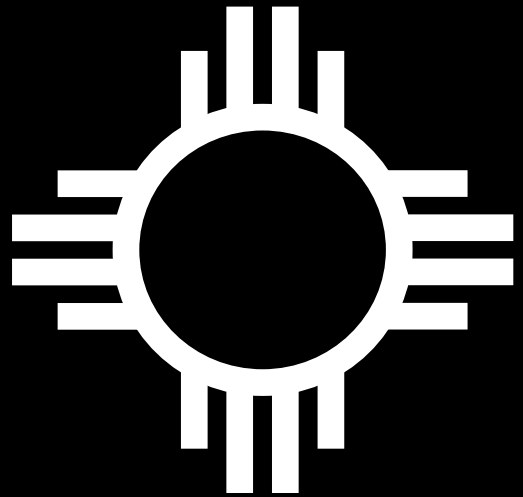


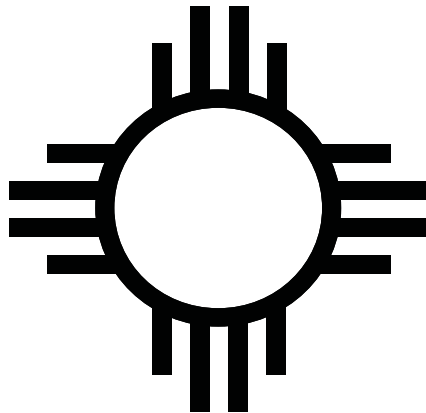
**NEW
MEXICO
REGISTER**



Volume XX
Issue Number 17
September 15, 2009

New Mexico Register

Volume XX, Issue Number 17
September 15, 2009



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

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2009

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New Mexico Register

Volume XX, Number 17

September 15, 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A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered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

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

Public Accountancy Board
Notice of Proposed Rulemaking

The New Mexico Public Accountancy Board ("Board") will convene a public hearing and regular Board meeting on Wednesday, October 21, 2009. The hearing and meeting will be held at 9:00 a.m. in the Conference Room of the Regulation and Licensing Department Building, 5200 Oakland NE, Albuquerque, New Mexico. Notice of the meeting is given in accordance with the Board's Open Meetings Policy. The hearing will be held for the purpose of affording members of the public the opportunity to offer comments on proposed amendments to existing Board rules.

The Board staff will recommend that the Board adopt amendments to the following rules:

NMAC NUMBER	RULE NAME
16.60.1 NMAC	General Provisions
16.60.3 NMAC	Licensure and Continuing Professional Educational Requirements

Notice of the hearing and Board meetings has been published in the New Mexico Register and in the Albuquerque Journal. Interested parties may access the proposed amendments on the Board's website at www.rld.state.nm.us/b&c/accountancy. Copies may also be obtained by contacting the Board office at (505) 222-9853. Written comments regarding the proposed amendments should be directed to Ms. Marie Aragon, Licensing Manager, Public Accountancy Board, 5200 Oakland NE, Suite D, Albuquerque, New Mexico 87113 or faxed to (505) 222-9855. Comments must be received by 5:00 p.m. on Monday, October 19, 2009; however the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting should contact the Board office at (505) 222-9852 by 5:00 p.m. on Wednesday, October 14, 2009.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

ERRATA NOTICE - CORRECTION OF HEARING DATE NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.7.3.7, 20.7.3.401, 20.7.3.402 AND 20.7.3.904 NMAC.

The hearing date and first paragraph in the notice for this rulemaking hearing published on August 31, 2009 in the New Mexico Register is hereby amended to state: The New Mexico Environmental Improvement Board (Board) will hold a public hearing beginning at 9:00 a.m. on November 2, 2009, and continuing thereafter as necessary at the New Mexico State Capitol Building, Room 317, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing location may change prior to November 2, and those interested in attending should check the EIB website: <http://www.nmenv.state.nm.us/oots/eib.htm> prior to the hearing. The purpose of the hearing is to consider proposed amendments to Liquid Waste Disposal Rules, 20.7.3.7, 20.7.3.401, 20.7.3.402

and 20.7.3.904 NMAC. The New Mexico Environment Department (NMED) is the proponent of the amendments to the rules. In addition, amendments to 20.7.3.904 have been proposed by the Professional On-Site Wastewater Re-use Association of New Mexico, Inc., and Mr. Link Summers.

In addition, the third paragraph should read: Amendments proposed to 20.7.3.904 NMAC by the Professional On-Site Wastewater Re-use Association of New Mexico, Inc. and Mr. Link Summers would assign the duty of adopting, developing administering and implementing the certification program to the Utility Operator Certification Program, would eliminate the classifications of Installer 1 and 2, would add a classification of "consultant", and would eliminate the Education Steering Committee.

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On **Thursday, September 24, 2009**, beginning at 9:00 a.m., at the **New Mexico Farm & Ranch Museum - Tortugas Room, 4100 Dripping Springs Road, Las Cruces, New Mexico 88011**, the State Game

Commission will meet in Public Session to hear and consider action as appropriate on the following: Updates and Miscellaneous; Revocations; Appeal Regarding Denial of Permit for the Importation of Live Elk; Discussion Regarding Prospective Re-Authorization of the Habitat Stamp; Final Department Recommendation on Prospective Changes to Game Management Units 6A and 6C; Presentation Regarding Elk Management in Game Management Unit 4; Closed Executive Session; Land Acquisition and Disposal Report; and General Public Comments (comments limited to 3 minutes).

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

- * Adoption of Final Proposed Amendments to the Use of Department of Game and Fish Lands Rule (19.34.3, NMAC) Rules;
- * Adoption of Amendments to the Deer (19.31.13, NMAC), and Hunting and Fishing License Application (19.31.3, NMAC) Rules;
- * Adoption of Amendments to the Barbary Sheep, Oryx, and Persian Ibex Rule (19.31.12, NMAC) to Clarify Certain Provisions; and
- * Adoption of Amendments to the Pronghorn Antelope and Javelina Rule

(19.31.15, NMAC), to Establish the 2010-2011 Pronghorn Hunting Season.

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 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 the Human Resources Division at (505) 476-8029. Please contact the Human Resources Division 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 also contact the Human Resources Division if a summary or other type of accessible form is needed.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico Human Services Department is proposing to restructure the General Assistance program regulations to consolidate, clarify and to permit changes to the standard of need based on limited state funding. The proposed changes align the regulations with the Human Services Department Secretary's statutory authority to comply with the Legislative and Executive appropriated budget for the General Assistance Program through the following options: 1) reduce the standard of need for general assistance payments; 2) deny new applications due to a lack of state funding; and 3) suspension of program. The Department proposes regulatory amendments consistent with chapter 27, article 2, section 7, of the Public Assistance Act, NMSA 1978.

The Department further proposes to define GA recipients and approval periods for benefits based on the new terms of Set Term General Assistance and Variable Term General Assistance.

In addition, the Department proposes to remove all references to the State Funded Cash Assistance Program for Qualified Aliens from the 8.106.400 NMAC and add them to 8.102.410 NMAC General Recipient

Requirements for the TANF cash assistance program. Further, the definition of an extension of the sixty month time limit due to hardship conditions has been changed to include limited employability.

A public hearing to receive testimony on these proposed regulations will be held on October 15, 2009 at 10:00 am.

The hearing will be held at the Behavioral Health Services Division Office at 37 Plaza La Prensa Santa Fe, NM 87507 in the Large Conference Room. Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling toll free 1-800-432-6217 or 505-827-7274.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the New Mexico Human Services Department toll free at 1-800-432-6217, in Santa Fe at 827-9454, or through the New Mexico Relay system, toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

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

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

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

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

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:00 a.m., on October 15, 2009, in the HSD Law Library at Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico. The subject of the hearing is Medicare Savings Programs.

The Human Services Department (HSD) is proposing to update the Special Low-Income Medicare Beneficiary (SLIMB) and the Qualified Individual (QI-1) Medicare Savings Programs, Category of Eligibility 045. Changes include: the removal of parental support as a condition of eligibility because it does not apply to Medicaid programs; citizenship and identity requirements; correction of citations and grammatical errors; and the removal of outdated material.

Interested persons may submit written comments no later than 5:00 p.m., October 15, 2009, to Pamela S. Hyde, J.D., Secretary, Human Services Department, PO Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

Copies of the Human Services Register are available for review on our Website at: www.hsd.state.nm.us/mad/registers or by sending a self-addressed stamped envelope to Medical Assistance Division, Long-Term Services and Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO STATE PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Santa Fe, New Mexico on Friday, November 13, 2009. The hearing will be held during the Board's regular business meeting beginning at 8:00 a.m., at the State Personnel Office, Willie Ortiz Building at 2600 Cerrillos Road, Santa Fe, New Mexico 87505.

The purpose of the Rule Hearing is to consider amending SPB Rules and Regulations related to 1.7.4 NMAC Pay.

A final agenda for the board meeting will be available at the board office on October 30, 2009.

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. October 15, 2009, to the board office, PO Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico, 87505, attention, Ken Giles. Copies of the proposed rules are available on request from the Board office at the address listed above, by phone (505) 476-7805, or on the Internet at www.spo.state.nm.us/ beginning September 15, 2009.

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 the Director at 2600 Cerrillos Road, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Director if a summary or other type of accessible format is needed.

NEW MEXICO BOARD OF PHARMACY

NEW MEXICO BOARD OF PHARMACY

REGULAR BOARD MEETING

NOTICE TO THE PUBLIC

The New Mexico Board of Pharmacy will convene on **October 19th & 20th, 2009** at 9:00 a.m. in the **Board of Pharmacy Conference Room located at 5200 Oakland Ave., NE, Albuquerque, NM** for the purpose of conducting a regular Board meeting.

Interested persons may contact Debra

Willhite, Administrative Secretary, 5200 Oakland Ave., NE, Suite A, Albuquerque, NM 87113, (505) 222-9830 or fax (505) 222-9845, e-mail debra.wilhite@state.nm.us to receive copies of the agenda, which will be available October 9, 2009. The Board may go into executive session at any time to discuss licensee and/or personnel matters. Anyone who needs special accommodations for the meeting should contact the Board office at (505) 222-9830 as soon as possible.

The agenda (tentative) will be available starting October 9, 2009 through the Board's website: www.rld.state.nm.us/pharmacy.

The Board will address:

Rule Hearings:

New Rule 16.19.33 NMAC Tele-Pharmacy And Remote Dispensing
16.19.6. NMAC Pharmacies
16.19.20 NMAC Controlled Substances

Hearings, Board Orders and Surrenders:

Approval of Applications:

Other Board Matters:

Public Requests:

*Executive Director's Report:
Case presentations*

NEW MEXICO REGULATION AND LICENSING DEPARTMENT MANUFACTURED HOUSING DIVISION

Cancellation of Notice - RLD Public Hearing and Manufactured Housing Committee Meeting on October 20, 2009.

Regulation and Licensing Department -
Manufactured Housing Division
LEGAL NOTIFICATION OF PUBLIC
HEARING

The Regulation and Licensing Department, Manufactured Housing Division, ("Division") hereby gives notice that the Division will conduct a public hearing to consider adopting amendments to New Mexico Administrative Code, Part 14.12.2 NMAC, Manufactured Housing.

The Hearing will be held at the Toney Anaya Building located at 2550 Cerrillos Road, Hearing Room 2, 2nd Floor, Santa Fe, New Mexico 87505 on Tuesday, October 20, 2009 and will begin at 9:00 a.m.

Copies of the proposed rules are available on the Manufactured Housing Division Website: www.rld.state.nm.us/MHD/index.htm or by sending a request to the Manufactured Housing Division, P.O. Box 25101, Santa Fe, New Mexico 87504. Phone (505) 476-4770.

The public is invited to attend and comment on the proposed amendments. Members of the Manufactured Housing Committee will serve as the Hearing Officer and will receive oral and written recommendations and comments regarding the proposed amendments. Written recommendations and comments, including draft language, may be submitted to the Division in advance of the meeting at the address provided below. These recommendations/comments must be provided no later than October 13, 2009, 5:00 p.m. in order to be included in the materials for the public hearing. All other recommendations/comments must be presented at the October 20, 2009 hearing.

Following the Public Hearing, the State of New Mexico Manufactured Housing Committee will convene a Regular Committee Meeting on Tuesday, October 20, 2009 immediately following the public hearing. The public is welcome to attend. Persons desiring to present their views may appear in person or send their written comments to the Manufactured Housing Division office at P.O. Box 25101, Santa Fe, New Mexico 87504.

The Committee may go into closed session during the meeting to discuss issues pertaining to issuance, suspension, renewal or revocation of a license or limited personnel matters as permitted by the Open Meetings Act. A final agenda for the meeting will be available at least 24 hours prior to

the meeting and may be obtained by making a written, verbal or faxed request to the Manufactured Housing Division, P.O. Box 25101, Santa Fe, New Mexico 87504. Phone (505) 476-4770 or Fax: (505) 476-4702.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other for of auxiliary aid or service to attend or participate in the meeting, please contact the Manufactured Housing Division office at (505) 476-4770, prior to the meeting but not later than October 16, 2009. Public documents, including the agenda and minutes, can be provided in various accessible formats.

Wayne Dotson, Director
Manufactured Housing Division
P.O. Box 25101
Santa Fe, New Mexico 87504

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
MANUFACTURED HOUSING
DIVISION**

Regulation and Licensing Department -
Manufactured Housing Division
LEGAL NOTIFICATION OF
PUBLIC HEARING AND REGULAR
MANUFACTURED HOUSING
COMMITTEE MEETING

The Regulation and Licensing Department, Manufactured Housing Division, ("Division") hereby gives notice that the Division will conduct a public hearing to consider adopting amendments to New Mexico Administrative Code, Part 14.12.2 NMAC, Manufactured Housing.

The Hearing will be held at the Construction Industries/Manufactured Housing Division building located at 5200 Oakland Ave. NE, Main Conference room, Albuquerque, New Mexico 87113 on Tuesday, November 17, 2009 and will begin at 9:30 a.m.

Copies of the proposed rules are available on the Manufactured Housing Division Website: www.rld.state.nm.us/MHD/index.htm or by sending a request to the Manufactured Housing Division, P.O. Box 25101, Santa Fe, New Mexico 87504. Phone (505) 476-4770.

The public is invited to attend and comment on the proposed amendments. Members of the Manufactured Housing Committee will serve as the Hearing Officer and will receive oral and written recommendations

and comments regarding the proposed amendments. Written recommendations and comments, including draft language, may be submitted to the Division in advance of the meeting at the address provided below. These recommendations/comments must be provided no later than November 10, 2009, 5:00 p.m. in order to be included in the materials for the public hearing. All other recommendations/comments must be presented at the November 17, 2009 hearing.

Following the Public Hearing, the State of New Mexico Manufactured Housing Committee will convene a Regular Committee Meeting on Tuesday, November 17, 2009 immediately following the public hearing. The public is welcome to attend. Persons desiring to present their views may appear in person or send their written comments to the Manufactured Housing Division office at P.O. Box 25101, Santa Fe, New Mexico 87504.

The Committee may go into closed session during the meeting to discuss issues pertaining to issuance, suspension, renewal or revocation of a license or limited personnel matters as permitted by the Open Meetings Act. A final agenda for the meeting will be available at least 24 hours prior to the meeting and may be obtained by making a written, verbal or faxed request to the Manufactured Housing Division, P.O. Box 25101, Santa Fe, New Mexico 87504. Phone (505) 476-4770 or Fax: (505) 476-4702.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other for of auxiliary aid or service to attend or participate in the meeting, please contact the Manufactured Housing Division office at (505) 476-4770, prior to the meeting but not later than November 13, 2009. Public documents, including the agenda and minutes, can be provided in various accessible formats.

Wayne Dotson, Director
Manufactured Housing Division
P.O. Box 25101
Santa Fe, New Mexico 87504

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
PRIVATE INVESTIGATIONS
ADVISORY BOARD**

The New Mexico Private Investigations Advisory Board will hold a Rule Hearing on October 6, 2009 and will convene at 10:00 am. Following the Rule Hearing the New

Mexico Private Investigations Advisory Board will convene a Regular Board Meeting to adopt the rules and take care of regular business. The meetings will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, 2nd floor, Rio Grande Room, Santa Fe, NM.

If you would like a copy of the proposed changes you may access the website at www.rld.state.nm.us after September 21, 2009 to get a draft copy. In order for Board members to review the comments in their meeting packets prior to the meeting, public comments must be received in writing no later than September 30, 2009. Persons wishing to present their comments at the hearing will need to bring (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4909 at least two weeks prior to the meeting or as soon as possible.

**NEW MEXICO TAXATION
AND REVENUE
DEPARTMENT**

**NEW MEXICO TAXATION AND
REVENUE DEPARTMENT**

**NOTICE OF HEARING AND
PROPOSED RULES**

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

Native American Veterans' Income Tax Settlement Fund

3.3.2.11 NMAC Section 7-2H-3 NMSA 1978
(Claims for Settlement Payments from the Native American Veterans' Income Tax Settlement Fund)

This proposal was placed on file in the Office of the Secretary on September 1, 2009. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposal, if filed, will be filed as required by law on or about November 13, 2009.

A public hearing will be held on the proposal on Thursday, October 22, 2009, at 9:30 a.m. in the 1st floor auditorium of the Harold Runnels Bldg., 1190 St. Francis

Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before October 22, 2009.

3.3.2.11 CLAIMS FOR SETTLEMENT PAYMENTS FROM THE NATIVE AMERICAN VETERANS' INCOME TAX SETTLEMENT FUND

A. A claim for a settlement payment from the Native American veterans' income tax settlement fund may be made for any period of active duty in the armed forces of the United States during which the claimant or, where the claimant is a successor, the deceased veteran:

(1) was a member of a federally recognized Indian nation, tribe, or pueblo;

(2) was a resident within the boundaries of the Indian member's or the member's spouse's reservation or pueblo grant, or within the boundaries of lands held in trust by the United States for the benefit of the member or spouse or the member's or spouse's nation, tribe or pueblo; and

(3) had New Mexico personal income tax withheld from his or her active duty military pay, and the amount withheld:

(a) has not already been refunded to the claimant or the claimant's representative; and

(b) cannot be claimed as a refund by filing a New Mexico personal income tax return because the period for filing a refund has run under the applicable statute of limitations.

B. A claim for a settlement payment must provide the following substantiation of the claimant's or, where the claimant is a successor, the deceased veteran's, eligibility for the claim and the amount of the claim.

(1) **Active duty in the armed forces of the United States.** The claimant must provide a copy of *certificate of release or discharge from active duty* (DD Form 214) or other proof of service provided by the department of defense and approved by the department of veterans' service. If a claimant does not have a copy of his or her DD Form 214 or other proof of service, the claimant can request that the department of veterans' services request the claimant's DD Form 214 or other proof of service from the department of defense.

(2) **Status as a Native American.** The claimant must provide a statement signed by the claimant that the claimant or, where the claimant is a successor, the deceased veteran was a member of a

federally recognized Indian nation, tribe, or pueblo during the period(s) of his or her active duty in the armed forces of the United States.

(3) **Domicile on tribal land during period(s) of active duty.** The claimant must substantiate domicile on tribal land (as described in Paragraph (2) of Subsection A above) during the period(s) any New Mexico personal income tax was withheld from active duty military pay. If the address shown on the DD Form 214 or other proof of service is on the claimant's tribal land, the claimant's or deceased veteran's DD Form 214 is sufficient substantiation. If the address shown on the claimant's or deceased veteran's DD Form 214 or other proof of service is not on tribal land, or the claimant cannot establish that the address is on tribal land, the claimant must provide a statement signed by the claimant that the claimant or deceased veteran was domiciled on tribal land during the period(s) any New Mexico personal income tax was withheld from active duty military pay; the statement must provide the claimant's or deceased veteran's address on the tribal land for each period and an official designated by the nation, tribe, or pueblo must attest that each address is on tribal land.

(a) For the purposes of this regulation, "domicile" means a place where an individual has a true fixed home and is a permanent establishment to which the individual intends to return after an absence. Every individual has a domicile somewhere, and each individual has only one domicile at a time. Once established, domicile does not change until the individual moves to a new location with the bona fide intention of making that location his or her permanent home. No change in domicile results when an individual leaves the tribal land if the individual's intent is to stay away only for a limited time, no matter how long.

(b) Examples:

(i) G is a Native American who lives and works on his tribe's pueblo in New Mexico. G joins the marines and is stationed outside New Mexico. G's domicile remains unchanged during his military service unless G moves to a new location with the intent to make that location his permanent home after leaving the military.

