in-service programs dealing with organizational structures, processes, or procedures;

(2) meetings for purposes of policy making;

(3) annual association, chapter, district, or organizational, and non-educational meetings;

(4) entertainment or recreational meetings or activities;

(5) committee meetings, holding of offices, serving as an organizational delegate;

(6) visiting exhibits;

(7) individual self-directed studies unless approved by APTA; and

(8) CPR education.

[16.20.8.12 NMAC - Rn, 16.20.8.9 NMAC, 08/01/09]

**NEW MEXICO PUBLIC REGULATION COMMISSION**  
INSURANCE DIVISION

This is an amendment to 13.14.9 NMAC Section 18, effective 8-1-09.

**13.14.9.18 PREMIUM RATES FOR ORIGINAL OWNER’S POLICIES:** The following schedule of premium rates for original owner’s policies shall be in effect from ~~July 1, 2008~~ August 1, 2009 until modified by the superintendent:

Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:
10,000	<del>[176]</del> 190	24,000	<del>[279]</del> 312	38,000	<del>[374]</del> 419
11,000	<del>[177]</del> 198	25,000	<del>[285]</del> 319	39,000	<del>[380]</del> 425
12,000	<del>[186]</del> 208	26,000	<del>[293]</del> 328	40,000	<del>[387]</del> 433
13,000	<del>[194]</del> 217	27,000	<del>[300]</del> 336	41,000	<del>[392]</del> 439
14,000	<del>[202]</del> 226	28,000	<del>[308]</del> 345	42,000	<del>[399]</del> 446
15,000	<del>[210]</del> 235	29,000	<del>[315]</del> 352	43,000	<del>[406]</del> 454
16,000	<del>[219]</del> 245	30,000	<del>[322]</del> 360	44,000	<del>[412]</del> 461
17,000	<del>[227]</del> 254	31,000	<del>[330]</del> 369	45,000	<del>[418]</del> 468
18,000	<del>[235]</del> 263	32,000	<del>[335]</del> 375	46,000	<del>[424]</del> 474
19,000	<del>[242]</del> 271	33,000	<del>[342]</del> 383	47,000	<del>[431]</del> 482
20,000	<del>[250]</del> 280	34,000	<del>[348]</del> 389	48,000	<del>[438]</del> 490
21,000	<del>[256]</del> 286	35,000	<del>[355]</del> 397	49,000	<del>[443]</del> 496
22,000	<del>[264]</del> 295	36,000	<del>[362]</del> 405	50,000	<del>[450]</del> 504
23,000	<del>[271]</del> 303	37,000	<del>[367]</del> 411		

For amounts of insurance (in thousands)	Portion of rate (per thousand) subject to agent commission, add	Agent r e t e n t i o n percentage	Additional rate per \$1000 to be collected on policy amounts in excess of \$10 million (solely for underwriter)	Total Charged to Consumer
over \$50 to \$100	\$ <del>[5.48]</del> 6.13	80%		\$ <del>[5.48]</del> 6.13
over \$100 to \$500	\$ <del>[4.31]</del> 4.82	80%		\$ <del>[4.31]</del> 4.82
over \$500 to \$2,000	\$ <del>[3.38]</del> 3.78	80%		\$ <del>[3.38]</del> 3.78
over \$2,000 to \$5,000	\$ <del>[2.72]</del> 3.04	75%		\$ <del>[2.72]</del> 3.04
over \$5,000 to \$10,000	\$ <del>[2.26]</del> 2.53	70%		\$ <del>[2.26]</del> 2.53
Over \$10,000 to \$25,000	\$ <del>[1.94]</del> 2.17	65%	\$ 0.25	\$ <del>[2.19]</del> 2.42
over \$25,000 to \$50,000	\$ <del>[1.69]</del> 1.89	60%	\$ 0.25	\$ <del>[1.94]</del> 2.14
over \$50,000	\$ <del>[1.35]</del> 1.51	50%	\$ 0.25	\$ <del>[1.60]</del> 1.76

[6-16-86...4-3-95; A, 5-1-99; 13.14.9.18 NMAC - Rn, 13 NMAC 14.9.8.11 & A, 5-15-00; A, 5-31-00; A, 8-1-00; A, 3-1-02; A, 7-1-03; A, 7-1-04; A, 7-1-05; A, 7-1-06; A, 9-1-07; A, 7-1-08; A, 8-1-09]

**NEW MEXICO REAL ESTATE COMMISSION**

This is an amendment to 16.61.3 NMAC, Section 8, effective August 17, 2009.