(ii) C is a Native American who lives on her tribe's pueblo in New Mexico. She leaves New Mexico to pursue a two-year master's degree program in Spain. She intends to return to her pueblo when she completes her studies. She remains domiciled on her pueblo while in Spain.

(4) **Amount of New Mexico personal income tax withheld from active duty military pay.** The claimant can substantiate this amount by providing copies of Form(s) W-2 covering active duty military

pay for the year(s) during which New Mexico personal income tax was withheld. If a claimant does not have copies of the applicable Form(s) W-2 for one or more of these years, the claimant can request that the taxation and revenue department obtain the claimant's or deceased veteran's Form(s) W-2 (or other withholding information in a form approved by taxation and revenue department) from the department of defense.

(5) **Amount of withholding has not already been refunded.** The claimant must provide a signed statement attesting that the claimant or deceased veteran did not receive a refund of the New Mexico personal income tax withheld for the year(s) for which the claimant is filing a claim for a settlement payment.

C. A claim for a settlement payment must be made by the eligible Native American veteran, or, in the case of a deceased veteran, by the veteran's surviving spouse, other successor or personal representative (an executor, administrator, or anyone in charge of the deceased veteran's property). If the claim is being made for a deceased veteran, the claim must be accompanied by a death certificate or other proof of death and by:

(1) if the claimant is a successor who is not the surviving spouse of the deceased veteran, a signed and dated notarized statement attesting that:

(a) the value of the entire probate estate of the decedent, wherever located, less liens and encumbrances, does not exceed thirty thousand dollars (\$30,000);

(b) at least 30 days have elapsed since the death of the decedent; and

(c) the successor is entitled to the settlement payment, or

(2) if the claimant is a personal representative, executor, or other representative authorized to administer the estate under applicable state law or the tribal law of the deceased veteran, a signed and dated notarized statement attesting that:

(a) he or she has been duly appointed as the personal representative, executor, or other representative of the estate of the decedent; and

(b) a copy of that appointment is attached;

(3) if the estate exceeds thirty thousand dollars (\$30,000), only the surviving spouse, a personal representative, an executor, or other representative of the estate as designated by applicable law or tradition may make a claim.

D. No claim for a settlement payment can be made for an amount of withholding that can be claimed as a refund by filing a New Mexico personal income tax return. A New Mexico personal income tax return can be filed by a Native American veteran to claim a refund by the later of:

(1) December 31 of the year three years after the veteran separated from military service, or

(2) December 31 of the year three years after the year in which New Mexico personal income tax was withheld from the active duty pay of the veteran.

E. All claims for settlement payments must be made with the department of veterans' services on the form prescribed by the taxation and revenue department. No claim for a settlement payment may be made after December 31, 2012.

F. Settlement payments will include interest on substantiated amounts of eligible withholding, computed on a daily basis from the date of withholding to the date a settlement warrant is issued at the rate specified for individuals pursuant to Section 6621 of the Internal Revenue Code of 1986. The date of withholding will be determined as follows:

(1) for withholding that occurred over an entire calendar year, one-twelfth of the amount withheld during the year will be considered to have been paid on the last day of each calendar month of the year; or

(2) for withholding that occurred over a period of less than an entire calendar year, the amount withheld during the period will be divided by the number of months (including partial months) in the period, and the resulting amount will be considered to have been paid on the last day of each calendar month during the period.

G. Eligible settlement payments will be made by the taxation and revenue department from the Native American veterans' income tax settlement fund. Settlement payments will be made on a "first come, first served" basis until the fund is exhausted or until no further claims are received.

H. Department of veterans' services must determine whether the claim meets the requirements of Paragraphs (1), (2) and (3) of Subsection B above and must act on a claim for settlement payment within 210 days of receipt of the claim. Claims not acted upon within 210 days are deemed denied.

I. A claimant whose claim is denied by department of veterans' services for failure to meet the requirements of Paragraphs (1), (2) and (3) of Subsection B above may dispute the denial by filing with the secretary of the department of veterans' services a written protest of the denial.

(1) The protest must contain the name and address of the claimant and must state with specificity the grounds for the protest. All evidence in support of the protest must also be submitted with the written protest. The secretary or designated hearing officer shall not consider any evidence that has not been submitted to the department of veterans' services at least 10 days prior to the

hearing.

(2) The written protest must be filed within 30 days of the date of mailing to the claimant by the department of veterans' services of the denial of the claim.

(3) Upon timely receipt of a protest, the department of veterans' services shall promptly set a date for hearing and on that date hear the protest. The hearing shall be scheduled no later than 90 days after the filing of the written protest. Notice of the hearing shall be mailed to the protestant no less than 15 days prior to the date of the hearing. The secretary of the department of veterans' services may designate a hearing officer to conduct the hearing. The claimants may appear at a hearing for themselves, may have the assistance of an advocate, or may be represented by an attorney. Hearings shall not be open to the public except upon request of the claimant and may be postponed or continued at the discretion of the secretary or hearing officer.

(4) The technical rules of evidence and the rules of civil procedure shall not apply in the hearings, but hearings shall be conducted so that claims are amply and fairly presented. It is the burden of the claimant to prove that the denial of the claim was improper.

(5) A complete record of the proceedings will be made. A written decision shall be issued within 30 days of the hearing.

J. If the department of veterans' services approves the claim, the claim will be sent to taxation and revenue department to determine whether the claim meets the requirements of Paragraphs (4) and (5) of Subsection B above. The taxation and revenue department must act on a claim within 210 days of the date that the claim is received by the taxation and revenue department from the department of veterans' services. Claims not acted upon within 210 days are deemed denied.

K. A claimant whose claim is denied in whole or in part by the taxation and revenue department for failure to meet the requirements of Paragraphs (4) and (5) of Subsection B above may dispute the denial by filing with the secretary of the taxation and revenue department a written protest of the denial.

(1) The protest must contain the name and address of the claimant and must state with specificity the grounds for the protest. All evidence in support of the protest must also be submitted with the written protest. The secretary or designated hearing officer shall not consider any evidence that has not been submitted to the taxation and revenue department at least 10 days prior to the hearing.

(2) The written protest must be filed within 30 days of the date of mailing to the claimant by the taxation and revenue department of the denial of the claim.

(3) Upon timely receipt of a protest, the taxation and revenue department shall promptly set a date for hearing and on that date hear the protest. The hearing shall be scheduled no later than 90 days after the filing of the written protest. Notice of the hearing shall be mailed to the protestant no less than 15 days prior to the date of the hearing. The secretary of the taxation and revenue department may designate a hearing officer to conduct the hearing. The claimants may appear at a hearing for themselves, may have the assistance of an advocate, or may be represented by an attorney. Hearings shall not be open to the public except upon request of the claimant and may be postponed or continued at the discretion of the secretary or hearing officer.

(4) The technical rules of evidence and the rules of civil procedure shall not apply in the hearings, but hearings shall be conducted so that claims are amply and fairly presented. It is the burden of the claimant to prove that the claimant or deceased veteran is entitled to a settlement payment.

(5) A complete record of the proceedings will be made. A written decision shall be issued within thirty (30) days of the hearing.

[3.3.2.11 NMAC - N, XXX]

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO OFFICE OF THE ATTORNEY GENERAL

**TITLE 12 T R A D E
, COMMERCE, AND BANKING
CHAPTER 2 C O N S U M E R
PROTECTION
PART 9 N E G O T I A T I N G A
SALE IN A LANGUAGE OTHER THAN
ENGLISH**

12.2.9.1 ISSUING AGENCY:
Office of the New Mexico Attorney General.
[12.2.9.1 NMAC - N, 9/15/09]

12.2.9.2 SCOPE: Transactions
that are negotiated in a language other than
English and are finalized in an English-
written agreement.
[12.2.9.2 NMAC - N, 9/15/09]

**12.2.9.3 S T A T U T O R Y
AUTHORITY:** The New Mexico Unfair
Practices Act, Section 57-12-1, et seq. NMSA
1978 and New Mexico False Advertising
Act, Section 57-15-1 et seq., NMSA 1978.
[12.2.9.3 NMAC - N, 9/15/09]

12.2.9.4 D U R A T I O N :
Permanent
[12.2.9.4 NMAC - N, 9/15/09]

12.2.9.5 EFFECTIVE DATE:
September 15, 2009, unless a later date is
cited at the end of a section.
[12.2.9.5 NMAC - N, 9/15/09]

12.2.9.6 OBJECTIVE: The
purpose of this rule is to deter unfair and
deceptive practices that result in economic
harm to consumers in transactions that are
negotiated in a language other than English
and are finalized in an English-written
agreement without a translation of the
material terms and conditions in the same
language used in the oral sales presentation
or negotiations.
[12.2.9.6 NMAC - N, 9/15/09]

12.2.9.7 DEFINITIONS:
A. "Trade and commerce"
includes the advertising, offering for sale,
distribution, lease, rental or loan of goods or
any services and any property and any other
article, commodity or thing of value, or in
the extension of credit or in the collection
of debts by a person, including any trade or
commerce directly or indirectly affecting the
people of this state.

B. "Language principally
used" means the language that is used to
discuss, present, or negotiate the material
terms and conditions of the sale regardless

of the partial use of some concepts, phrases
or words in the English Language during the
negotiations or sales presentation.
[12.2.9.7 NMAC - N, 9/15/09]

**12.2.9.8 UNFAIR OR
DECEPTIVE TRADE PRACTICE:** It
is an unfair and deceptive business trade
practice for any seller to fail to furnish
the buyer with a summary translation of
any receipt or contract pertaining to the
sale of goods or services at the time of its
execution that is in the same language as that
principally used in the oral sales presentation
or negotiations.
[12.2.9.8 NMAC - N, 9/15/09]

**12.2.9.9 REQUIREMENTS
WHEN ANOTHER LANGUAGE
OTHER THAN ENGLISH IS USED TO
SELL GOODS AND SERVICES:**

A. The summary
translation must contain the material terms
and conditions of the parties' agreement.

B. Sellers must also furnish
the English language receipt or contract.

C. If the language used
principally during the oral presentation or
negotiations is not a written language, the
seller or his representative must provide a
summary containing the material terms and
conditions in English but must also read
the material terms and conditions orally to
the consumer in language used during the
presentation or negotiations. The reader
must certify that he or she is fluent in that
language and that he or she accurately read
the summary translation to the buyer in the
language principally used during the oral
presentation or negotiation.
[12.2.9.9 NMAC - N, 9/15/09]

12.2.9.10 SEVERABILITY:
If any part of this rule is held invalid, the
remainder and the application thereof shall
not be affected.
[12.2.9.10 NMAC - N, 9/15/09]

HISTORY OF 12.2.9 NMAC:
[RESERVED]

NEW MEXICO OFFICE OF THE ATTORNEY GENERAL

**TITLE 12 T R A D E ,
COMMERCE, AND BANKING
CHAPTER 2 C O N S U M E R
PROTECTION
PART 11 A U T O M A T I C
RENEWAL OF SERVICE CONTRACTS**

12.2.11.1 ISSUING AGENCY:
Office of the New Mexico Attorney General.
[12.2.11.1 NMAC - N, 9/15/09]

12.2.11.2 SCOPE: Service
contracts which contain automatic renewal
clauses.
[12.2.11.2 NMAC - N, 9/15/09]

**12.2.11.3 S T A T U T O R Y
AUTHORITY:** The New Mexico Unfair
Practices Act, NMSA 1978, Section 57-12-
1, et seq. (1967).
[12.2.11.3 NMAC - N, 9/15/09]

12.2.11.4 D U R A T I O N :
Permanent.
[12.2.11.4 NMAC - N, 9/15/09]

12.2.11.5 EFFECTIVE DATE:
September 15, 2009, unless a later date is
cited at the end of a section.
[12.2.11.5 NMAC - N, 9/15/09]

12.2.11.6 OBJECTIVE: The
purpose of this rule is to deter unfair and
deceptive practices that result in economic
harm to consumers in transactions involving
service contracts which contain automatic
renewal clauses.
[12.2.11.6 NMAC - N, 9/15/09]

12.2.11.7 DEFINITIONS:
A. "Automatic renewal
provision" means a provision under which
a service contract is renewed for a specified
period if:

(1) the renewal causes the service
contract to continue in effect more than
two months after the end of the term of the
original contract; and

(2) the renewal is effective unless
the consumer gives notice to the seller of the
consumer's intention to terminate the service
contract.

B. "Seller" means a person
providing service, maintenance, or repair
under a service contract.

C. "Service contract"
means any contract for service, maintenance
or repair.
[12.2.11.7 NMAC - N, 9/15/09]

**12.2.11.8 A U T O M A T I C
CANCELLATION PROVISIONS:**

A. It is an unfair or deceptive
trade practice for any consumer service
contract to contain an automatic renewal
provision unless the contract provision is set
forth in a clear and conspicuous manner in
at least 10 point type and includes the notice
requirements and specific procedure by
which the consumer may cancel the contract
at the end of the initial contract term and the
terms of the automatic renewal in the event
that notice of cancellation is not given at the
end of the initial contract term;

B. It is an unfair or deceptive trade practice for any consumer service contract to contain an automatic renewal provision unless the seller provides the consumer written notice prior to the end of the initial term of the contract or prior to the end of any renewal term of the contract consistent with Subsection (C) of 12.2.11.8 NMAC herein.

C. It is an unfair and deceptive trade practice for any service contract that contains an automatic renewal provision to:

(1) fail to provide written notice to the consumer specifying the procedure by which the consumer may cancel the contract and set forth in a clear and conspicuous manner, in at least 10 point type, and served on the consumer either by certified mail or on the first page of a monthly statement at least 30 days before the last day on which the consumer may give notice of the consumer's intention to terminate the contract, but not sooner than 60 days before the last day on which the consumer may give notice;

(2) fail to allow a minimum of thirty (30) calendar days after the receipt of the seller's notice pursuant to Paragraph (1) of Subsection C of 12.2.11.8 NMAC herein for the consumer to give notice of the consumer's intent to terminate the contract at the end of the initial term or at the end of any additional renewal term;

(3) fail to honor a written notice sent via fax, U.S. mail, email or any other means upon which a consumer can reasonably rely to deliver such notice and postmarked, time stamped or otherwise electronically date stamped within the 30 calendar days provided for the consumer to give notice;

(4) fail to honor a written notice timely sent, mailed, emailed or otherwise transmitted in a manner upon which the consumer can reasonably rely to deliver such notice but received by the seller after the expiration of the notice period;

(5) fail to allow termination of the contract at the end of the initial term or at the end of any additional renewal term without additional cost or penalty.

[12.2.11.8 NMAC - N, 9/15/09]

12.2.11.9 SEVERABILITY: If any portion of this rule is held invalid, the remainder of the rule and application thereof shall remain unaffected.

[12.2.11.9 NMAC - N, 9/15/09]

HISTORY OF 12.2.11 NMAC:
[RESERVED]

NEW MEXICO ENVIRONMENT DEPARTMENT

This is an amendment to 20.2.89 NMAC, Sections 2, 3, 6, 7, 200, 201, 203 and 400 effective on 09/26/09.

20.2.89.2 SCOPE. All entities that ~~hold title to~~ have an interest in a qualified generating facility pursuant to NMSA 1978, [Section] Sections 7-9G-2, 7-2-18.25, and 7-2A-25.

[20.2.89.2 NMAC - N, 12/20/08; A, 09/26/09]

20.2.89.3 STATUTORY AUTHORITY. NMSA 1978, [Section] Sections 7-9G-2, 7-2-18.25, and 7-2A-25, and NMSA 1978, Section 62-6-28.

[20.2.89.3 NMAC - N, 12/20/08; A, 09/26/09]

20.2.89.6 OBJECTIVE . The objective of this part is to establish requirements for issuance of a certificate of eligibility for advanced energy tax credits pursuant to NMSA 1978, [Section] Sections 7-9G-2, 7-2-18.25, and 7-2A-25.

[20.2.89.6 NMAC - N, 12/20/08; A, 09/26/09]

20.2.89.7 DEFINITIONS. In addition to the terms defined in 20.2.2 NMAC, the following definitions shall apply to terms used in this part.

A. "Department" means the environment department.

B. "Entity" means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other association or a gas, water or electric utility owned or operated by a county or municipality.

C. "Geothermal electric generating facility" means a facility with a name-plate capacity of one megawatt or more that uses geothermal energy to generate electricity, including a facility that captures and provides geothermal energy to a preexisting electric generating facility using other fuels in part.

D. "Interest in a qualified generating facility" means title to a qualified generating facility; a leasehold interest in a qualified generating facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in a qualified generating facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership,

in a business that holds title to or a leasehold interest in a qualified generating facility.

E. "Name-plate capacity" means the maximum rated output of the facility measured as alternating current or the equivalent direct current measurement.

~~**B. "New solar thermal electric generating facility"**~~ means a solar thermal electric generating facility that begins construction no later than December 31, 2015.]

~~**[E] E. "Qualified generating facility"**~~ means a facility for which construction is anticipated to begin not later than December 31, 2015 and is:

(1) a [new] solar thermal electric generating facility that begins or began construction on or after July 1, 2007 and that may include an associated renewable energy storage facility; [or]

(2) a recycled energy project[-] if that facility begins or began construction on or after July 1, 2007;

(3) a solar photovoltaic electric generating facility that begins or began construction on or after July 1, 2009 and that may include an associated renewable energy storage facility; or

(4) a geothermal electric generating facility that begins or began construction on or after July 1, 2009.

~~**[D] G. "Recycled energy"**~~ means energy produced by a generation unit with a name-plate capacity of not more than 15 megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel.

~~**[E. "Recycled energy project"**~~ means an energy generating project using recycled energy that begins construction no later than December 31, 2015.]

[F] H. "Small business" means a business entity, including its affiliates, that is independently owned and operated and employs fifty or fewer full-time employees. In addition, "small business" does not include any source which may emit more than fifty (50) tons per year of any regulated air contaminant for which there is a national or New Mexico ambient air quality standard, or seventy-five (75) tons per year of all regulated air contaminants for which there are national or New Mexico ambient air quality standards; and any major source for hazardous air pollutants under 20.2.70 NMAC.

I. "Solar photovoltaic electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar photovoltaic energy to generate electricity.

[G] J. "Solar thermal electric generating facility" means an electric generating facility with a name-

plate capacity of one megawatt or more that utilizes solar energy conversion technologies that convert solar energy to electricity by heating a working fluid to power a turbine that drives a generator, including a facility that captures and provides solar energy to a preexisting electric generating facility using other fuels in part. Examples of these systems include, but are not limited to, central receiver systems, parabolic dish, and solar trough.

~~“(H. ————— “Title holder” or “entity(ies) that hold title” means a person who holds or will hold a financial interest in the qualified generating facility.]~~

[20.2.89.7 NMAC - N, 12/20/08; A, 09/26/09]

20.2.89.200 APPLICABILITY.

Any entity that ~~[holds title to]~~ has an interest in a qualified generating facility located in New Mexico may apply for a certificate of eligibility under this part. Only one certificate shall be granted to a qualified generating facility. If changes to the facility are planned or made that could result in the facility no longer meeting certification requirements as a qualified generating facility, the ~~[title holder]~~ entity that has an interest in a qualified generating facility shall apply to the department for a reevaluation of the certification under this part. A complete application including fees pursuant to section 20.2.89.400 NMAC shall be submitted with that application for reevaluation.

[20.2.89.200 NMAC - N, 12/20/08; A, 09/26/09]

20.2.89.201 APPLICATION REQUIREMENTS.

A. Entities that ~~[hold title to]~~ have an interest in a qualified generating facility may submit an application for a certificate of eligibility for an advanced energy tax credit.

B. All applications shall include all of the following items and information.

(1) Be filled out on the form(s) furnished by the department.

(2) State the applicant's name and address.

(3) Include a topographical map, at least as detailed as the 7.5 minute topographic quadrangle map published by the United States geological survey, showing the exact location and geographical coordinates of the proposed construction or installation of the facility or project.

(4) Include a full description of the process, including a process flow sheet, or, if the department so requires, layout and assembly drawings.

(5) All information relied upon by the applicant to support its position that the facility meets the criteria for a qualified generating facility.

(6) Contain other information requested by the department to determine whether the facility meets the criteria for a qualified generating facility.