**16.61.3.8 EXAMINATION AND LICENSING REQUIREMENTS:**

The New Mexico real estate commission issues two types of real estate broker’s licenses; an associate broker’s license and a qualifying broker’s license. Both types of licenses are issued to individuals. There is no corporate real estate broker’s license in New Mexico. An associate broker can hold only one associate broker’s license and be affiliated

with one qualifying broker at a time. A qualifying broker can be the qualifying broker for multiple brokerages, but cannot be a qualifying broker for one brokerage and an associate broker for another brokerage at the same time. The requirements for obtaining both types of licenses are described below.

A. Associate broker’s license: prior to applying for an associate broker’s license, an applicant must pass the real estate broker’s examination prescribed by the commission.

B. Examination application.

(1) Applications to take the broker’s examination are made directly to

the commission’s examination contractor on a form prescribed by the commission and provided by the contractor in a candidate information bulletin. Along with the application form, an applicant must submit certificates of completion of commission-approved thirty (30) hour pre-licensing courses in real estate principles and practice, real estate law, and broker basics completed within three years immediately preceding the candidate’s application to take the examination.

(2) Exam candidates currently licensed as real estate salespersons or brokers in other states or jurisdictions will be exempted from completing the real estate principles and practice and real estate law



courses in New Mexico if they can provide a certified license history from their resident licensing jurisdiction documenting that they have completed these courses or their equivalent.

(3) Except in a case of a license applicant from a state or jurisdiction with which the New Mexico real estate commission has a written license recognition agreement, an exam applicant cannot be exempted from completing the commission-approved thirty (30) hour broker basics course.

(4) License applicants currently licensed by state or jurisdiction with which the commission has a written license recognition agreement are not required to take any of the prescribed pre-licensing courses or take either portion of the broker's examination to be eligible to apply for a New Mexico broker's license.

(5) Exam applicants exempted from taking the real estate principles and practice and real estate law courses by virtue of having a current real estate broker's license in another state shall attach to their examination application a letter of pre-licensing education waiver from the commission and a certificate of completion of the thirty (30) hour broker basics course.

(6) All other applicants for the examination shall attach to their license examination application certificates documenting completion of one thirty (30) hour pre-licensing course each in real estate principles and practice, real estate law, and broker basics.

(7) At the time of making application to take the examination, applicants shall pay to the commission's examination contractor a non-refundable fee not to exceed \$95.

(8) Applicants are required to pass both the state and national portions of the examination with a minimum score of 75 no later than ninety (90) calendar days after the first time they took the examination. Applicants failing to pass both portions of the examination within this time frame will be required to re-take and pass both portions of the examination before being eligible to apply for a broker's license.

C. License application.

(1) Upon passing both portions of the New Mexico real estate broker's examination, an individual has six months to apply for an associate broker's license on the application prescribed by the commission.

(2) An individual who fails to apply for an associate broker's license within six months of having passed both portions of the broker's examination shall be required to re-take both portions of the examination, unless he/she provides in writing to the commission a reasonable explanation for why he/she was unable to meet the six month deadline.

(3) An applicant for an associate broker's license shall be a legal resident of the United States and have reached the age of majority in New Mexico or in the state in which the applicant resides.

(4) Along with the license application form prescribed by the commission, the applicant must submit a written score report provided by the examination contractor documenting that he/she has passed both portions of the examination with a minimum score of 75, a completed arrest record check from the New Mexico department of public safety or the equivalent agency in their state of residence, a certificate of insurance documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in part 5 of the commission rules, and a non-refundable license application fee not to exceed \$270.

D. Qualifying broker's license examination: there is no separate qualifying broker's examination.

E. License application.

(1) Before being issued a qualifying broker's license, an applicant must document that their associate broker's or equivalent license has been on active status with a real estate brokerage for two of the last five years immediately preceding their application to become a qualifying broker, and must provide a certificate of completion of the commission-approved thirty (30) hour brokerage office administration course. Applicants who can document that they were New Mexico qualifying broker's on or before December 31, 2005 are not subject to those requirements and may regain qualifying broker status by filling a trade name registration form and paying the trade name registration fee to the commission.

(2) Brokers who were salespersons on January 1, 2006 when the license law was amended to eliminate the salesperson category and were converted to associate broker status, shall in addition to meeting the requirements in the preceding section, document that they have met the requirements for and passed the associate broker's examination prior to being issued a qualifying broker's license.

(3) An application for a New Mexico qualifying broker's license shall be made on the form prescribed by the commission and shall be accompanied by a completed arrest record check from the New Mexico department of public safety or the equivalent agency in their state of residence, a certificate documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in part 5 of the commission rules, and a non-refundable license application fee not to exceed \$270.

[16.61.3.8 NMAC - Rp, 16.61.3.8 NMAC,

12-31-2008; A, 8-17-2009]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.15 NMAC Section 10, effective August 17, 2009.

### 16.61.15.10 APPROVAL OF SPONSORS:

A. All sponsors wishing to offer commission approved courses for credit must be approved by the commission prior to accepting students.

B. Educational institutions, proprietary schools, professional organizations or businesses wishing to become commission approved sponsors must submit a completed sponsor application form with supporting documentation as required by the commission.

C. The commission will maintain a list of approved sponsors.

D. An approved sponsor shall comply with the following requirements:

(1) conduct all courses in accordance with commission rules and education policies, and in accordance with approved course content;

(2) prominently display the current certificate of sponsorship in the main office of the sponsor as registered with the commission;

(3) prepare and provide to each student who successfully completes a pre-licensing or continuing education course, a course completion certificate showing the student name, the course name, the course number, the credit hours earned and whether the course is in the education or training category;

(a) certify no candidate as successfully completing a pre-licensing real estate course unless the student has attended at least 75% of the classroom instruction and has passed a written examination at the conclusion of the course;

(b) certify no broker as successfully completing the mandatory course unless the broker has attended each credit hour and on or after January 1, 2007, passed a written examination at the conclusion of the course.

(c) certify no broker as successfully completing an approved continuing education course unless the broker has attended each credit hour;

(4) maintain current, complete, and accurate student records; these records shall include, but not be limited to, a record of payments made, a record of attendance, and a record of course work completed; records shall be maintained for a period of three years;

(5) permit the commission or

its representative access to classes being conducted, and make available to the commission, upon request, all information pertaining to the activities of the sponsor;

(6) advertise at all times in a manner free from misrepresentation, deception or fraud; all course advertising must include the name of the commission-approved sponsor, and must specify whether the course is in the education or training category;

(7) in the event a sponsor determines that it intends to cease sponsoring real estate classes it shall inform the commission in writing not less than 30 days prior to cessation. The sponsor shall also inform the commission in writing of the plan for reimbursement and disposition of student fees for courses not completed by the date operations cease. The sponsor shall forward all student records to the commission for proper disposition; if the sponsor ceases operations while students are still enrolled who have not completed their program of study, the sponsor shall submit to the commission within thirty (30) days a list of students enrolled at the time of closure, the amount of tuition paid, the status of course work in progress, and all other student records;

(8) advise the commission within 30 days of changes in ownership, directorship, financial status, location or other pertinent information, and reapply for sponsorship in the event of change of majority ownership;

(9) at the end of each course, the sponsor shall collect from each student an evaluation that evaluates adherence to course content, the effectiveness of the instructor, and other prescribed criteria; the evaluation forms shall be maintained by the sponsor for not less than three years;

(10) renew sponsorship approval every three (3) years by submitting a sponsor renewal form to the commission;

(11) shall meet the requirements of the Americans with Disabilities Act and all other local, state and federal laws.

E. An affiliate of the National Association of REALTORS or other organizations that routinely and ordinarily offer courses in real estate practice and law, continuing education, or professional designations or accreditations for real estate brokers, shall have the right to apply for sponsor status.

(1) An individual sponsor shall be allowed to submit for approval not more than four (4) individual classes per year for continuing education credit without the intention of having the course be on the list of approved courses, in addition to classes leading to a designation. These classes must be approved by the ESC and the commission prior to presentation.

(2) The sponsor shall be required

to present the class for approval, and will be responsible for assuring that the program is presented as approved.

(3) Failure to assure that the class is delivered in accordance with the approved outline and materials, shall result in loss of sponsorship status and revocation of continuing education credit.

F. Failure to comply with this rule may result in the loss of sponsor approval. The commission may investigate any claim of violation of this rule pursuant to 16.61.36.8 NMAC of the commission rules. [16.61.15.10 NMAC - Rp, 16.61.15.9 NMAC, 1-1-2007; A, 12-31-2008; A, 8-17-2009]

### NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 18.19.1 NMAC, Section 9, effective 7/31/09.

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, 7/31/09]

### NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 18.19.5 NMAC, Section 12, effective 7/31/09.

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, 7/31/09]

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## End of Adopted Rules 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
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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

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