(7) Be notarized and signed under oath or affirmation by ~~[the operator, the owner or an authorized representative,]~~ an entity that has an interest in the facility certifying, to the best of his or her knowledge, the truth of all information in the application and addenda, if any.

(8) Contain payment of any fees which are specified in ~~[20.2.89.300 NMAC]~~ 20.2.89.400 NMAC, payable at the time the application is submitted.

[20.2.89.201 NMAC - N, 12/20/08; A, 09/26/09]

20.2.89.203 CANCELLATION OF CERTIFICATION.

The department shall cancel a previously issued certification and notify the department of taxation and revenue if the department finds that the plans for the facility are changed, or the facility is changed, so that the facility no longer meets the requirements of this part as a qualified generating facility.

[20.2.89.203 NMAC - N, 12/20/08; A, 09/26/09]

20.2.89.400 FEES.

A. Fees for the review of ~~[application]~~ applications for certification shall be ~~[paid according to this fee schedule:~~

~~(1) For solar thermal electric generating facilities, the fee is \$1,000;~~

~~(2) For recycled energy projects, the fee is \$5,000.]~~ \$5,000 per application.

B. For sources that satisfy the definition of “small business” as defined in Subsection F of 20.2.89.7 NMAC, the permit fee determined by Subsection A of this section shall be divided by two.

C. Fees collected pursuant to this part shall be included with the application for certification. The department shall refuse to accept any application without inclusion of the fee.

D. All fees paid pursuant to this part shall be remitted in the form of a corporate or certified check or money order made payable to the environment department at the address specified on the application form. Upon receipt of the check, it shall be deposited in the “state air quality permit fund” established by NMSA 1978, 74-2-15 (1992).

E. All fees shall be paid in U.S. dollars.

F. Beginning on January 1, 2010, the fees referenced in this section shall be changed annually by the percentage, if any, of any annual increase in the consumer price index in accordance with Section 502(b)(3)(B)(v) of the federal Clean Air Act. [20.2.89.400 NMAC - N, 12/20/08; A, 09/26/09]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.4 NMAC, Sections, 11 and 12, effective September 15, 2009

19.31.4.11 DAILY BAG, POSSESSION LIMITS AND REQUIREMENTS OR CONDITIONS:

A. Trout

(1) Waters with reduced bag limit: No person shall fish waters regulated for reduced limits while having in excess of that limit in possession.

(2) Brown, rainbow, cutthroat, Gila, lake, Brook trout and Kokanee salmon:

(a) The daily bag limit shall be 5 trout and no more than 10 trout shall be in possession, unless otherwise specified in special trout waters, Paragraph (4) of Subsection A of 19.31.4.11 NMAC.

(b) The daily bag limit for cutthroat trout shall be 2 trout and no more than 2 cutthroat trout may in possession. Cutthroat trout are included in the bag and possession limits for trout explained in Subparagraph (a) of Paragraph (2) of Subsection A of 19.31.4.11 NMAC (above).

(c) The daily bag limit for lake trout shall be 2 trout and no more than 4 lake trout shall be in possession.

(3) Special Kokanee salmon season: During the special Kokanee salmon season, the daily bag limit shall be 12 Kokanee salmon in addition to the daily bag limit for trout, and no more than 24 Kokanee salmon may be possessed in addition to the possession limit for trout. It shall be unlawful to possess Kokanee salmon at Heron lake and Pine river during the closed Kokanee salmon season (October 1 through the second Thursday of November).

(4) Special trout waters - On certain waters, hereafter referred to as “Special Trout Waters”, the following exceptions shall apply:

(a) On those sections of the following waters the daily bag limit shall be 2 trout and no more than 2 trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached: In Rio Arriba county: all waters lying within or adjacent to the Little Chama valley ranch (Edward Sargent wildlife area) including the Rio Chamito, Sexton creek, and Rio Chama, excluding Nabor creek and Nabor lake; In Colfax county; the Shuree lakes on the Valle Vidal; In Taos county: a posted portion of the Rio Pueblo between the bridge at mile marker 55 on state hwy. 518 upstream approximately 1 mile to the Canon Tio Maes trailhead; In San Miguel county: an approximately 1-1/2 mile posted portion of

the Pecos river beginning approximately 1/2 mile above the confluence of the Mora river (Mora-Pecos) upstream to approximately 1/4 mile above the bridge crossing at Cowles; In Rio Arriba county: a posted portion of the Chama river approximately 2.9 miles within the boundaries of the Rio Chama wildlife and fishing area; In Rio Arriba county: a posted portion of the Rio de los Pinos from USFS Boundary 24 at the junction of forest road 284 and 87A, 2.5 miles upstream to the private property boundary; In Taos county: a posted portion of Red River from the confluence of Goose creek 1 mile upstream. In Catron county: Iron creek in the Gila wilderness upstream of the constructed waterfall barrier located in T12SR17WSec16NE. Every person angling for fish on this portion of Iron creek must be in possession of a Gila trout permit, issued in their name by the department or its designee. A photocopy, duplicate copy or computer printout of this permit will suffice as evidence of receiving such permit.

~~[(b) In San Juan county, in a posted portion of the San Juan river, from a point beginning approximately 1/4 mile downstream of Navajo dam and extending downstream 3.5 miles to the east side of section 16; the daily bag limit shall be 1 trout and no more than 1 trout shall be in possession except in the catch-and-release section. The angler must stop fishing in the section defined once the daily bag limit is reached.~~

~~[(c) (b) On those sections of the following waters every person must comply with any special requirements listed and no fish may be kept or held in possession while fishing in the posted portions of the following waters: In San Juan county: a posted portion of the San Juan river from Navajo dam downstream approximately [1/4 mile] 3.75 miles to the east side of section 16; In Sandoval county: a posted portion of the Rio Cebolla from the Seven Springs day use area upstream to its headwaters; In Sandoval county: a posted portion of the San Antonio river from the Baca location boundary downstream approximately 2.0 miles (T. 19 N., R. 03 E., S 16 and 20); In Sandoval county: a posted portion of the Rio Guadalupe from the Porter landing bridge downstream approximately 1.3 miles to Llano Loco Spring; In Taos county: a posted portion of the Rio Costilla from the Valle Vidal tract of the Carson national forest downstream for approximately 2.4 miles to the confluence of Latir creek; In Sierra county: the Rio las Animas within the Gila national forest, Black range ranger district; In Mora county: the Pecos river in the Pecos wilderness, above Pecos falls; In Rio Arriba county: Nabor creek and Nabor lake on the Edward Sargent wildlife area; In San Miguel and Santa Fe counties: Doctor creek from 1/4 mile above its confluence with Holy~~

Ghost creek upstream to its headwaters; In Mora county: Rio Valdez in the Pecos wilderness from 1/4 mile below Smith cabin upstream to its headwaters; In San Miguel and Mora counties: Jack's creek from the water falls located 1/4 mile downstream of NM highway 63 crossing upstream to its headwaters; In Taos and Colfax counties: any stream on the Valle Vidal (Vermejo tract - Carson national forest); In Grant and Catron counties: Black canyon creek in Grant county upstream from lower Black canyon campground and Mogollon creek in Grant and Catron counties upstream from waterfall barrier near intersection of FS trail 153 to confluence of Trail canyon. Every person angling for fish on these portions of Black canyon and Mogollon creek must be in possession of a Gila trout permit, issued in their name by the department or its designee. A photocopy, duplicate copy or computer printout of this permit will suffice as evidence of receiving such permit.

~~[(d) (c) In Colfax county: on a posted section of the Cimarron river from the lower end of Tolby campground downstream approximately 1.4 miles to the first bridge of N.M. 64 the daily bag limit shall be 1 fish and no more than one fish may be in possession.~~

~~[(e) (d) At Conservancy park/Tingley beach in Albuquerque: the southernmost pond shall be catch-and-release only and the remaining two ponds shall have daily bag limits of 4 trout with no more than 4 trout in possession.~~

~~[(f) (e) On those sections of the following waters the daily bag limit shall be 3 trout and no more than 3 trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached. Any legal angling gear and legal bait for trout waters may be used. In Taos county: a posted portion of the Rio Grande beginning at the New Mexico/Colorado state line downstream to the Taos junction bridge; In Taos county: a posted portion of the Red River beginning approximately 1/2 mile downstream of the walking bridge at Red River state fish hatchery downstream to its confluence with the Rio Grande; In Taos county: the designated fishing pond at Red River state fish hatchery; In Taos county: the Red River city ponds; In Rio Arriba county: on a posted portion of the Rio Chama from the base of Abiquiu dam downstream approximately 7 miles to the river crossing bridge on U.S. 84 at Abiquiu; In Rio Arriba county: Laguna del campo at Los Ojos trout hatchery; In Sierra county: the Rio Grande from Elephant Butte dam downstream to and including Caballo lake; In Lincoln county: The Rio Ruidoso from the boundary between the Mescalero Apache reservation and the city of Ruidoso downstream to Fridenbloom drive.~~

~~[(g) (f) On those sections of the following waters the daily bag limit shall be~~

2 Gila trout and no more than 2 Gila trout in possession, and the bag limit and possession limit for brown trout is unlimited. Anglers must stop fishing in those waters when the daily bag limit is reached. Any legal angling gear and legal bait for trout waters must be used. In Catron county: waters upstream from the confluence of Gilita creek and Snow creek including Gilita, Willow and Little Turkey creeks.

B. Warm-water fishes:

The daily bag limit for game fish other than trout shall be as listed below and the possession limit shall be twice the daily bag limit.

- (1) striped bass 3 fish;
- (2) largemouth, smallmouth, and spotted bass 5 fish;
- (3) walleye 5 fish;
- (4) crappie 20 fish;
- (5) white bass and white bass x striped bass hybrid 25 fish;
- (6) northern pike 10 fish;
- (7) catfish (all species, except bullheads) 15 fish;
- (8) yellow perch 30 fish;
- (9) all other warm-water game species 20 fish.

C. The following exception shall apply:

(1) At Conservancy park/Tingley beach in Albuquerque; lake Van (Chaves county); Oasis state park; Greene Acres lake (Curry county); Burn lake (Dona Ana county); Escondida lake (Socorro county); McGaffey lake (McKinley county); Bataan lake (Eddy county); Chaparral lake (Lea county); Bosque Redondo (De Baca county); Carrizozo lake (Lincoln county); Green Meadow lake; Eunice lake; Estancia Park lake (Torrance county); Corona lake (Lincoln county); Grants city pond (Cibola county); and Jal lake (Lea county): the daily bag limit for channel catfish will be 2 fish and the possession limit shall be twice the daily bag limit.

(2) In San Juan county, in the San Juan and Animas rivers, not including Navajo lake, there is no daily bag limit or possession limit for channel catfish and striped bass.

(3) Statewide, all tiger muskie (*Esox lucius x E. masquinongy*) caught must immediately be released.

(4) In Eddy county, the Pecos river beginning at the north boundary of Brantley wildlife management area to Brantley reservoir dam including Brantley reservoir, all fish caught must immediately be released, except during official fishing tournaments during which fish may be held in a live well until they are weighed and measured, on site, and then immediately released back into the lake.

[19.31.4.11 NMAC - Rp 19.31.4.11 NMAC, 4-15-02; A, 10-31-02; A, 6-25-03; A, 8-13-04; A, 5-13-05; A, 9-15-05; A/E, 01-03-06;

A, 1-31-06; A/E, 3-31-06; A/E, 5-31-06; A, 5-1-07; A, 9-14-07; A, 12-14-07; A, 3-14-08; A, 6-15-09; A, 9-15-09]

19.31.4.12 SIZE LIMITS:

A. Salmonids

~~[(1)]~~ On that section of the San Juan river where only barbless lures or flies may be used, any trout taken that are less than 20 inches long shall be immediately returned to the water and no fish under 20 inches shall be possessed in that section; provided, however, that no fish may be possessed in the catch-and-release water section.

~~[(2)]~~ (1) On Shuree lakes, on the Valle Vidal tract, any trout taken that are less than 15 inches long shall be immediately returned to the water.

~~[(3)]~~ (2) In Colfax county, a posted portion of the Cimarron river where only barbless lures or flies may be used (and more specifically described in Subsection A of 19.31.4.11 NMAC above), any trout taken that are less than 16 inches long shall be immediately returned to the water.

~~[(4)]~~ (3) [Reserved]

~~[(5)]~~ (4) Any trout taken that are less than 12 inches long shall be immediately returned to the water in the following locations:

(a) In San Miguel county: a posted portion of the Pecos river where only barbless lures or flies may be used (more specifically described in Subsection A of 19.31.4.11 NMAC above).

(b) In Lincoln county: a posted section of the Rio Ruidoso where only barbless lures or flies may be used (more specifically described in Subsection A of 19.31.4.11 NMAC above).

(c) In Taos county: a posted section of the Red River from the confluence with Goose creek 1 mile upstream.

B. Black basses

(1) Any largemouth or spotted bass taken which is less than 14" long shall be immediately returned to the water.

(2) Any smallmouth bass taken which is less than 12" long shall be immediately returned to the water except at Ute and Conchas reservoirs where any smallmouth bass taken which is less than 14" long shall be immediately returned to the water.

C. Walleye:

Any walleye taken which are less than 14" long shall be immediately returned to the water. [19.31.4.12 NMAC - Rp 19.31.4.12 NMAC, 4-15-02; A, 8-13-04; A, 1-31-06; A, 9-15-09]

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

This is an emergency amendment to section 8 of 8.102.500 NMAC effective October 1, 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 \$1,500 liquid and \$2,000 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]	\$	<u>768</u>
(b) two persons	[\$—992]		<u>\$1,033</u>
(c) three persons	[\$1,247]		<u>\$1,298</u>
(d) four persons	[\$1,502]		<u>\$1,563</u>
(e) five persons	[\$1,757]		<u>\$1,828</u>
(f) six persons	[\$2,012]		<u>\$2,092</u>
(g) seven persons	[\$2,267]		<u>\$2,358</u>
(h) eight persons	[\$2,522]		<u>\$2,623</u>
(i) add [\$255]	<u>\$233</u>		

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]	\$	<u>903</u>
(2) two persons	[\$1,167]		<u>\$1,215</u>
(3) three persons	[\$1,467]		<u>\$1,526</u>
(4) four persons	[\$1,767]		<u>\$1,838</u>
(5) five persons	[\$2,067]		<u>\$2,150</u>
(6) six persons	[\$2,367]		<u>\$2,461</u>
(7) seven persons	[\$2,667]		<u>\$2,773</u>
(8) eight persons	[\$2,967]		<u>\$3,085</u>
(9) add [\$300]	<u>\$312</u>		

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, TBP 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; A, 08/14/2009; A/E, 10/01/2009]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is as an emergency amendment to section 8 of 8.106.500 NMAC effective October 1, 2009.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. Lack of availability of state funds may result in a suspension or reduction in general assistance benefits without eligibility and need considered.

B. Need determination process: Eligibility for the GA program based on need requires a finding that the:

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

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

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

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

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

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

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

(a) one person [~~\$ 737~~] \$ 768
(b) two persons [~~\$ 992~~] \$ 1,033
(c) three persons [~~\$ 1,247~~]

\$ 1,298

(d) four persons [~~\$ 1,502~~]

\$ 1,563

(e) five persons [~~\$ 1,757~~]

\$ 1,828

(f) six persons [~~\$ 2,012~~]

\$ 2,092

(g) seven persons [~~\$ 2,267~~]

\$ 2,358

(h) eight persons [~~\$ 2,522~~]

\$ 2,623

(i) add [~~\$255~~] \$233 for each additional person.

E. Standard of need:

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

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

(3) The financial standard includes approximately \$84 per month for each individual in the benefit group.

(4) The standard of need, based on the availability of state funds for the GA cash assistance benefit group is:

(a) one person \$245
(b) two persons \$329
(c) three persons \$412
(d) four persons \$496
(e) five persons \$580
(f) six persons \$664
(g) seven persons \$748
(h) eight persons \$849
(i) add \$84 for each additional person.

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

G. Special clothing allowance for school-age dependent children: In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$100 for the months of August and January subject to the availability of state or federal funds.

(1) For purposes of determining eligibility for the clothing allowance, a child

is considered to be of school age if the child is six years of age or older and less than age nineteen (19) by the end of August.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group for the months of August and January subject to the availability of state or federal funds.

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

H. Supplemental issuance: A one time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion of the secretary of the human services department and the availability of state funds.

(1) The one time supplemental issuance may be no more than the standard GA payment made during the month the GA payment was issued.

(2) To be eligible to receive the one time supplement, a GA application must be active and determined eligible no later than the last day of the month in the month the one time supplement is issued.

[8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008; A, 07/01/2009; A/E, 10/01/2009]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This as an emergency amendment to section 8 of 8.139.500 NMAC effective October 1, 2009.

8.139.500.8 BASIS OF ISSUANCE

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

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

increment in the federal income poverty guidelines is multiplied by 130%, divided by 12, and the results rounded upward if necessary.

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

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

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

Household Size	Maximum Gross Monthly Income Elderly/Disabled Separate Status at 165% of Poverty	Maximum Gross Monthly Income At 130% of Poverty	Maximum Net Monthly Income At 100% of Poverty	Maximum Allotment (benefit amount)
1	[\$1,430] <u>\$1,490</u>	[\$1,127] <u>\$1,174</u>	[\$ 867] <u>\$ 903</u>	\$200
2	[\$1,925] <u>\$2,004</u>	[\$1,517] <u>\$1,579</u>	[\$1,167] <u>\$1,215</u>	\$367
3	[\$2,420] <u>\$2,518</u>	[\$1,907] <u>\$1,984</u>	[\$1,467] <u>\$1,526</u>	\$526
4	[\$2,915] <u>\$3,032</u>	[\$2,297] <u>\$2,389</u>	[\$1,767] <u>\$1,839</u>	\$668
5	[\$3,410] <u>\$3,547</u>	[\$2,687] <u>\$2,794</u>	[\$2,067] <u>\$2,150</u>	\$793
6	[\$3,905] <u>\$4,061</u>	[\$3,077] <u>\$3,200</u>	[\$2,367] <u>\$2,461</u>	\$952
7	[\$4,400] <u>\$4,575</u>	[\$3,467] <u>\$3,605</u>	[\$2,667] <u>\$2,773</u>	\$1,052
8	[\$4,895] <u>\$5,089</u>	[\$3,857] <u>\$4,010</u>	[\$2,967] <u>\$3,085</u>	\$1,202
\$Each Additional Member	[+\$495] <u>+\$515</u>	[+\$390] <u>+\$406</u>	[+\$300] <u>+\$312</u>	+\$150

F. Deductions and standards:

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

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

(3) Expense deductions and standards table:

Standard Deduction for Household Size of 1 through 3	[\$144.00] <u>\$141.00</u>
Standard Deduction for Household of 4	[\$147.00] <u>\$153.00</u>
Standard Deduction for Household Size of 5	[\$172.00] <u>\$179.00</u>
Standard Deduction for Household Size of 6 or more	[\$197.00] <u>\$205.00</u>
Earned Income Deduction (EID)	20%
Dependent Care Deduction	Actual Amount
Heating/Cooling Standard Utility Allowance (HCSUA)	\$278.00
Limited Utility Allowance (LUA)	\$101.00
Telephone Standard (TS)	\$ 32.00
Excess Shelter Cost Deduction Limit for Non-Elderly/Disabled Households	[\$446.00] <u>\$459.00</u>
Homeless Household Shelter Standard	\$ 143.00
Minimum Allotment for Eligible One-and Two-Person Households	\$ 16.00

[02/1/95, 10/01/95, 02/29/96, 10/01/96, 3/15/97, 01/15/98,11/15/98, 12/15/99, 01/01/01, 03/01/01; 8.139.500.8 NMAC - Rn, 8 NMAC 3.FSP.501, 05/15/2001; A, 10/01/2001; A, 10/01/2002, A, 09/01/2003; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A/E, 10/01/2006; A/E, 10/01/2007; A/E, 10/01/2008; A/E, 04/01/2009; A/E, 10/01/2009]

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

This is an emergency amendment to 8.200.400 NMAC, Sections 8 and 14, effective October 1, 2009.

8.200.400.8 **MISSION:** To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.
[8.200.400.8 NMAC - N/E, 10-1-09]

8.200.400.14 **12 MONTHS CONTINUOUS ELIGIBILITY FOR CHILDREN:** Children eligible for medicaid under category of eligibility 032 and families under category of eligibility 072 will remain eligible for a period of 12 months, regardless of changes in income. This provision applies even if it is reported that the family income exceeds the applicable federal income poverty guidelines. The 12 months of continuous medicaid starts with the month of approval or redetermination and is separate from any months of presumptive or retroactive eligibility. This provision does not apply to children who move out of state during the 12-month period.
[8.200.400.14 NMAC - Rn, 8.200.400.13 NMAC, 7-1-02; Repealed, 7-1-04; 8.200.400.14 NMAC - N/E, 10-1-09]

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

This is an emergency amendment to 8.200.410 NMAC, Sections 8 and 11, effective October 1, 2009.

8.200.410.8 **MISSION:** To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.
[8.200.410.8 NMAC - N/E, 10/1/09]

8.200.410.11 **CITIZENSHIP:** To be eligible for medicaid, an individual must be a citizen of the United States; or an alien who entered the United States prior to August 22, 1996, as one of the classes of aliens described in Subsection A of 8.200.410.11 NMAC or an alien who entered the United States as a qualified alien on or after August 22, 1996, and who has met the five-year bar listed in Subsection B of 8.200.410.11 NMAC.

A. **Aliens who entered the United States prior to August 22, 1996:** Aliens who entered the United States prior to August 22, 1996, will not be subject to the five-year bar on eligibility for purposes

of medicaid eligibility, and will continue to be eligible for medicaid on the basis of alien regulations in effect prior to August 22, 1996. These classes of aliens are as follows:

(1) aliens who entered the United States prior to August 22, 1996, and remained continuously present in the United States until the date they obtained qualified alien status on or after August 22, 1996; any single absence from the United States of more than 30 days, or a total aggregate of absences of more than 90 days, is considered to interrupt "continuous presence";

(2) aliens lawfully admitted for permanent residence or permanently residing in the United States under color of law as follows:

(a) The individual may be eligible for medicaid if the individual is an alien residing in the United States with the knowledge and permission of the immigration and naturalization services (INS) and the INS does not contemplate enforcing the [aliens] alien's departure. The INS does not contemplate enforcing an [aliens] alien's departure if it is the policy or practice of INS not to enforce the departure of aliens in the same category, or if from all the facts and circumstances in a particular case it appears that INS is otherwise permitting the alien to reside in the United States indefinitely, as determined by verifying the aliens status with INS.

(b) Aliens who are permanently residing in the United States under color of law are listed below. None of the categories include applicants for an immigration and naturalization service status other than those applicants listed in Item (vi) of Subparagraph (b) of Paragraph (2) of Subsection A of 8.200.410.11 NMAC or those covered under Item (xvi) of Subparagraph (b) of Paragraph (2) of Subsection A of 8.200.410.11 NMAC. None of the categories allow medicaid eligibility for non-immigrants; for example, students or visitors. Also listed are the most commonly used documents that the INS provides to aliens in these categories.

(i) aliens admitted to the United States pursuant to 8 U.S.C. 1153(a)(7)(Section 203(a)(7) of the Immigration and Nationality Act); ask for a copy of INS Form I-94 endorsed "refugee-conditional entry";

(ii) aliens, including Cuban/Haitian entrants, paroled in the United States pursuant to 8 U.S.C. 1182(d)(5) (Section 212(d)(5)) of the Immigration and Nationality Act; for Cuban/Haitian entrant (Status Pending) reviewable January 15, 1981; (although the forms bear this notation, Cuban/Haitian entrants are admitted under section 212(d)(5) of the Immigration and Nationality Act);

(iii) aliens residing in the United States pursuant to an indefinite stay of deportation; ask for an immigration and naturalization services letter with this

information or INS Form I-94 clearly stated that voluntary departure has been granted for an indefinite period of time;

(iv) aliens residing in the United States pursuant to an indefinite voluntary departure; ask for an immigration and naturalization services letter or INS Form I-94 showing that voluntary departure has been granted for an indefinite time period;

(v) aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition who are entitled to voluntary departure (under 8 CFR 242.5(a)(2)(vi)) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for a copy of INS Form I-94 or Form I-210 or a letter clearly stating that status;

(vi) aliens who have filed applications for adjustment of status pursuant to Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that the immigration and naturalization services has accepted as properly filed (within the meaning of 8 CFR 245.2(a)(1) or (2) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for a copy of INS Form I-94 or I-181 or a passport appropriately stamped;

(vii) aliens granted stays of deportation by court order, statute, or regulation, or by individual determination of the immigration and naturalization services pursuant to Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105 a) or relevant immigration and naturalization services instructions, whose departure that agency does not contemplate enforcing; ask for a copy of INS Form I-94 or a letter from the immigration and naturalization service, or a copy of a court order establishing the [aliens] alien's status;

(viii) aliens granted asylum pursuant to Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158); ask for a copy of INS Form I-94 and a letter establishing this status;

(ix) aliens admitted as refugees pursuant to Section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or Section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)); ask for a copy of INS Form I-94 properly endorsed;

(x) aliens granted voluntary departure pursuant to Section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) or 8 CFR 242.5 whose departure the Immigration and Naturalization Service does not contemplate enforcing; ask for a Form I-94 or Form I-210 bearing a departure date;

(xi) aliens granted deferred action status pursuant to Immigration and Naturalization Service

Operations Instruction 103.1(a)(ii) prior to June 15, 1984 or 242.1(a)(22) issued June 15, 1984 and later; ask for a copy for INS Form I-210 or a letter showing that departure has been deferred;

(xii) aliens residing in the United States under orders of supervision pursuant to Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252(d)); ask for a copy of Form I-220 B;

(xiii) aliens who have entered and continuously resided in the United States since before January 1, 1972, (or any date established by Section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259); ask for any proof establishing this entry and continuous residence;

(xiv) aliens granted suspension for deportation pursuant to Section 244 of the Immigration and Nationalization Act (8 U.S.C. 1254) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for an order from an immigration judge showing that deportation has been withheld;

(xv) aliens whose deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)); ask for an order from an immigration judge showing that deportation has been withheld;

(xvi) any other aliens living in the United States with the knowledge and permission of the immigration and naturalization service and whose departure the agency does not contemplate enforcing (including permanent non-immigrants as established by Public Law 99-239, and persons granted extended voluntary departure due to conditions in the alien's home country based on a determination by the secretary of state);

(3) aliens granted lawful temporary resident status under Section 245A and 210A of the Immigration and Nationality Act if the individual is aged, blind or disabled as defined in Section 1614(a)(1) of the act, under 18 years of age, or a Cuban/Haitian entrant as defined in Section 510(e)(1) and (2)(A) of the Public Law 96-422; [or]

(4) aliens granted lawful temporary resident status under Section 210 of the Immigration and Nationality Act unless the alien would, but for the 5-year bar to receipt of AFDC contained in such section, be eligible for AFDC.

B. Aliens who entered the United States on or after August 22, 1996:

(1) Aliens who entered the United States on or after August 22, 1996, are barred from medicaid eligibility for a period of five years, other than emergency services (under category 85). The five-year bar begins on the date of the [aliens] alien's entry into the United States with a status of qualified alien. The following classes of qualified aliens are

exempt from the five-year bar:

(a) an alien admitted to the United States as a refugee under Section 207 of the Immigration and Nationality Act;

(b) an alien granted asylum under Section 208 of the Immigration and Nationality Act;

(c) an alien whose deportation is withheld under Section 243(h) of the Immigration and Nationality Act;

(d) an alien who is lawfully residing in the state and who is a veteran with an honorable discharge not on account of alien status; who is on active duty other than on active duty for training, in the armed forces of the United States; or who is the spouse or unmarried dependent child under the age of 18 of such veteran or active duty alien;

(e) an alien is granted status as a Cuban and Haitian entrant, as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;

(f) an alien granted Amerasian immigrant status as defined under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988;

(g) victims of a severe form of trafficking, in accordance with Section 107(b)(1) of the Trafficking Victims Protection Act of 2000, P.L. 106-386;

(h) battered aliens who meet the conditions set forth in Section 431(c) of PRWORA, as added by Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208 (IIRIRA), and amended by Section 5571 of the Balanced Budget Act of 1997, P.L. 105-33 (BBA), and Section 1508 of the Violence Against Women Act of 2000, P.L. 106-386. Section 431(c) of PRWORA, as amended, is codified at 8 USC 1641(c);

(i) members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e); and

(j) American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act applies.

(2) **Qualified alien:** A "qualified alien", for purposes of this regulation, is an alien, who at the time the alien applies for, receives, or attempts to receive a federal public benefit, is:

(a) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act; or

(b) an alien who is granted asylum under Section 208 of such act; or

(c) a refugee who is admitted to the United States under Section 207 of the act (including certain Amerasian immigrants as refugees); or

(d) an alien who is paroled into the United States under Section 212(d)(5) of such act for a period of at least [~~1~~(one)] one year; or

(e) an alien whose deportation is being withheld under Section 243(h) of such act; or

(f) an alien who is granted conditional entry pursuant to 203(a)(7) or such act as in effect prior to April 1, 1980; or

(g) an alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980); or

(h) certain battered women and alien children of battered parents (only those who have begun the process of becoming a lawful permanent resident under the Violence Against Women Act);

(i) victims of a severe form of trafficking; or

(j) members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e); or

(k) American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act applies.

(3) Children and pregnant women exempt from the five year bar: As authorized by CHIPRA 2009 legislation, New Mexico medicaid allows lawfully residing immigrant children and pregnant women, if otherwise eligible, to obtain medicaid coverage.

[~~(3)~~] (4) **Alien sponsors (where an affidavit of sponsorship was executed pursuant to Section 213 of the Immigration and Nationality Act subsequent to August 22, 1996):** The income and resources of an alien sponsor, and the spouse of the sponsor, of any individual applying for medicaid, is deemed available to the applicant, when an affidavit of support is executed pursuant to Section 213 of the Immigration and Nationality Act, on or after August 22, 1996. This counting of alien sponsor income and resources is effective until the sponsored alien achieves citizenship, or can be credited with 40 qualifying quarters.

[~~(4)~~] (5) **Quarters of coverage:** For purposes of determining the number of quarters of coverage under Title II of the Social Security Act, an alien will be credited with all of the quarters that were worked by him/her, as well as all of the qualifying quarters of coverage worked by such parent of an alien, while the alien was under 18; and all of the quarters credited to a spouse, if the alien remains married to the spouse or such spouse is deceased. Beginning January 1, 1997, any quarter in which the alien received a means-tested federal benefit is not counted as a qualifying quarter.

[~~(5)~~] (6) **Federal means-tested benefit:** For purposes of determining whether an alien has or has not received any federal means-tested benefits during a quarter, starting with January 1, 1997, the definition of federal means-tested benefits will not include:

(a) medical assistance under Title

XIX of the Social Security Act (medicaid) for emergency treatment of an alien, not related to an organ transplant procedure, if the alien otherwise meets eligibility for medical assistance under the state plan;

(b) short-term, noncash, in-kind emergency disaster relief;

(c) assistance or benefits under the National School Lunch Act;

(d) assistance or benefits under the Child Nutrition Act of 1966;

(e) public health assistance (not including any assistance under Title XIX medicaid) for immunizations, and testing or treatment of symptoms of communicable diseases, whether or not such symptoms are caused by communicable diseases;

(f) payments for foster care and adoption assistance under Part B and E of Title IV of the Social Security Act for a parent or child who would, in the absence of the restriction of eligibility for aliens contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, be eligible for such payments made on the child's behalf, but only if the foster or adoptive parent (or parents) of such child, is a qualified alien;

(g) programs, services, or assistance, delivering in-kind services at the community level and necessary for the provision of life or safety; that do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided, on the individual recipient's income or resources;

(h) programs of student assistance under Titles IV, V, IX, and X of the Higher Education Act of 1965, and Titles III, VII, and VIII of the Public Health Services Act;

(i) means-tested programs under the Elementary and Secondary Education Act of 1965;

(j) benefits under the Head Start Act;

(k) benefits under the Job Training Partnership Act.

[2/1/95; 1/1/97; 4/1/98; 8.200.410.11 NMAC - Rn, 8 NMAC 4.MAD.412 & A, 7/1/03; A/E, 10/1/09]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an emergency amendment to 8.200.450 NMAC, Sections 8 and 9, effective October 1, 2009.

8.200.450.8 MISSION: To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities. [8.200.450.8 NMAC - N/E, 10-1-09]

8.200.450.9 REPORTING REQUIREMENTS: A medicaid applicant/recipient must report any change in circumstances which might affect his/her eligibility within ~~ten (10)~~ 10 days after the change to the local income support division (ISD) office. This provision does not apply to children's medicaid (category of eligibility 032) or family medicaid (category 072). See 8.232.600.14 NMAC, changes in eligibility. [2-1-95; 8.200.450.9 NMAC - Rn, 8 NMAC 4.MAD.430.450, 1-1-01; A/E, 10-1-09]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an emergency amendment to 8.202.400 NMAC, Sections 8 and 15, effective October 1, 2009.

8.202.400.8 MISSION: To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities. [8.202.400.8 NMAC - N/E, 10-1-09]

8.202.400.15 CITIZENSHIP: To be eligible for medicaid, an individual must be: a citizen of the United States; or an alien who entered the United States prior to August 22, 1996, as one of the classes of aliens described in Subsection A of 8.200.410.11 NMAC, or an alien who entered the United States as a qualified alien on or after August 22, 1996, and who has met the five-year bar listed in Subsection B of 8.200.410.11 NMAC, citizenship. Effective October 1, 2009, lawfully residing immigrant children and pregnant women are exempt from the five year bar and therefore meet the citizenship requirement.

[4-1-98; 8.202.400.15 NMAC - Rn, 8 NMAC 4.JUL.412, 7-1-01; A, 7-1-03; A/E, 10-1-09]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an emergency amendment to 8.232.400 NMAC, Sections 8 and 13, effective October 1, 2009.

8.232.400.8 MISSION: To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities. [8.232.400.8 NMAC - N/E, 10-1-09]

8.232.400.13 REPORTING REQUIREMENTS: A medicaid recipient must report to the local income support division office [any change in his/her

circumstances which might affect eligibility within ten (10) days of the change] a move out-of-state or the death of a household member within 10 days of the occurrence.

An authorized employee of any other agency, or any person employed as a contractual agent by such an agency, must inform the responsible income support division office when a recipient child enters a substitute care arrangement or otherwise leaves the home/facility in which his/her eligibility was determined. This report must be made within ~~ten (10)~~ 10 days of the date the child leaves the home.

[2-1-95, 4-1-95; 8.232.400.13 NMAC - Rn, 8 NMAC 4.KID.450, 7-1-01; A/E, 10-1-09]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an emergency amendment to 8.232.600 NMAC, Sections 8 and 14, effective October 1, 2009.

8.232.600.8 MISSION: To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities. [8.232.600.8 NMAC - N/E, 10/1/09]

8.232.600.14 CHANGES IN ELIGIBILITY:

A. **Eligibility termination when age limit reached:** If a recipient's eligibility ends because he/she turns ~~nineteen (19)~~ 19 years of age and the recipient is receiving inpatient services in an acute care hospital on the date he/she turns ~~nineteen (19)~~ 19 years of age, the recipient's eligibility continues until the end of that admission. If the recipient is an inpatient in a free-standing psychiatric facility or other residential facility, the recipient's eligibility continues until the end of the month in which the recipient turns ~~nineteen (19)~~ 19 years of age. The income support division worker verifies that the closure is caused by the recipient's turning ~~nineteen (19)~~ 19 years of age and terminates medicaid eligibility at the end of the applicable time period.

B. **Ongoing eligibility:** A redetermination of eligibility is made every ~~twelve (12)~~ 12 months. [All changes, which may affect eligibility must be reported within ten (10) days from the date the change took place.] Changes in eligibility status will be effective the first day of the following month.

C. **Continuous eligibility:** Eligibility will continue for the 12-month certification period, regardless of changes in income, as long as the recipient retains New Mexico residency. This provision applies even if it is reported that the family income exceeds the applicable federal

income poverty guidelines. The 12 months of continuous medicaid starts with the month of approval or redetermination and is separate from any months of presumptive or retroactive eligibility. [2/1/95; 4/1/95; 6/30/98; 8.232.600.14 NMAC - Rn, 8 NMAC 4.KID.630 & A, 7/1/04; A, 7/1/06; A/E, 10/1/09]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.7 NMAC, Sections 3, 7, 9, 10, 13, 14, 15, 16, 17, and 18, effective September 21, 2009.

16.10.7.3 STATUTORY AUTHORITY: This ~~rules~~ rule governs the practice of medicine in New Mexico and is promulgated pursuant to and in accordance with the Medical Practice Act, Section [61-6-21] 61-6-19, 61-6-26, 61-6-27, 61-6-28 and 61-6-30 NMSA 1978. [16.10.7.3 NMAC - N, 4/18/02; A, 9/21/09]

16.10.7.7 DEFINITIONS:

A. "Inactive" means a license placed in a non-working status at the request of a physician not currently practicing in New Mexico.

B. "Lapsed" means a license that has not been renewed by September 30 of the expiration year and has been suspended for non-renewal. A license that has lapsed is not valid for practice in New Mexico.

[B]C. "Retired" means a license that has been withdrawn from active or inactive status at the physician's request. A retired license cannot be used to practice medicine in New Mexico and a retired license may not subsequently be reinstated.

[C]D. "Nationwide criminal history record" means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states.

[D]E. "Nationwide criminal history screening" means a criminal history background investigation of a licensee applying for licensure renewal through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.

[E]F. "Statewide criminal

history record" means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized database of the department of public safety or the repositories of criminal history information in municipal jurisdictions.

[F]G. "Statewide criminal history screening" means a criminal history background investigation of a licensee applying for licensure renewal through the use of fingerprints submitted to the department of public safety and resulting in the generation of a statewide criminal history record for that licensee.

[G]H. "Suspended for non-renewal" ~~means a license that has not been renewed by September 30 of the expiration year. A license that has been suspended for non-renewal is not valid for practice in New Mexico.~~ means a license that has not been renewed by September 30 of the expiration year, and has at the discretion of the board, been lapsed.

[H]I. "Voluntarily lapsed" means a license that is not renewed at the request of the physician.

[16.10.7.7 NMAC - N, 4/18/02; A, 4/3/05; A, 7/1/06; A, 1/10/07; A, 9/27/07; A, 9/21/09]

16.10.7.9 RENEWAL PROCESS: To avoid additional penalty fees, a completed renewal application, accompanied by the required fees and documentation must be submitted through the online renewal system, post-marked or hand-delivered on or before July 1 of the renewal year. A New Mexico medical license that has not been renewed by July 1 of the renewal year will remain temporarily active with respect to medical practice until September 30 of the renewal year at which time, at the discretion of the board, the license may be suspended for non-renewal and the status changed to lapsed. New Mexico hospitals and health insurance plans will be notified.

A. All renewal applications will be subject to a one time nationwide and statewide criminal history screening. Renewal applications will be processed pending the completion of the statewide criminal history screening and may be granted while the screening still pending.

B. If the nationwide or statewide criminal background screening reveals a felony or a violation of the Medical Practice Act, the licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.10.7.9 NMAC - N, 4/18/02; A, 4/3/05; A, 7/1/06; A, 9/27/07; A, 9/21/09]

16.10.7.10 LICENSEE RESPONSIBILITY: The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to assure the board has accurate address information and to make a timely request for the renewal form if one has not been received prior to license expiration. If the notice of renewal is returned to the board office and the licensee has not sent a change of address, the suspension for non-renewal and lapsed status notice will be considered undeliverable and will not be mailed.

[16.10.7.10 NMAC - N, 4/18/02; A, 9/21/09]

16.10.7.13 CHANGE IN STATUS: Physicians who do not want to maintain an active license to practice medicine in New Mexico may choose to place their license on inactive, retired or voluntary lapsed status at the time of renewal.

A. Inactive status. A license may be placed on inactive status by the payment of the processing fee indicated in 16.10.9.8 NMAC before October 1 of the renewal year. A license in inactive status is not valid for practice in New Mexico but may be reinstated in accordance with the provisions of 16.10.7.16 NMAC and 16.10.7.17 NMAC.

B. Retired status. [On] Upon request, a license may be placed on retired status. A retired licensee cannot practice medicine with a retired license, and such license may not subsequently be reinstated. A physician with a retired license who chooses to reinstate the license must re-apply as a new applicant.

C. [Voluntary] Voluntarily lapsed status. A physician may inform the board that he does not wish to renew an active license to practice medicine in New Mexico and will voluntarily allow the license to lapse. There is no charge for this change in status. A voluntarily lapsed license is not valid for practice in New Mexico. A physician with a voluntarily lapsed license may only be reinstated in accordance with the provisions of 16.10.7.16 NMAC and 16.10.7.17 NMAC.

[16.10.7.13 NMAC - N, 4/18/02; A, 9/21/09]

16.10.7.14 LICENSEE SUSPENSION FOR [RENEWAL] NON-RENEWAL: ~~[The board shall summarily suspend]~~ The board may in its discretion suspend for non-renewal and change the status to lapsed on October 1 of the renewal year the license of any physician who has failed within ninety days after the license renewal date to renew their license, or to change the license status as indicated in section 13, above, to pay all required fees, or

to comply with continuing medical education requirements, or to provide required documentation. Suspension for non-renewal ~~[is an administrative action] and lapsed status is a non-reportable administrative action.~~

[16.10.7.14 NMAC - N, 4/18/02; A, 4/3/05; A, 1/10/07; A, 9/21/09]

16.10.7.15 ~~[R E N E W A L APPLICATION — UNDELIVERABLE:~~

~~If the notice of renewal is returned to the board office and the licensee has not sent a change of address, the summary suspension for non-renewal order will be considered undeliverable and will not be mailed.]~~

[Reserved]

[16.10.7.15 NMAC - N, 4/18/02; A, 1/10/07; A, 9/21/09]

16.10.7.16 **L I C E N S E REINSTATEMENT WITHIN TWO YEARS OF RENEWAL DATE:**

A license that has been suspended for non-renewal and placed on lapsed status, placed in inactive, or ~~[voluntary]~~ voluntarily lapsed status may be reinstated within two years of the renewal date by submitting the following documentation:

A. written request for reinstatement;

B. completion of a renewal application;

C. ~~[payment of fees as indicated in Subsection K of 16.10.9.8 and Subsection E of 16.10.9.8]~~ payment of fees as indicated in Subsections B, H, and I of 16.10.9.8 NMAC;

D. proof of completion of required continuing medical education as defined in 16.10.4 NMAC for the current year and the previous renewal cycle;

E. list of licenses held in any other state(s) and license status.

[16.10.7.16 NMAC - N, 4/18/02; A, 4/3/05; A, 1/10/07; A, 9/21/09]

16.10.7.17 **L I C E N S E REINSTATEMENT AFTER TWO YEARS FROM RENEWAL DATE:**

Restoration of a medical license to active status after two years from the renewal date requires the physician demonstrate continued competence to practice medicine through the following documentation:

A. completion of a reinstatement application;

B. proof of completion of 75 hours of continuing medical education during the past three licensing years as defined in 16.10.4 NMAC;

C. ~~[payment of fees as defined in 16.10.9.8 NMAC]~~ payment of fees as defined in Subsections B, H and I of 16.10.9.8 NMAC; and

D. applicants who have not been in active practice for the previous

two years may be required to pass an examination for current competency as defined in 16.10.3.11 NMAC;

E. ~~[in addition the board may require a personal interview with a board member and/or interview with the entire board at a regularly scheduled meeting;]~~ applicants may be required to personally appear before the board or the board's designee for an interview;

F. consistent with the provisions of the Medical Practice Act, Section 61-6-30 NMSA 1978, the board may impose terms and conditions on the reinstated license.

[16.10.7.17 NMAC - N, 4/18/02; A, 4/3/05; A, 9/21/09]

16.10.7.18 **REINSTATEMENT PROCESS:**

All applicants approved for reinstatement must pay the renewal fee indicated in Subsection B of 16.10.9.8 NMAC. ~~[Applicants with a license that has been placed on inactive status are not required to pay any additional fees. Applicants for reinstatement whose license has been suspended for non-renewal or voluntarily lapsed must pay the reinstatement fee indicated in 16.10.9.8 NMAC in addition to the renewal fee.]~~ Applicants with a license that has been placed on inactive status must pay the reinstatement fee indicated in Subsection I of 16.10.9.8 NMAC in addition to the triennial renewal fee. Applicants for reinstatement whose license has been suspended for non-renewal and placed on lapsed status or voluntarily lapsed must pay the reinstatement fee indicated in Subsection H of 16.10.9.8 NMAC in addition to the triennial renewal fee. Reinstatement licenses are issued for a period not less than 24 months or more than 36 months from the date of approval.

A. All reinstatement applications will be subject to a nationwide and statewide criminal history screening. Reinstatement applications shall be processed pending the completion of the statewide criminal history screening and may be granted while the screening still pending.

B. If the nationwide or statewide criminal background screening reveals a felony or a violation of the Medical Practice Act, the licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.10.7.18 NMAC - N, 4/18/02; A, 4/3/05; A, 7/1/06; A, 1/10/2007; A, 9/27/07; A, 9/21/09]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.8 NMAC, Section 8, effective September 21, 2009.

16.10.8.8 UNPROFESSIONAL OR DISHONORABLE CONDUCT:

As defined in the Medical Practice Act, Section 61-6-15,D,(29), "unprofessional or dishonorable conduct" includes, but is not limited to, the following:

A. practicing medicine without an active license;

B. sexual misconduct, including sexual contact with patient surrogates, such as parents and legal guardians, that occurs concurrently with the physician-patient relationship;

C. violating a narcotic or drug law;

D. excessive prescribing or administering of drugs;

E. excessive treatment of patients;

F. impersonating an applicant in an examination or at a board interview;

G. making or signing false documents;

H. dishonesty;

I. deceptive or anonymous advertising;

J. improper use of a fictitious name;

K. violation of a term of a stipulation; or

L. prescribing, dispensing or administering drugs or medical supplies to a patient when there is no established physician-patient relationship, including prescribing over the internet or via other electronic means that is based solely on an on-line questionnaire; except for:

(1) ~~[on-call]~~ physicians and physician assistants on call for another practitioner, or responsible for another practitioner's patients in an established clinic or office, or acting as locum tenens where a physician-patient relationship has previously been established and documented in the practitioner's or clinic's record;

(2) ~~[emergency room or urgent care]~~ physicians and physician assistants in emergency room or urgent care settings;

(3) prescriptions written to prepare a patient for special examination(s) or laboratory testing;

(4) prescribing or dispensing for immunization programs; ~~[and]~~

(5) the provision of treatment for partners of patients with sexually transmitted diseases when this treatment is conducted in accordance with the expedited partner therapy guidelines and protocol published by the New Mexico department of health[-];

and

(6) the provision of consultation, recommendation, or treatment during a face-to-face telehealth encounter online, using standard videoconferencing technology, where a medical history and informed consent are obtained and a medical record generated by the practitioner, and a physical examination is:

(a) recorded as appropriate by the practitioner, or a practitioner such as a physician, a physician or anesthesiologist assistant, or an advanced practice nurse, with the results communicated to the telehealth practitioner; or

(b) waived when a physical examination would not normally be part of a typical physical face-to-face encounter with the patient for the specific services being provided.

[16.10.8.8 NMAC - Rp 16 NMAC 10.8.8, 7/15/01; A, 1/10/07; A, 9/27/07; A, 9/21/09]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.15 NMAC, Sections 7 and 16, effective September 21, 2009.

16.10.15.7 DEFINITIONS:

A. "AAPA" means American academy of physician assistants.

B. "Alternate supervising physician" means a physician who holds a current unrestricted New Mexico medical license, is a cosignatory on the notification of supervision, agrees to act as the supervising physician in the supervising physician's absence and is approved by the board.

C. "Interim permit" means a document issued by the board that allows a physician assistant to practice pending completion of all licensing requirements.

D. "Effective supervision" means the exercise of physician oversight, control, and direction of services rendered by a physician assistant. Elements of effective supervision include:

(1) on-going availability of direct communication, either face-to-face or by electronic means;

(2) active, ongoing review of the physician assistants services, as appropriate, for quality assurance and professional support;

(3) delineation of a predetermined plan for emergency situations, including unplanned absence of the primary supervising physician; and

(4) identification and registration of alternate supervising physicians, as appropriate to the practice setting.

E. "Lapsed" means a license that has not been renewed by

March 1 of the expiration year and has been suspended for non-renewal. A license that has lapsed is not valid for practice in New Mexico.

[E]E. "Nationwide criminal history record" means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states.

[F]G. "Nationwide criminal history screening" means a criminal history background investigation of an applicant for licensure by examination or endorsement, or a licensee applying for licensure renewal, through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.

[G]H. "NCCPA" means national commission on certification of physician assistants.

[H]I. "Direct communication" means communication between the supervising physician and physician assistant, in person, telephonically, by two-way radio, by email or other electronic means.

[I]J. "Scope of practice" means duties and limitations of duties placed upon a physician assistant by their supervising physician and the board; includes the limitations implied by the field of practice of the supervising physician.

[J]K. "Statewide criminal history record" means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized database of the department of public safety or the repositories of criminal history information in municipal jurisdictions.

[K]L. "Statewide criminal history screening" means a criminal history background investigation of a licensee applying for licensure renewal through the use of fingerprints submitted to the department of public safety and resulting in the generation of a statewide criminal history record for that licensee.

[L]M. "Supervising physician" means a physician who holds a current unrestricted license, provides a notification of supervision, assumes legal

responsibility for health care tasks performed by the physician assistant and is approved by the board.

N. "Suspended for non-renewal" means a license that has not been renewed by May 31 of the expiration year, and has at the discretion of the board, been lapsed.

[M]O. "Emergency supervising physician" means a physician who is responsible for the operations of a team or group of health professionals, including physician assistants, who are responding to a major disaster.

[N]P. "Major disaster" means a declaration of a major disaster by the federal emergency management agency (FEMA).

[16.10.15.7 NMAC - Rp 16 NMAC 10.15.7, 7/15/01; A, 10/7/05; A, 12/30/05; A, 7/1/06; A, 9/27/07; A, 9/21/09]

16.10.15.16 LICENSURE EXPIRATION, RENEWAL, CHANGE OF STATUS:

A. Physician assistant licenses expire on March 1 of the year following NCCPA expiration. To avoid additional penalty fees, a completed renewal application, accompanied by the required fees, proof of current NCCPA certification and other documentation must be submitted through the online renewal system, postmarked or hand-delivered on or before March 1 of the expiration year. A New Mexico physician assistant license that has not been renewed by March 1 of the renewal year will remain temporarily active with respect to medical practice until June 1 of the renewal year at which time, at the discretion of the board, the license may be suspended for non-renewal and the status changed to lapsed. The primary supervising physician will be notified.

B. The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to assure the board has accurate address information and to make a timely request for the renewal application if one has not been received prior to license expiration.

C. Renewal applications postmarked or hand-delivered after March 1 but prior to April 15 must be accompanied by the completed renewal application, proof of current NCCPA certification, the renewal fee and late fee indicated in 16.10.9.9 NMAC.

D. Renewal applications postmarked or hand-delivered on or after April 16 but prior to May 30 must be accompanied by the completed renewal application, proof of current NCCPA certification, the renewal fee and late fee indicated in 16.10.9.9 NMAC.

E. A physician assistant who has not passed the NCCPA six year

recertification exam prior to the date of license expiration may apply to the board for an emergency deferral of the requirement. A designee of the board may grant deferrals of up to one year.

(1) A physician assistant who is granted an emergency deferral shall pay the renewal fee and additional late fee indicated in 16.10.9.9 NMAC.

(2) The license of a physician assistant who is granted an emergency deferral shall expire two years after the original renewal date, regardless of the duration of the emergency deferral.

F. ~~[The board shall summarily suspend on May 30 of the renewal year]~~ The board may suspend for non-renewal and change the status to lapsed on June 1 of the renewal year. The license of any physician assistant who has failed within ninety days after the license renewal date to renew their license, or to change the license status, or to pay all required fees, or to comply with NCCPA certification requirements, or to provide required documentation, or to request an emergency deferral.

G. At the time of license renewal a physician assistant may request a status change.

(1) A license that is placed on inactive status requires payment of a fee as defined in 16.10.9.9 NMAC. A license in inactive status is not valid for practice in New Mexico but may be reinstated in accordance with the provisions of 16.10.15.16 NMAC.

(2) On request, a license may be placed on retired status. There is no charge for this change in status. A retired license is not valid for practice in New Mexico and such license may not subsequently be reinstated. A physician assistant with a retired license who chooses to reinstate the license must re-apply as a new applicant.

(3) A physician assistant may inform the board that he does not wish to renew an active license to practice in New Mexico and will voluntarily allow the license to lapse. There is no charge for this change to ~~[inactive status.]~~ voluntarily lapsed status. A voluntarily lapsed license is not valid for practice in New Mexico but may be reinstated in accordance with the provisions of 16.10.15.16 NMAC.

H. Re-instatement within two years. ~~[An inactive or suspended license]~~ An inactive, lapsed, voluntarily lapsed or suspended license may be placed on active status upon completion of a renewal application in which the applicant has supplied all required fees and proof of current NCCPA certification.

I. Re-instatement after two years. ~~[An inactive or suspended license]~~ An inactive, lapsed, voluntarily lapsed or suspended license may be placed on active status upon completion of a re-instatement application for which the applicant has

supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board. Applicants may be required to personally appear before the board or the board's designee for an interview.

J. All renewal and reinstatement applications will be subject to a one-time nationwide and statewide criminal history screening.

(1) Renewal and reinstatement applications will be processed pending the completion of the statewide criminal history screening and may be granted while the screening still pending.

(2) If the nationwide or statewide criminal background screening reveals a felony or a violation of the Medical Practice Act, the licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.10.15.16 NMAC - N, 7/15/01; A 10/5/03; A, 8/6/04; A, 7/1/06; A, 9/27/07; A, 9/21/09]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.19 NMAC, Sections 5, 7, 10, 13, 14 and 15, effective September 21, 2009.

16.10.19.5 EFFECTIVE DATE: 8/11/01, unless a ~~[different]~~ later date is cited at the end of a section.

[16.10.19.5 NMAC - N, 8/11/01; A, 9/21/09]

16.10.19.7 DEFINITIONS:

~~[A. "Supervising Anesthesiologist"~~ means an anesthesiologist currently and actively licensed in the State of New Mexico who meets the requirements of the Act, who will function as the supervisor of the anesthesiologist assistant, and whose application to do so is accepted by the Board.

~~B. Reserved]~~

A. "Lapsed" means a license that has not been renewed by September 30 of the expiration year and has been suspended for non-renewal. A license that has lapsed is not valid for practice in New Mexico.

B. "Suspended for non-renewal" means a license that has not been renewed by September 30 of the expiration year, and has at the discretion of the board, been lapsed.

C. "Supervising anesthesiologist" means an anesthesiologist currently and actively licensed in the state of New Mexico who meets the requirements of the act, who will function as the supervisor of the anesthesiologist assistant, and whose application to do so is accepted by the board.

[16.10.19.7 NMAC - N, 8/11/01; A, 9/21/09]

16.10.19.10 SUPERVISION REQUIREMENTS:

A. Pursuant to Session Laws of 2001, Ch. 311, Section 9, an anesthesiologist may not supervise more than three (3) anesthesiologist assistants, except in emergency cases. An anesthesiologist shall not supervise, except in emergency cases, more than four anesthesia providers if at least one is an anesthesiologist assistant.

B. The supervising anesthesiologist shall submit written notice of intent to supervise an anesthesiologist assistant on forms prescribed by the board. These forms ~~[most]~~ must be submitted and approved before the anesthesiologist assistant begins work. Supervising anesthesiologists who are notifying the board of their intent to supervise an anesthesiologist assistant with less than one year of experience will include a plan for providing enhanced supervision during the first year of practice.

C. An anesthesiologist assistant shall only work under the supervision of an anesthesiologist approved by the board.

D. Failure of the supervising anesthesiologist to comply with the Medical Practice Act and the rules may result in denial of approval for current or future anesthesiologist assistant supervision.

E. Except in cases of emergency, the supervising anesthesiologist must be present in the operating room during induction of a general or regional anesthetic and during emergence from a general anesthetic, and the presence of the supervising anesthesiologist must be documented in the patient record.

F. The supervising anesthesiologist must be present within the operating suite and immediately available to the operating room when an anesthesiologist assistant is performing anesthesia procedures.

G. The supervising anesthesiologist shall ensure that all activities, functions, services and treatment measures are properly documented in writing and that all anesthesia records are reviewed, countersigned and dated.

[16.10.19.10 NMAC - N, 8/11/01; A, 1/20/03; A, 10/5/03; A, 9/21/09]

16.10.19.13 LICENSE EXPIRATION AND RENEWAL:

A. Anesthesiologist assistant licenses expire on July 1 of each odd-numbered year. A New Mexico anesthesiologist assistant license that has not been renewed by July 1 of the renewal year will remain temporarily active with respect to medical practice until September 30 of the renewal year at which time, at the discretion of the board, the license may be suspended

for non-renewal and the status changed to lapsed. Primary supervising anesthesiologist will be notified.

B. A completed renewal application, post-marked on or before July 1 of the renewal year, shall include the required fees as defined in Subsection B of 16.10.9.10 NMAC and certification of required continuing education.

C. The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal application if one has not been received.

D. Renewal applications postmarked or hand-delivered after July 1 will be subject to late penalties as defined in Subsection D of 16.10.9.10 NMAC.

E. ~~[Unless a complete renewal application is received by the Board office, or post-marked, by October 1, the license shall be suspended.]~~ The board may suspend for non-renewal and change the status to lapsed, on October 1 of the renewal year, the license of any anesthesiologist assistant who has failed within ninety days after the license renewal date either to renew their license, or to change the license status, or to pay all required fees, or to comply with NCCAA certification requirements, or to provide required documentation.

[16.10.19.13 NMAC - N, 8/11/01; A, 9/21/09]

16.10.19.14 INACTIVE STATUS AND REINSTATEMENT:

A. Upon request an anesthesiologist assistant may place the license on inactive status. Licensing or renewal fees already paid to the board will not be refunded, regardless of the date of the status change. A license placed in inactive status does not require payment of renewal fees.

B. An anesthesiologist assistant with a license in inactive status may not practice as an anesthesiologist assistant.

C. Re-instatement within two years. ~~[An inactive or suspended]~~ An inactive, lapsed, voluntarily lapsed or suspended license may be placed on active status upon completion of a renewal application in which the applicant has supplied all required fees and proof of current competence.

D. Re-instatement after two years. ~~[An inactive or suspended]~~ An inactive, lapsed, voluntarily lapsed or suspended license may be placed on active status upon completion of a re-instatement application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board. Applicants may be required to personally appear before the board or the

board's designee for an interview.

[16.10.19.14 NMAC - N, 8/11/01; A, 9/21/09]

16.10.19.15 CONTINUING EDUCATION:

A. Proof of forty hours of continuing education ~~[are]~~ is required for each bi-annual renewal.

B. Current certification in advanced cardiac life support is also required for license renewal and the hours spent in refresher courses count as part of the required education hours.

C. Required continuing education will be prorated during the initial licensing period. Individuals licensed less than one year will require no continuing education for the initial renewal. Individuals licensed more than one year, but less than two years must submit proof of twenty hours of continuing education, including ACLS certification.

[16.10.19.15 NMAC - N, 8/11/01; A, 9/21/09]

NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.11 NMAC Section 13, effective 9-15-09, adopted by the State Personnel Board at a meeting on 8-21-09.

1.7.11.13 EMPLOYEES IN CAREER STATUS:

A. Notice of Contemplated Action:

(1) To initiate the suspension, demotion, or dismissal of an employee in career status and an employee in term status who has completed the probationary period, the agency shall serve a notice of contemplated action on the employee which: describes the conduct, actions, or omissions which form the basis for the contemplated disciplinary action; gives a general explanation of the evidence the agency has; advises the employee of his or her right to inspect and obtain copies of any documentary evidence relied upon; specifies what the contemplated action is; and states that the employee has eleven calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an oral response.

(2) When the notice of contemplated action is served by mail, the employee receiving service shall have 3 additional calendar days in which to file a response.

B. Response to Notice of Contemplated Action:

(1) A representative of the employee's choosing may respond in writing to the notice of contemplated action on

behalf of the employee.

(2) If there is a request for an oral response to the notice of contemplated action, the agency shall meet with the employee within 11 calendar days of a request for an oral response, unless the employee and the agency agree in writing to an extension of time. A representative of the employee's choosing may represent the employee.

(3) The purpose of the oral response is not to provide an evidentiary hearing but is an opportunity for the employee to present his or her side of the story. It is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.

C. Notice of Final Action:

(1) If the employee does not respond to the notice of contemplated action the agency shall issue a notice of final action within 11 calendar days following the response period.

(2) If the employee has filed a written response or has been provided an opportunity for oral response, the agency shall issue a notice of final action no later than 11 calendar days from the date of receipt of the response.

(3) The notice of final action shall:

(a) specify the final action to be taken, which may be upholding the contemplated action, a lesser form of discipline than contemplated, or no disciplinary action;

(b) describe the conduct, actions, or omissions which form the basis for the disciplinary action, which may not include allegations not included in the notice of contemplated action;

(c) give a general explanation of the evidence the agency has;

(d) specify when the disciplinary action will be effective, which must be at least 24 hours from the time of service of the notice of final action; and

(e) inform the employee of his or her appeal rights.

(4) Appeal rights:

~~[(a) for an employee not covered by a collective bargaining agreement inform the employee that the final disciplinary action may be appealed to the board with a written statement of the grounds for the appeal delivered to the state personnel office in Santa Fe, New Mexico, and that the appeal must be received by the director within 30 calendar days of the effective day of final action and that the employee must submit a copy of the notice of final action with the notice of appeal.~~

~~(b) for an employee covered by a collective bargaining agreement inform the employee that the final disciplinary action may be appealed to the board with a written statement of the grounds for the appeal~~

delivered to the state personnel office in Santa Fe, New Mexico, and that the appeal must be received by the director within 30 calendar days of the effective day of final action and that the employee must submit a copy of the notice of final action with the notice of appeal; or the employee may make an irrevocable election of appeal to an arbitrator and that the appeal to an arbitrator shall be filed in accordance with the steps outlined in the collective bargaining agreement;]

(a) an employee, not covered by a collective bargaining agreement, may appeal a final disciplinary action to the board by delivering a written statement of the grounds for appeal to the state personnel director at 2600 Cerrillos Road, P.O. Box 26127, Santa Fe, New Mexico 87505 no later than 30 calendar days from the effective date of the final disciplinary action; the employee must submit a copy of the notice of final disciplinary action with the notice of appeal;

(b) an employee who is covered by a collective bargaining agreement may either appeal the final disciplinary action to the board as stated above in *Sub-paragraph (a) of Paragraph (4) of Subsection C of 1.7.11.13 NMAC* or make an irrevocable election to appeal to an arbitrator pursuant to the collective bargaining agreement.

[1.7.11.13 NMAC - Rp, 1 NMAC 7.11.13, 07/07/01; A, 11/14/02; A, 7-15-05; A/E, 6/19/09; A, 9/15/09]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.1 NMAC, Section 9, effective September 15, 2009.

1.13.1.9 NOTICE REQUIREMENTS: All meetings shall be held at the times and places indicated in the meeting notice.

A. Regular meetings.

Notice requirements for any regular meeting as described in Subsection A of 1.13.1.8 NMAC shall be met if notice is given at least ten days in advance of the meeting. The notice shall include the date, time and place of the meeting and information about how to obtain copies of the agenda.

(1) Notices of regular meetings shall be published in at least one newspaper of general circulation and in the New Mexico register and posted at the New Mexico state records center and archives in Santa Fe, NM.

(2) Notices shall also be mailed to those broadcast stations licensed by the federal communications commission and those newspapers of general circulation that have made a written request for notices of public meetings.

B. Special and emergency

meetings. Notice requirements for any special or emergency meeting as described Subsections B and C of 1.13.1.8 NMAC shall be met if notice is given at least three days in advance of any special, non-emergency meeting and 24 hours in advance of [the] any emergency meeting, unless in the case of an emergency meeting, threat of personal injury or property damage requires less notice. The notice shall include the date, time and place of the meeting and information about how to obtain copies of the agenda.

(1) Notices of special or emergency meetings shall be provided by telephone to at least one newspaper of general circulation and posted at the New Mexico state records center and archives in Santa Fe, NM.

(2) Notices shall also be provided by telephone to those broadcast stations licensed by the federal communications commission and those newspapers of general circulation that have made a written request for notices of public meetings.

C. In addition to the other information specified in this section (1.13.1.9 NMAC), all notices shall include language providing information about whom an individual with a disability and in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service may contact to obtain such aid or service. The notices shall further direct the individual with the disability to contact the named person at least one week prior to the meeting or as soon as possible. The notice shall also state that public documents, including the agenda and minutes, can be provided in various accessible formats and shall provide the name and telephone number of the person to contact for a summary or other accessible format.

[1.13.1.9 NMAC - N, 05/30/03; A, 09/15/09]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.665 NMAC, ERRDS Department of Health, adding Section 638 effective 09/21/2009.

1.18.665.638 CHILD FATALITY REVIEW FILES:

A. Program: epidemiology

B. Maintenance system: chronological by calendar year, then numerical by case identification number

C. Description: records concerning the review of all reported deaths of children due to fatal injury or other undetermined cause (i.e., motor vehicle, suicide, homicide, unexpected death, abuse and neglect, etc.). Portions of file are input to the national child death review case reporting system. Files may include case

reports, office of the medical investigator reports of death, police reports, school records, disciplinary histories, children, youth and family intervention records, hospital records, psychiatric evaluations, medical records, etc.

D. Retention: five calendar years from date of death

E. Confidentiality: Portions of the records may be confidential pursuant, but not limited to Section 24-14-27 NMSA 1978, Disclosure of records, 5 USC, Section 552a (i.e., social security number) and Section 14-6-1 NMSA 1978 (i.e., health information).

[1.18.665.638 NMAC - N, 9/21/2009]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.770 NMAC, ERRDS Corrections Department, amending Section 31 effective 09/21/2009.

1.18.770.31 AMERICAN CORRECTIONAL ASSOCIATION ACCREDITATION AUDIT COMPLIANCE FILES:

A. Program: [training] accreditation

B. Maintenance system: chronological by calendar year, then numerical by standard number

C. Description: records [concerning the training academy's] documenting audit compliance with the American correctional association accreditation standards. File may contain [academy] equipment inventory, copy of primary correctional training standards and secondary documentation on [academy] training policies, accreditation checklist, etc.

D. Retention: six years after completion date of compliance audit

[1.18.770.31 NMAC - Rp, 1.18.770.194 NMAC, 7/21/2008; A, 9/21/2009]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.14.5 NMAC Section 9, effective 9-15-09.

13.14.5.9 STANDARD EXCEPTIONS IN SCHEDULE B:

A. All commitments issued on New Mexico property will contain each of the following numbered exceptions verbatim and in the same order stated herein.

(1) Rights or claims of parties in possession not shown by the public records.

(2) Easements, or claims of easements, not shown by the public records.

(3) Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matter which would be disclosed by an accurate survey and inspection of the premises.

(4) Any lien, claim or right to a lien, for services, labor or materiel heretofore or hereafter furnished, imposed by law and not shown by the public records.

(5) Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy). **note:** Existing inventory of preprinted forms containing the words "dower, curtesy" in standard exception number 5 may be used without penalty until existing supplies are exhausted or the words "dower, curtesy" may be deleted on preprinted forms by crossing them out.

(6) [Any titles or rights asserted by anyone including, but not limited to, persons, corporations, governments, or other entities, to lands comprising the shores or bottoms of navigable streams, lakes, or land beyond the line of the harbor or bulkhead lines established or changed by the United States government.] [RESERVED]

(7) [Unpatented mining claims, reservations or exceptions in patents or in acts authorizing the issuance thereof water rights, claims or title to water. **note:** Standard exception 7 may be modified to allow deletion of all language with the exception of the words "w" "Water rights, claims or title to water."

(8) [Taxes or assessments which are not shown as existing liens by the public records.] [RESERVED]

(9) Taxes for the year _____, and thereafter. (See 13.14.5.12 NMAC)

(10) Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of records the estate or interest or mortgage thereon covered by this commitment.

B. Additionally, each commitment may contain the following statement when said commitment is used to commit for both an owner's policy and a loan policy or a loan policy only: "Exceptions numbered _____ will not appear in the loan policy but will appear in the owner's policy, if any." If the commitment is for a construction policy, the following statement must be added: "The construction loan policy will contain an exception limiting its coverage to two years duration pursuant to 13.14.7.18 NMAC."

C. Each commitment shall contain the following statement: Standard exceptions 1, 2, 3, 4, 6 and/or 8 may be deleted from any policy, and standard

exception 7 may be modified on any policy, upon compliance with all provisions of the applicable rules, upon payment of all additional premiums required by the applicable rules, upon receipt of the required documents and upon compliance with the company's underwriting standards for each such deletion. Standard exception 5 may be deleted from the policy if the named insured in the case of an owner's policy, or the vestee, in the case of a leasehold or loan policy, is a corporation, a partnership, or other artificial entity, or a person holding title as trustee. The policy to be issued pursuant to this commitment will be endorsed or modified in schedule B by the company to waive its right to demand arbitration pursuant to the conditions and stipulations of the policy at no cost or charge to the insured. The endorsement or the language added to schedule B of the policy shall read: "In compliance with Subsection D of 13.14.18.10 NMAC, the company hereby waives its right to demand arbitration pursuant to the title insurance arbitration rules of the American land title association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the company and the insured."

[6-16-86, 3-1-90, 6-1-97, 6-1-98; 13.14.5.9 NMAC - Rn, 13 NMAC 14.5.9, 5-15-00; A, 8-29-03; A, 7-1-05; A, 8-17-09; A, 9-15-09]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.14.6 NMAC Sections 17, 23 and 24, effective 9-15-09.

13.14.6.17 [~~NAVIGABLE STREAMS, LAKES, ETC. - STANDARD EXCEPTION 6:~~ Upon being paid the premium provided for in 13.14.10.29 NMAC, and upon being furnished with a satisfactory survey of property to be insured; which survey discloses no streams, lakes, arroyos or ponds located on the property; the Standard Exception numbered 6 in 13.14.5.9 NMAC may be deleted in its entirety from an owner's policy. A staked survey may not be required solely to satisfy the survey requirement in this regulation where the insured property is one to four family residential property.] [RESERVED]
[4-3-95; 13.14.6.17 NMAC - Rn, 13 NMAC 14.6.17, 5-15-00; Repealed, 9-15-09]

13.14.6.23 [~~PERMISSIBLE MODIFICATION - STANDARD EXCEPTION 7:~~ Standard exception 7 may be modified to allow deletion of all language with the exception of the words "water rights;

claims or title to water."] [RESERVED]
[6-1-97; 13.14.6.23 NMAC - Rn, 13 NMAC 14.6.23, 5-15-00; Repealed, 9-15-09]

13.14.6.24 [~~TAXES - OR ASSESSMENTS WHICH ARE NOT SHOWN AS EXISTING LIENS BY THE PUBLIC RECORDS - STANDARD EXCEPTION 8:~~ Upon request of the insured, upon being paid the premium provided for in 13.14.10.46 NMAC, and upon being furnished with a satisfactory search of the appropriate records, if any; the standard exception numbered 8 in Subsection A of 13.14.5.9 NMAC may be deleted in its entirety from an owner's or leasehold owner's policy.] [RESERVED]
[13.14.6.24 NMAC - N, 7-1-05; Repealed, 9-15-09]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.14.7 NMAC Sections 16, 24 and 25, effective 9-15-09.

13.14.7.16 [~~NAVIGABLE STREAMS, LAKES, ETC. - STANDARD EXCEPTION 6:~~ Upon being paid the premium provided for in 13.14.10.29 NMAC, and upon being furnished with a satisfactory staked survey of the property to be insured; which survey discloses no streams, lakes, arroyos or ponds located on the property; the Standard Exception numbered 6 in 13.14.5.9 NMAC may be deleted in its entirety from a Loan Policy, Leasehold Owner's Policy or Leasehold Loan Policy. A staked survey may not be required solely to satisfy the survey requirement in this regulation where the insured property is One to Four Family Residential Property.] [RESERVED]
[4-3-95; 13.14.7.16 NMAC - Rn, 13 NMAC 14.7.16, 5-15-00; Repealed, 9-15-09]

13.14.7.24 [~~PERMISSIBLE MODIFICATION - STANDARD EXCEPTION 7:~~ Standard exception 7 may be modified to allow deletion of all language with the exception of the words "water rights, claims and title to water."] [RESERVED]
[13.14.7.24 NMAC - N, 7-1-04; Repealed, 9-15-09]

13.14.7.25 [~~TAXES - OR ASSESSMENTS WHICH ARE NOT SHOWN AS EXISTING LIENS BY THE PUBLIC RECORDS - STANDARD EXCEPTION 8:~~ Upon request of the insured, upon being paid the premium

provided for in 13.14.10.46 NMAC, and upon being furnished with a satisfactory search of the appropriate records, if any, the standard exception numbered 8 in Subsection A of 13.14.5.9 NMAC may be deleted in its entirety from a loan policy, leasehold loan policy, short form residential loan policy or construction loan policy.] [RESERVED] [13.14.7.25 NMAC - N, 7-1-04; A, 7-1-05; Repealed, 9-15-09]

**NEW MEXICO
PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION**

This is an amendment to 13.14.8 NMAC Section 18, effective 9-15-09.

13.14.8.18 [DESIGNATION OF IMPROVEMENTS, ADDRESS] LOCATION ENDORSEMENT: The ["designation of improvements, address"] "location" endorsement, NM form 52, may be attached to owner's policies and loan policies provided a recent survey is furnished and the premium in 13.14.10.37 is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement. [13.14.8.18 NMAC - N, 5-15-00; A, 5-31-00; A, 9-15-09]

**NEW MEXICO
PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION**

This is an amendment to 13.14.10 NMAC Sections 29, 35, 37 and 46, effective, 9-15-09.

13.14.10.29 [NAVIGABLE STREAMS, LAKES, ETC. - STANDARD EXCEPTION 6: The company may delete standard exception 6 in accordance with 13.14.6.17 NMAC and 13.14.7.16 NMAC at a charge of twenty-five dollars (\$25.00); [RESERVED] 4-3-95; 13.14.10.29 NMAC - Rn & A, 13 NMAC 14.10.29, 5-15-00; A, 5-31-00; Repealed, 9-15-09]

13.14.10.35 [PERMISSIBLE MODIFICATION - STANDARD EXCEPTION 7: The premium charge for issuance of this endorsement shall be twenty-five dollars (\$25.00); [RESERVED] [5-1-99; 13.14.10.35 NMAC - Rn, 13 NMAC 14.10.35, 5-15-00; A, 5-31-00; Repealed, 9-15-09]

13.14.10.37 [DESIGNATION OF IMPROVEMENTS, ADDRESSES] LOCATION ENDORSEMENT: When a ["designation of improvements, address"] "location" endorsement, NM form 52, is issued pursuant to 13.14.8.18, the premium for each endorsement shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy. [13.14.10.37 NMAC - N, 5-15-00; A, 5-31-00; A, 9-15-09]

13.14.10.46 [PERMISSIBLE DELETION OF STANDARD EXCEPTION 8: The premium for deletion of standard exception 8 from an owner's policy, a leasehold owner's policy, a loan policy, leasehold loan policy, short form residential loan policy, or construction loan policy shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy; [RESERVED] [13.14.10.46 NMAC - N, 7-1-04; A, 7-1-05; Repealed, 9-15-09]

**NEW MEXICO
PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION**

This is an amendment to 13.14.18 NMAC Sections 41, 72, and 85, effective, 9-15-09.

13.14.18.41 NM FORM 24.1: ASSIGNMENT AND DATE DOWN ENDORSEMENT:

**Assignment and Date Down Endorsement Attached to Policy No. _____
Issued By
Blank Title Insurance Company
[NM Form 24.1; ALTA Form 10.1, Rev. 2006]**

[The Company insures the owner of the indebtedness secured by the Insured Mortgage against loss or damage sustained by reason of:]

- 1. The name of the Insured is amended to read: _____.
- 2. The Company insures against loss or damage sustained by the Insured by reason of

a. The failure of the following assignment to vest title to the Insured Mortgage in the Insured: _____;

b. Any liens for taxes or assessments that are due and payable on Date of Endorsement, except: _____;

c. Lack of priority of the lien of the Insured Mortgage over defects, liens, or encumbrances other than those shown in the policy or a prior endorsement, except: _____;

d. Notices of federal tax liens or notices of pending bankruptcy proceedings affecting the Title and recorded subsequent to Date of Policy in the Public Records and on or prior to Date of Endorsement, except: _____;

e. Any modification, partial or full reconveyance, release or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except: _____.

This endorsement shall be effective provided that the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Insured at Date of Endorsement.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Date of Endorsement _____

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____
[2-6-87; 13.14.18.41 NMAC - Rn, 13 NMAC 14.8.A.25, 5-15-00; 13.14.18.41 NMAC - N, 8-1-08; A, 9-15-09]

13.14.18.72 NM FORM 52: [DESIGNATION OF IMPROVEMENTS, ADDRESS - ENDORSEMENT] LOCATION ENDORSEMENT:

[Designation of Improvements, Address Endorsement

Attached to Policy No. _____
Issued By _____
Blank Title Insurance Company
[NM Form 52]

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of the failure of a (insert description of improvement, e.g., "a commercial building") known as (insert street address of improvement), to be located on the land at Date of Policy:

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

D a t e : _____

BLANK TITLE INSURANCE COMPANY

BY _____

Location Endorsement
Attached to Policy No. _____
Issued By _____
Blank Title Insurance Company
[NM Form 52, ALTA 22-06]

The Company insures against loss or damage sustained by the insured by reason of the failure of a (description of improvement), known as (street address), to be located on the land at date of policy.

This endorsement is issued as part of this policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the date of policy, or (iv) increase the amount of insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

Blank Title Insurance Company

By: _____

Authorized Signatory

[13.14.18.72 NMAC - N, 7-1-03; 13.14.18.72 NMAC - Rn, 13.14.18.65 NMAC, 8-1-08;

A, 9-15-09]

13.14.18.85 NM FORM 63:
SHORT FORM RESIDENTIAL LOAN POLICY:

Short Form Residential Loan Policy - One-to-Four Family
Issued By Blank Title Insurance Company
[NM Form 63; ALTA Form Rev. 2006]

Schedule A.

Name and Address of Title Insurance Company:
[File No.: _____]
Policy No.: _____
Loan No.: _____
Address Reference: _____
Street Address: _____
County and State: _____
Amount of Insurance: \$ _____
[Premium: \$ _____]
Mortgage Amount: \$ _____
Mortgage Date: _____
Date of Policy: [at a.m./p.m.] _____
Name of Insured: _____
Name of Borrower(s): _____

The estate or interest in the Land identified in this Schedule A and which is encumbered by the Insured Mortgage is fee simple and is, at Date of Policy, vested in the borrower(s) shown in the Insured Mortgage and named above.

The Land referred to in this policy is described as set forth in the Insured Mortgage.

This policy consists of [one] page(s), [including its reverse side,] unless an addendum is attached and indicated below:

_____ Addendum attached

[Subject to the conditions stated in the endorsement list below, the following ALTA endorsements are incorporated in this policy:]

[ALTA ENDORSEMENT 4.1-06 (Condominium); if the Land or estate or interest is referred to in the Insured Mortgage as a condominium:]

[ALTA ENDORSEMENT 5.1-06 (Planned Unit Development)]

[ALTA ENDORSEMENT 6-06 (Variable Rate); if the Insured Mortgage contains provisions which provide for an adjustable interest rate:]

[ALTA ENDORSEMENT 6.2-06 (Variable Rate-Negative Amortization); if the Insured Mortgage contains provisions

which provide for both an adjustable interest rate and negative amortization.]

[ALTA ENDORSEMENT 7-06 (Manufactured Housing); if a manufactured housing unit is located on the Land at Date of Policy:]

[ALTA ENDORSEMENT 8.1-06 (Environmental Protection Lien) - Paragraph b refers to the following state statute(s):

[bracketed material optional]
[ALTA ENDORSEMENT 9-06 (Restrictions, Encroachments, Minerals)

The endorsements checked below, if any, are incorporated in this policy:

_____ ALTA ENDORSEMENT 4-06 (Condominium)

_____ ALTA ENDORSEMENT 5-06 (Planned Unit Development)

_____ ALTA ENDORSEMENT 7.1-06 (Manufactured Housing - Conversion; Loan)

The endorsements checked below, if any, are incorporated in this policy:

ALTA ENDORSEMENT 4-06 (Condominium)

ALTA ENDORSEMENT 4.1-06 (Condominium), if the land or estate or interest is referred to in the _____

insured mortgage as a condominium.

ALTA ENDORSEMENT 5-06 (Planned Unit Development)

ALTA ENDORSEMENT 5.1-06 (Planned Unit Development)

ALTA ENDORSEMENT 6-06 (Variable Rate), if the insured mortgage contains provisions which _____

provide for an adjustable interest rate.

ALTA ENDORSEMENT 6.2-06 (Variable Rate-Negative Amortization), if the insured mortgage _____

contains provisions which provide for both an adjustable interest rate and negative _____ amortization.

ALTA ENDORSEMENT 7-06 (Manufactured Housing), if a manufactured housing unit is located on _____

the land at date of policy.

ALTA ENDORSEMENT 7.1-06 (Manufactured Housing - Conversion; Loan)

ALTA ENDORSEMENT 8.1-06 (Environmental Protection Lien) - Paragraph b refers to the following _____

s t a t e statute(s): Sections 3-48-7 and 69-25B-8,

New Mexico Statutes Annotated 1978.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____
PRESIDENT

BY: _____
SECRETARY

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____,
PRESIDENT

BY: _____,
SECRETARY

SUBJECT TO THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B BELOW, AND ANY ADDENDUM ATTACHED HERETO, BLANK TITLE INSURANCE COMPANY, A _____ CORPORATION, HEREIN CALLED THE "COMPANY," HEREBY INSURES THE INSURED IN ACCORDANCE WITH AND SUBJECT TO THE TERMS, EXCLUSIONS AND CONDITIONS SET FORTH IN THE AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (6-17-06), ALL OF WHICH ARE INCORPORATED HEREIN. ALL REFERENCES TO SCHEDULES A AND B SHALL REFER TO SCHEDULES A AND B OF THIS POLICY.

SCHEDULE B - Exceptions from coverage and affirmative [coverage]insures.

Except to the extent of the affirmative insurance set forth below, this policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees, or expenses) which arise by reason of:

1. Those taxes and special assessments that become due or payable subsequent to Date of Policy. (This does not modify or limit the coverage provided in covered risks 11(b).
2. Covenants, conditions, or restrictions, if any, appearing in the Public Records; however, this policy insures against loss or damage arising from:
 - a. the violation of those covenants, conditions, or restrictions on or prior to Date of Policy;
 - b. a forfeiture or reversion of Title from a future violation of those covenants, conditions, or restrictions, including those relating

to environmental protection; and

c. provisions in those covenants, conditions, or restrictions including those relating to environmental protection, under which the lien of the Insured Mortgage can be extinguished, subordinated, or impaired.

As used in paragraph 2(a), the words "covenants, conditions, or restrictions" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not referenced in an addendum attached to this policy.

3. Any easements or servitudes appearing in the Public Records; however this policy insures against loss or damage arising from (a) the encroachment, at Date of Policy, of the improvements on any easement, and (b) any interference with or damage to existing improvements, including lawns, shrubbery, and trees, resulting from the use of the easements for the purposes granted or reserved.

4. Any lease, grant, exception, or reservation of minerals or mineral rights appearing in the Public Records; however, this policy insures against loss or damage arising from

(a) any affect on or impairment of the use of the Land for residential one-to-four family dwelling purposes by reason of such lease, grant, exception or reservation of minerals or mineral rights, and

(b) any damage to existing improvements, including lawns, shrubbery, and trees, resulting from the future exercise of any right to use the surface of the Land for the extraction or development of the minerals or mineral rights so leased, granted, excepted, or reserved. Nothing herein shall insure against loss or damage resulting from subsidence.

NOTICES, WHERE SENT: Any notice of claim or other notice or statement in writing required to be given the Company under this policy must be given to the Company at the following address: _____

SCHEDULE B continued - Addendum to short form residential loan policy

Addendum to Policy Number: _____
[File Number: _____]

IN ADDITION TO THE MATTERS SET FORTH ON SCHEDULE B OF THE POLICY TO WHICH THIS ADDENDUM IS ATTACHED, THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE (AND THE COMPANY WILL NOT PAY COSTS, ATTORNEYS' FEES OR EXPENSES) THAT ARISE BY REASON OF THE FOLLOWING:

[13.14.18.85 NMAC - Rn, 13.14.18.76 NMAC & A, 8-1-08; A, 9-15-09]

NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.1 NMAC Sections 3 and 9. In Subsection B of 15.2.1.9 NMAC, the two types of appeals that may be filed have been eliminated, increasing the appeal fee and removing language that would allow refunds of appeal fees, these amendments are effective 09/15/09.

15.2.1.3 STATUTORY AUTHORITY: Sections [60-1-1 thru 60-1-26] 60-1A-1 through 60-1A-30, NMSA 1978 authorizes the New Mexico Racing Commission to promulgate rules and regulations and carry out the duties of the Act to regulate horse racing.

[15.2.1.3 NMAC - Rp, 15 NMAC 2.1.3, 03/15/2001; A, 09/15/09]

15.2.1.9 DUE PROCESS AND DISCIPLINARY ACTION:

...
B. PROCEEDINGS BEFORE THE STEWARDS:

(9) Appeals.
(a) A person who has been aggrieved by a ruling of the stewards may appeal to the commission. A person who fails to file an appeal by the deadline and in the form required by this section waives the right to appeal the ruling.

(b) An appeal under this section must be filed not later than 20 days from the date of the ruling. The appeal must be filed at the main commission offices or with the stewards who issued the ruling[-

~~(i) A ruling appeal excluding riding infractions, must be accompanied by a fee in the amount of \$100. The fee must be in the form of a cashier's check, money order or personal check. The commission has the discretion to refund all or part of the fee.~~

~~(ii) A ruling appeal regarding a riding infraction] and must be accompanied by a fee in the amount of [\$300] \$500. The fee must be in the form of a cashier's check, money order or personal check. [The commission has the discretion to refund all or part of the fee.]~~

(c) An appeal must be in writing on a form prescribed by the commission. The appeal must include the name, address, telephone number and signature of the person making the appeal; a statement of the basis for the appeal.

(d) On notification by the commission that an appeal has been filed, the stewards shall forward to the commission the record of the proceeding on which the appeal is based, and a statement of the reasons for their rulings.

(e) If a person against whom a fine has been assessed files an appeal of the ruling that assesses the fine, the person shall pay the fine in accordance with these rules. ~~[If the appeal is disposed of in favor of the appellant, the commission shall refund the amount of the fine.]~~

...

[15.2.1.9 NMAC - Rp, 15 NMAC 2.1.9, 03/15/2001; A, 03/31/2003; A, 05/30/2003; A, 06/15/2004; A, 06/30/09; A, 09/15/09]

NEW MEXICO RACING COMMISSION

This is an amendment to 15.2.2 NMAC Section 3, effective 09/15/09.

15.2.2.3 STATUTORY AUTHORITY: Section ~~[60-1-3]~~ 60-1A-4, NMSA 1978 empowers the state racing commission to make rules and regulations for the holding, conducting and operating of all race meets and races. Section 60-1-6, NMSA 1978 empowers the racing commission to establish such qualifications for licenses to conduct horse race meets as it deems to be in the public interest. [15.2.2.3 NMAC - Rp, 15 NMAC 2.2.3, 03/15/2001; A, 09/15/09]

NEW MEXICO RACING COMMISSION

This is an amendment to 15.2.3 NMAC Section 3, effective 09/15/09.

15.2.3.3 STATUTORY AUTHORITY: Sections ~~[60-1-1 thru 60-1-26]~~ 60-1A-1 through 60-1A-30 NMSA 1978 provide that the New Mexico racing commission has the authority to promulgate rules and regulations deemed necessary to enforce Chapter 60 NMSA 1978 pertaining to horse racing. [15.2.3.3 NMAC - Rp, 15 NMAC 2.3.3, 04/13/2001; A, 09/15/09]

NEW MEXICO RACING COMMISSION

This is an amendment to 15.2.4 NMAC Section 3, effective 09/15/09.

15.2.4.3 STATUTORY AUTHORITY: Sections ~~[60-1-1]~~ 60-1A-1 through [60-1-26] 60-1A-30 NMSA 1978 provides the authority of the New Mexico Racing Commission to establish rules and regulations deemed necessary to carry out the purposes of Chapter 60 NMSA 1978 pertaining to horse racing. [15.2.4.3 NMAC - Rp, 15 NMAC 2.4.3, 03/15/2001; A, 09/15/09]

NEW MEXICO RACING COMMISSION

This is an amendment to 15.2.5 NMAC Sections 3, 13 and 14, effective 09/15/09.

15.2.5.3 STATUTORY AUTHORITY: Sections ~~[60-1-1]~~ 60-1A-1 through [60-1-26] 60-1A-30 NMSA 1978 provides the authority of the New Mexico Racing Commission to establish rules and regulations deemed necessary to carry out the purposes of Chapter 60 NMSA 1978 pertaining to horse racing. [15.2.5.3 NMAC - Rp, 15 NMAC 2.5.3, 03/15/2001; A, 09/15/09]

15.2.5.13 RUNNING OF THE RACE:

A. EQUIPMENT.

(1) No whip shall weigh more than one pound nor exceed 31 inches in length, including the popper. No whip shall be used unless it has affixed to the end a looped popper not less than one and one-quarter (1 1/4) inches in width, and not over three (3) inches in length, and be feathered above the popper with not less than three (3) rows of feathers, each feather not less than one (1) inch in length. There shall be no holes in the popper. All whips are subject to inspection and approval by the stewards.

(2) No bridle shall exceed two pounds.

(3) Reins. No jockey, apprentice jockey, exercise person or any person mounted on a horse shall ride, breeze, exercise, gallop or workout a horse on the grounds of a facility under the jurisdiction of the commission unless the horse is equipped with a nylon rein or a safety rein. A safety rein is a rein with a wire or nylon cord stitched into the traditional leather rein during the manufacturing process and the safety cord is attached to the bit with a metal clasp.

(4) Toe grabs with a height greater than ~~[four millimeters worn on the front~~

~~shoes of quarter horses and]~~ two millimeters worn on the front shoes of thoroughbred horses while racing are prohibited. The horse shall be scratched and the trainer may be subject to fine.

(5) A horse's tongue may be tied down with clean bandages, gauze or tongue strap.

(6) No licensee may add blinkers to a horse's equipment or discontinue their use without the prior approval of the starter, the paddock judge, and the stewards.

(7) No licensee may change any equipment used on a horse in its last race without approval of the paddock judge or stewards.

(8) All jockeys and exercise riders must wear a fastened protective helmet and fastened safety vest when mounted. The safety vest shall weigh no more than two pounds and shall be designed to provide shock-absorbing protection to the upper body of at least a rating of five, as defined by the British equestrian trade association (BETA).

B. RACING NUMBERS.

(1) Each horse shall carry a conspicuous saddle cloth number corresponding to the official number given that horse on the official program.

(2) In the case of a coupled entry that includes more than one horse, each horse in the entry shall carry the same number, with a different distinguishing letter following the number. As an example, two horses in the same entry shall appear in the official program as 1 and 1A.

(3) Each horse in the mutuel field shall carry a separate number or may carry the same number with a distinguishing letter following the number.

C. JOCKEY REQUIREMENTS.

(1) Jockeys shall report to the jockeys' quarters at the time designated by the association. Jockeys shall report their engagements and any overweight to the clerk of scales. Jockeys shall not leave the jockeys' quarters, except to ride in scheduled races, until all of their riding engagements of the day have been fulfilled except as approved by the stewards.

(2) A jockey who has not fulfilled all riding engagements, who desires to leave the jockeys' quarters, must first receive the permission of the stewards and must be accompanied by an association security guard.

(3) Except as otherwise provided by this subsection, a jockey engaged for a certain race or for a specified time may not fail or refuse to abide by the engagement agreement, unless excused by the stewards. Failure to fulfill riding engagements may result in disciplinary action.

(4) A jockey may be excused by the stewards from fulfilling the jockey's

riding engagement if the jockey believes the horse he or she is to ride is unsafe, or the racecourse he or she is to ride on is unsafe, or the jockey is ill or injured, or other extenuating circumstances. No jockey may take off a mount for reasons of safety without first mounting and taking that horse to the track and/or commission veterinarian unless that horse is unruly in the paddock. In that event a jockey's fee is not earned.

(5) The stewards may require a jockey who is excused from fulfilling a riding engagement, because of illness or injury, to pass a physical examination conducted by a licensed physician not employed by the association before resuming race riding.

(6) While in the jockeys' quarters, jockeys shall have no contact or communication with any person outside the jockeys' quarters other than commission personnel and officials, an owner or trainer for whom the jockey is riding or a representative of the regular news media, except with the permission of the stewards. Any communication permitted by the stewards may be conducted only in the presence of the clerk of scales or other person designated by the stewards.

(7) Jockeys shall be weighed out for their respective mounts by the clerk of scales not more than 30 minutes before post time for each race.

(8) A jockey's fee shall be considered earned when the jockey is weighed out by the clerk of scales. In the event an owner or trainer elects to remove a jockey from his or her mount after naming a rider at the time of draw, the stewards may require a double jockey fee to be paid. The fee to be paid is equal to that earned by the jockey who rode the horse. The fee shall not be considered earned when a jockey(s), of their own free will, take themselves off their mounts, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above rule shall be at the discretion of the stewards. All jockey protests must be filed prior to the race.

(9) Only valets employed by the association shall assist jockeys in weighing out.

(10) A jockey's weight shall include his/her clothing, boots, saddle and its attachments and any other equipment except the whip, bridle, bit or reins, safety helmet, safety vest, blinkers, goggles and number cloth.

(11) Seven pounds is the limit of overweight any horse is permitted to carry.

(12) Once jockeys have fulfilled their riding engagements for the day and have left the jockeys' quarters, they shall not be re-admitted to the jockeys' quarters until after the entire racing program for that day has been completed, except with permission of the stewards.

D. Paddock to Post.

(1) Each horse shall carry the full weight assigned for that race from the paddock to the starting post, and shall parade past the stewards' stand, unless excused by the stewards. The post parade shall not exceed 12 minutes, unless otherwise ordered by the stewards. It shall be the duty of the stewards to ensure that the horses arrive at the starting gate as near to post time as possible.

(2) In the post parade, all pony persons, or trainers who pony horses, must wear upper body apparel in accordance with the policy of the commission.

(3) After the horses enter the track, no jockey may dismount nor entrust his horse to the care of an attendant unless, because of accident occurring to the jockey, the horse or the equipment, and with the prior consent of the starter. During any delay during which a jockey is permitted to dismount, all other jockeys may dismount and their horses may be attended by others. After the horses enter the track, only the jockey, an assistant starter, the official veterinarian, the racing veterinarian or an outrider or pony rider may touch the horse before the start of the race.

(4) If a jockey is seriously injured on the way to the post, the horse may be returned to the paddock and a replacement jockey obtained.

(5) After passing the stewards' stand in parade, the horses may break formation and proceed to the post in any manner unless otherwise directed by the stewards. Once at the post, the horses shall be started without unnecessary delay.

(6) In case of accident to a jockey or his/her mount or equipment, the stewards or the starter may permit the jockey to dismount and the horse to be cared for during the delay, and may permit all jockeys to dismount and all horses to be attended to during the delay.

(7) If a jockey is thrown on the way from the paddock to the post, the horse must be remounted, returned to the point where the jockey was thrown and then proceed over the route of the parade to the post. The horse must carry its assigned weight from paddock to post and from post to finish.

(8) If a horse leaves the course while moving from paddock to post, the horse shall be returned to the course at the nearest practical point to that at which it left the course, and shall complete its parade to the post from the point at which it left the course unless ordered scratched by the stewards.

(9) No person shall willfully delay the arrival of a horse at the post.

(10) The starter shall load horses into the starting gate in any order deemed necessary to ensure a safe and fair start. An appointed representative may tail the horse with the starter's consent. In case of an

emergency, the starter may grant approval for a horse to be tailed. In any case, the steward's shall be notified of who is tailing horses.

E. POST TO FINISH.

(1) The start.

(a) The starter is responsible for assuring that each participant receives a fair start.

(b) If, when the starter dispatches the field, any door at the front of the starting gate stalls should not open properly due to a mechanical failure or malfunction or should any action by any starting personnel directly cause a horse to receive an unfair start, the stewards may declare such a horse a non-starter.

(c) Should a horse, not scratched prior to the start, not be in the starting gate stall thereby causing it to be left when the field is dispatched by the starter, the horse shall be declared a non-starter by the stewards.

(d) Should an accident or malfunction of the starting gate, or other unforeseeable event compromise the fairness of the race or the safety of race participants, the stewards may declare individual horses to be non-starters, exclude individual horses from one or more pari-mutuel pools or declare a "no contest" and refund all wagers except as otherwise provided in the rules involving multi-race wagers.

(2) Interference, jostling or striking.

(a) A jockey shall not ride carelessly or willfully so as to permit his/her mount to interfere with, impede or intimidate any other horse in the race.

(b) No jockey shall carelessly or willfully jostle, strike or touch another jockey or another jockey's horse or equipment.

(c) No jockey shall unnecessarily cause his/her horse to shorten its stride so as to give the appearance of having suffered a foul.

(3) Maintaining a straight course.

(a) When the way is clear in a race, a horse may be ridden to any part of the course, but if any horse swerves, or is ridden to either side, so as to interfere with, impede or intimidate any other horse, it is a foul.

(b) The offending horse may be disqualified, if in the opinion of the stewards, the foul altered the finish of the race, regardless of whether the foul was accidental, willful or the result of careless riding.

(c) If the stewards determine the foul was intentional, or due to careless riding, they may fine or suspend the guilty jockey.

(d) In a straightaway race, every horse must maintain position as nearly as possible in the lane in which it starts. If a horse is ridden, drifts or swerves out of its lane in such a manner that it interferes with,

impedes or intimidates another horse, it is a foul and may result in the disqualification of the offending horse.

(4) Disqualification.

(a) When the stewards determine that a horse shall be disqualified for interference, they may place the offending horse behind such horse as in their judgment it interfered with, or they may place it last.

(b) If a horse is disqualified for a foul, any horse or horses with which it is coupled as an entry may also be disqualified.

(c) When a horse is disqualified for interference in a time trial race, it shall receive the time of the horse it is placed behind plus one-hundredth of a second penalty or more exact measurement if photo finish equipment permits, and shall be eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

(d) The stewards may determine that a horse shall be unplaced for the purpose of purse distribution and trial qualification.

(e) In determining the extent of disqualification, the stewards in their discretion may: declare null and void a track record set or equaled by a disqualified horse, or any horses coupled with it as an entry; affirm the placing judges' order of finish and suspend or fine a jockey if, in the stewards' opinion, the foul riding did not affect the order of finish; disqualify the offending horse and not penalize a jockey if in the stewards' opinion the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of a jockey.

(5) Horses shall be ridden out: All horses shall be ridden out in every race. A jockey shall not ease up or coast to the finish, without adequate cause, even if the horse has no apparent chance to win prize money.

(6) Use of whips.

(a) Although the use of a whip is not required, any jockey who uses a whip during a race shall do so only in a manner consistent with exerting his/her best efforts to win.

(b) In all races where a jockey will ride without a whip, an announcement of such fact shall be made over the public address system.

(c) No electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than the ordinary whip approved, shall be possessed by anyone, or applied by anyone to the horse at any time on the grounds of the association during the meeting, whether in a race or otherwise.

(d) Whips shall not be used on two-year-old horses before March 1 of each year.

(e) Indiscriminate use of the whip is prohibited including whipping a horse: on the head, flanks or on any other part of its body other than the shoulders or hind quarters; during the post parade except when

necessary to control the horse; excessively or brutally causing welts or breaks in the skin; when the horse is clearly out of the race or has obtained its maximum placing; persistently even though the horse is showing no response under the whip.

(7) Horse leaving the racecourse.

If a horse leaves the racecourse during a race, it must turn back and resume the race from the point at which it originally left the course.

(8) Returning after the finish.

(a) After a race has been run, the jockey shall ride promptly to the finish line, dismount and report to the clerk of scales to be weighed in. Jockeys shall weigh in with all pieces of equipment with which they weighed out.

(b) If a jockey is prevented from riding to the finish line because of an accident or illness to the jockey or the horse, the jockey may walk or be transported to the scales, or may be excused from weighing in by the stewards.

(9) Unsaddling. No person shall assist a jockey with unsaddling except with permission of the stewards and no one shall place a covering over a horse before it is unsaddled.

(10) Weighing in.

(a) A jockey shall weigh in at the same weight at which he/she weighed out, and if under that weight by more than two pounds, his/her mount shall be disqualified from any portion of the purse money.

(b) In the event of such disqualification, all monies wagered on the horse shall be refunded unless the race has been declared official.

(c) If any jockey weighs in at more than two pounds over the proper or declared weight, the jockey shall be fined or suspended or ruled off by the stewards, having due regard for any excess weight caused by rain or mud. The case shall be reported to the commission for such action, as it may deem proper.

(11) Dead heats.

(a) When a race results in a dead heat, the dead heat shall not be run off, owners shall divide except where division would conflict with the conditions of the races.

(b) When two horses run a dead heat for first place, all purses or prizes to which first and second horses would have been entitled shall be divided equally between them; and this applies in dividing all purses or prizes whatever the number of horses running a dead heat and whatever places for which the dead heat is run.

(c) In a dead heat for first place, each horse involved shall be deemed a winner and liable to penalty for the amount it shall receive.

(d) When a dead heat is run for second place and an objection is made to the

winner of the race, and sustained, the horses, which ran a dead heat, shall be deemed to have run a dead heat for first place.

(e) If the dividing owners cannot agree as to which of them is to have a cup or other prize, which cannot be divided, the question shall be determined by lot by the stewards.

(f) On a dead heat for a match, the match is off for pari-mutuel payoffs and mutuels are refunded.

[15.2.5.13 NMAC - Rp, 15 NMAC 2.5.13, 03/15/2001; A, 08/30/2007; A, 12/01/08; A, 06/30/09; A, 09/15/09]

15.2.5.14 PROTESTS, OBJECTIONS AND INQUIRIES:

A. STEWARDS TO INQUIRE: The stewards shall take cognizance of foul riding and, upon their own motion or that of any racing official or person empowered by this chapter to object or complain, shall make diligent inquiry or investigation into such objection or complaint when properly received.

B. RACE OBJECTIONS:

(1) An objection to an incident alleged to have occurred during the running of a race shall be received only when lodged with the clerk of scales, the stewards or their designees, by the owner, the authorized agent of the owner, the trainer or the jockey of a horse engaged in the same race.

(2) An objection following the running of any race must be filed before the race is declared official, whether all or some riders are required to weigh in, or the use of a "fast official" procedure is permitted.

(3) The stewards shall make all findings of fact as to all matters occurring during an incident to the running of a race; shall determine all objections and inquiries, and shall determine the extent of disqualification, if any, of horses in the race. Such findings of fact and determination shall be final for pari mutuel payout purposes.

C. P R I O R OBJECTIONS:

(1) Objections to the participation of a horse entered in any race shall be made to the stewards in writing, signed by the objector, and filed not later than one hour prior to post time for the first race on the day which the questioned horse is entered. Any such objections shall set forth the specific reason or grounds for the objection in such detail so as to establish probable cause for the objection. The stewards upon their own motion may consider an objection until such time as the horse becomes a starter.

(2) An objection to a horse which is entered in a race may be made on, but not limited to, the following grounds or reasons:

(a) a misstatement, error or omission in the entry under which a horse is to run;

(b) the horse, which is entered to

run, is not the horse it is represented to be at the time of entry, or the age was erroneously given;

(c) the horse is not qualified to enter under the conditions specified for the race, or the allowances are improperly claimed or not entitled the horse, or the weight to be carried is incorrect under the conditions of the race;

(d) the horse is owned in whole or in part, or leased or trained by a person ineligible to participate in racing or otherwise ineligible to own a race horse as provided in these rules;

(e) the horse was entered without regard to a lien filed previously with the racing secretary.

(3) The stewards may scratch from the race any horse, which is the subject of an objection if they have reasonable cause to believe that the objection is valid.

D. PROTESTS:

(1) A protest against any horse, which has started in a race, shall be made to the stewards in writing, signed by the protestor, and must be accompanied by a fee in the amount of [~~\$300~~] \$500 in the form of a cashier's check, money order or personal check within 48 hours of the race. [~~The commission has the discretion to refund all or part of the fee.~~] If the incident upon which the protest is based occurs within the last two days of the meeting, such protest may be filed with the commission within 48 hours exclusive of Saturdays, Sunday or official holidays. Any such protest shall set forth the specific reason or reasons for the protest in such detail as to establish probable cause for the protest.

(2) A protest may be made on any of the following grounds:

(a) any grounds for objection as set forth in this chapter;

(b) the order of finish as officially determined by the stewards was incorrect due to oversight or errors in the numbers of the horses, which started the race;

(c) a jockey, trainer, owner or lessor was ineligible to participate in racing as provided in this chapter;

(d) the weight carried by a horse was improper, by reason of fraud or willful misconduct;

(e) an unfair advantage was gained in violation of the rules;

(f) the disqualification of a horse(s).

(3) Notwithstanding any other provision in this article, the time limitation on the filing of protests shall not apply in any case in which fraud or willful misconduct is alleged provided that the stewards are satisfied that the allegations are bona fide and verifiable.

(4) No person shall file any objection or protest knowing the same to be inaccurate, false, untruthful or frivolous.

(5) The commission may fine any license holder an amount of up \$2,500 after considering protest, if based on the evidence they determine that the protest is frivolous, unreasonable or unnecessary.

(6) If a license holder who appealed fails to appear for any scheduled hearing without providing five days prior notice, the stewards or the commission may impose costs.

(7) The stewards may order any purse, award or prize for any race withheld from distribution pending the determination of any protest. In the event any purse, award or prize has been distributed to an owner or for a horse which by reason of a protest or other reason is disqualified or determined to be not entitled to such purse, award or prize, the stewards or the commission may order such purse, award or prize returned and redistributed to the rightful owner or horse. Any person who fails to comply with an order to return any purse, award or prize erroneously distributed shall be subject to fines and suspension.

E. RACE REVIEW COMMITTEE:

(1) If a timely objection concerning a race is filed in accordance with the rules, the agency director may refer the objection to the race review committee who shall consist of three members appointed by the commission. The agency director shall issue and send, or deliver, to the objecting party a notice of hearing stating the date, time and place at which the race review committee will hear the appeal. The notice of hearing shall also be sent, or delivered, to any trainer or owner the placement of whose horse may be affected by the outcome of the appeal. The race review committee shall review the official tape or tapes of the race. Affected parties shall be given the opportunity to state their positions to the committee.

(2) The committee shall state its conclusions as to the merits of the objection and shall make a recommendation to the commission as to whether to uphold the stewards' determination, or to revise the order of finish. The commission shall then make the final determination as to the order of finish. The race review committee and the commission may only address the issues raised in the appeal filed.

[15.2.5.14 NMAC - Rp, 15 NMAC 2.5.14, 03/15/2001; A, 08/30/2001; A, 06/15/2004; A, 09/15/09]

NEW MEXICO RACING COMMISSION

This is an amendment to 15.2.6 NMAC Sections 3 and 9, effective 09/15/09.

15.2.6.3 STATUTORY

AUTHORITY: Sections [~~60-1-1~~] 60-1A-1 through [~~60-1-26~~] 60-1A-30, NMSA 1978 provides the authority for the state racing commission to promulgate rules and regulations for enforcing Chapter 60 pertaining to horse race meetings in the state of New Mexico.

[15.2.6.3 NMAC - Rp, 15 NMAC 2.6.3, 04/13/2001; A, 09/15/09]

15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES:

The "*uniform classification guidelines for foreign substances and recommended penalties and model rule*", revised [July 2007] February 2009, as issued by the association of racing commissioners international, is incorporated by reference. Upon a finding of a violation of these medication and prohibited substances rules, the stewards shall consider the classification level of the violation as listed at the time of the violation by the uniform classification guidelines of foreign substances as promulgated by the association of racing commissioners international and impose penalties and disciplinary measures as [~~consistent with the recommendations contained therein~~] as determined by the New Mexico racing commission. The commission only adopts the recommended penalties listed in this reference material should a violation occur in a thoroughbred graded stake race. The guidelines and recommended penalties shall be provided to all license holders by attachment to this section. Provided, however, that in the event a majority of the stewards determine that mitigating circumstances require imposition of a lesser penalty they may impose the lesser penalty.

A. UNIFORM CLASSIFICATION GUIDELINES:

The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the official veterinarian and the racing secretary.

(1) **Class 1** - Opiates, opium derivatives, synthetic opioids, psychoactive drugs, amphetamines and U.S. drug enforcement agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the race horse and their pharmacological potential for altering the performance of a race is very high.

(2) **Class 2** - Drugs in this category has a high potential for affecting the outcome of a race. Most are not generally accepted as

therapeutic agents in the race horse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a race horse. The following groups of drugs are in this class.

(a) Opiate partial agonists, or agonist-antagonists.

(b) Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects.

(c) Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS).

(d) Drugs with prominent CNS depressant action.

(e) Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects.

(f) Muscle blocking drugs, which have a direct neuromuscular blocking action.

(g) Local anesthetics, which have a reasonable potential for use as nerve blocking agents (except procaine).

(h) Snake venoms and other biologic substances, which may be used as nerve blocking agents.

(3) **Class 3** - Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a race horse. The following groups of drugs are in this class.

(a) Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class).

(b) A local anesthetic, which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine).

(c) Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines.

(d) Primary vasodilating/hypotensive agents.

(e) Potent diuretics affecting renal function and body fluid composition.

(4) **Class 4** - This category is comprised primarily of therapeutic medications routinely used in race horses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following.

(a) Non-opiate drugs which have a mild central analgesic effect.

(b) Drugs affecting the autonomic nervous system, which do not have prominent CNS, cardiovascular, or respiratory effects.

(i) Drugs used solely as topical vasoconstrictors or decongestants.

(ii) Drugs used as gastrointestinal antispasmodics.

(iii) Drugs used to void the urinary bladder.

(iv) Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.

(c) Antihistamines, which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in class 5).

(d) Mineralocorticoid drugs.

(e) Skeletal muscle relaxants.

(f) Anti-inflammatory drugs--those that may reduce pain as a consequence of their anti-inflammatory actions, which include.

(i) Non-steroidal anti-inflammatory drugs (NSAIDs), except for those specifically approved by the commission, -- aspirin-like drugs.

(ii) Corticosteroids (glucocorticoids).

(iii) Miscellaneous anti-inflammatory agents.

(g) Anabolic and/or androgenic steroids and other drugs.

(h) Less potent diuretics.

(i) Cardiac glycosides and antiarrhythmics including.

(i) Cardiac glycosides.

(ii) Antiarrhythmics agents (exclusive of lidocaine, bretylium and propranolol).

(iii) Miscellaneous cardiotoxic drugs.

(j) Topical anesthetics--agents not available in injectable formulations.

(k) Antidiarrheal agents.

(l) Miscellaneous drugs including:

(i) expectorants with little or no other pharmacologic action;

(ii) stomachics;

(iii) mucolytic agents.

(5) **Class 5** - Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents, which have very localized action only, such as anti-ulcer drugs and certain antiallergic drugs. The anticoagulant drugs are also included.

B. P E N A L T Y RECOMMENDATIONS (in the absence of mitigating circumstances).

(1) Class 1 - one to five years' suspension and at least \$5,000 fine and loss of purse.

(2) Class 2 - six months to one-year suspension and \$1,500 to \$2,500 fine and loss of purse.

(3) Class 3 - sixty days to six months suspension and up to \$1,500 fine and loss of purse.

(4) Class 4 - fifteen to 60 days

suspension and up to \$1,000 fine and loss of purse.

(5) Class 5 - zero to 15 days suspension with a possible loss of purse and/or fine.

C. M E D I C A T I O N RESTRICTIONS:

(1) A finding by the official chemist of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include: drugs or medications for which no acceptable levels have been established; therapeutic medications in excess of established acceptable levels; substances present in the horse in excess of levels at which such substances could occur naturally; substances foreign to a horse at levels that cause interference with testing procedures.

(2) Drugs or medications in horses are permissible, provided: the drug or medication is listed by the association of racing commissioners international's drug testing and quality assurance program; the maximum permissible urine or blood concentration of the drug or medication does not exceed the published limit.

(3) Except as otherwise provided by this part, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this part during the 24-hour period before post time for the race in which the horse is entered.

(a) **Phenylbutazone:** The use of phenylbutazone shall be permitted under the following conditions: Any horse to which phenylbutazone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative phenylbutazone level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s). The permitted quantitative test level of phenylbutazone or oxyphenbutazone shall be administered in such dosage amount that the official test sample shall not exceed 5 micrograms per milliliter of plasma.

(b) **Furosemide (Salix):** furosemide (Salix) may be administered intravenously to a horse, which is entered to compete in a race. Except under the instructions of the official veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a post-race urine sample, furosemide (Salix) shall be permitted only after the trainer enters the horse on the bleeder list by so declaring it as a bleeder on the entry card.

(i) The use of furosemide (**Salix**) shall be permitted under the following circumstances on association grounds where a detention barn is utilized: furosemide (**Salix**) shall be administered no less than three hours prior to post time for the race for which the horse is entered. A horse qualified for a furosemide (**Salix**) administration must be brought to the detention barn within time to comply with the three-hour administration requirement specified above. After treatment, the horse shall be required by the commission to remain in the detention barn in the care, custody and control of its trainer or the trainer's designated representative under association and/or commission security supervision until called to the saddling paddock.

(ii) The use of furosemide (**Salix**) shall be permitted under the following circumstances on association grounds where a detention barn is not utilized: furosemide (**Salix**) shall be administered no less than three hours prior to post time for the race for which the horse is entered; the furosemide (**Salix**) dosage administered shall not exceed 250 milligrams nor be less than 100 milligrams; the trainer of the treated horse shall cause to be delivered to the official veterinarian or his/her designee no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the commission: the racetrack name, the date and time the furosemide (**Salix**) was administered to the entered horse; the dosage amount of furosemide (**Salix**) administered to the entered horse; the printed name and signature of the attending licensed veterinarian who administered the furosemide (**Salix**).

(iii) Quantitation of furosemide in serum or plasma shall be performed when specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

(iv) **Bleeder List.** The official veterinarian shall maintain a bleeder list of all horses, which have been certified as bleeder horses. Such certified horses must have been entered by the trainer as a bleeder to obtain certification.

(v) The confirmation of a bleeder horse must be certified in writing by the official veterinarian or the racing veterinarian and entered on the bleeder list. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's certificate of registration.

(vi) Every confirmed bleeder, regardless of age, shall be placed on the bleeder list.

(vii) A horse may be removed from the bleeder list only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal and only after remaining on the bleeder list for a minimum of sixty (60) days.

(viii) A horse, which has been placed on a bleeder list in another jurisdiction, may be placed on a bleeder list in this jurisdiction by entering the horse into a race by so declaring it on the entry card as a bleeder in another jurisdiction.

(c) **Flunixin:** In addition to phenylbutazone and furosemide, flunixin may be administered in such dosage amount that the official test sample shall not exceed 1.0 microgram per milliliter of the drug substance, its metabolites, or analogs, per milliliter of blood plasma.

(d) **Meclofenamic acid:** In addition to phenylbutazone and furosemide, meclofenamic acid may be administered in such dosage amount that the official test sample shall not exceed 1.0 microgram per milliliter of the drug substance, its metabolites, or analogs, per milliliter of blood plasma.

(e) **Ketoprofen:** In addition to phenylbutazone and furosemide, ketoprofen may be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of the drug substance, its metabolites, or analogs, per milliliter of plasma.

(4) The official urine test sample may contain one of the following drug substances, their metabolites or analogs, in any amount that does not exceed the specified levels:

(a) **Acepromazine:** The use of acepromazine shall be permitted under the following conditions: Any horse to which acepromazine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of acepromazine shall not exceed 25 nanograms per milliliter of urine, or its blood equivalent.

(b) **Albuterol:** The use of albuterol shall be permitted under the following conditions: Any horse to which albuterol has been administered shall be subject to having a blood and urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of albuterol shall not exceed 1 nanogram per milliliter of urine, or its blood equivalent. If albuterol is detected in the urine, it must be confirmed in the blood to be a violation.

(c) **Atropine:** The use of atropine shall be permitted under the following conditions: Any horse to which atropine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of atropine shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

(d) **Benzocaine:** The use of benzocaine shall be permitted under the following conditions: Any horse to which benzocaine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of benzocaine shall not exceed 50 nanograms per milliliter of urine, or its blood equivalent.

(e) **Mepivacaine:** The use of mepivacaine shall be permitted under the following conditions: Any horse to which mepivacaine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of mepivacaine shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

(f) **Procaine:** The use of procaine shall be permitted under the following conditions: Any horse to which procaine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of procaine shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

(g) **Promazine:** The use of promazine shall be permitted under the following conditions: Any horse to which promazine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of promazine shall not exceed 25 nanograms per milliliter of urine, or its blood equivalent.

(h) **Salicylates:** The use of salicylates shall be permitted under the following conditions: Any horse to which salicylates have been administered shall be subject to having a blood and/or urine

sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of salicylates shall not exceed 750 micrograms per milliliter of urine, or its blood equivalent.

(i) **Clenbuterol:** The use of clenbuterol shall be permitted under the following conditions: Any horse to which clenbuterol has been administered shall be subject to having [a] blood and urine [sample(s)] samples taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of clenbuterol shall be administered in such dosage amount that the official test sample shall not exceed 5 nanograms per milliliter of urine, [or its] and 500 picograms per milliliter of blood [equivalent]. If clenbuterol is detected in the urine it must be confirmed in the blood to be a violation.

(j) **Androgenic-anabolic steroids.**

(i) No AAS shall be permitted in test sample collected from racing horses except for residues of the major metabolite of **stanozolol**, **nandrolone**, and the naturally occurring substances **boldenone** and testosterone at concentrations less than the indicated thresholds.

(ii) Concentrations of these AAS shall not exceed the following urine threshold concentrations for total (*i.e.*, free drug or metabolite and drug or metabolite liberated from its conjugates): a) 16B-hydroxystanozolol (metabolite of stanozolol (Winstrol) - 1 ng/ml in urine for all horses regardless of sex; b) boldenone (Equipose [®] is the undecylenate ester of boldenone) in male horses other than geldings - 15 ng/ml in urine; no boldenone shall be permitted in geldings or female horses; c) nandrolone (Durabolin [®] is the phenylpropionate ester and Deca-Durabolin [®] is the decanoate ester) (in geldings - 1 ng/ml in urine, in fillies and mares - 1 ng/ml in urine); in male horses other than geldings-45 ng/ml of metabolite, 5 alpha oestrane-3 beta, 17 alpha - diol in urine; d) testosterone (in geldings - 20 ng/ml in urine, in fillies and mares - 55 ng/ml in urine).

(iii) Any other anabolic steroids are prohibited in racing horses.

(iv) The presence of more than one of the four AAS identified in Item (ii) of this subparagraph at concentrations greater than the individual thresholds indicated above shall not be permitted.

(v) Post-race urine samples collected from intact males must be

identified to the laboratory.

(vi) Any horse to which an anabolic steroid has been administered in order to assist in the recovery from illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug or metabolite in urine. After the concentration has fallen below the designated threshold for the administered AAS, the horse is eligible to be removed from the list.

(k) **Butorphanol:** The use of butorphanol shall be permitted under the following conditions: Any horse to which butorphanol has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of butorphanol shall be administered in such dosage amount that the official test sample shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

(l) **Detomidine:** The use of detomidine shall be permitted under the following conditions: Any horse to which detomidine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of detomidine shall be administered in such dosage amount that the official test sample shall not exceed 100 nanograms per milliliter of urine, or its blood equivalent.

(m) **Dexamethasone:** The use of dexamethasone shall be permitted under the following conditions: Any horse to which dexamethasone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of dexamethasone shall be administered in such dosage amount that the official test sample shall not exceed 100 nanograms per milliliter of urine, or its blood equivalent.

(n) **Diclofenac:** The use of diclofenac shall be permitted under the following conditions: Any horse to which diclofenac has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of diclofenac shall be administered in such dosage amount that the official test sample shall not exceed 500 nanograms per milliliter of urine, or its blood equivalent.

(o) **Dipyrrone:** The use of dipyrrone shall be permitted under the following conditions: Any horse to which dipyrrone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of dipyrrone shall be administered in such dosage amount that the official test sample shall not exceed 1000 nanograms per milliliter of urine, or its blood equivalent.

(p) **DMSO:** The use of DMSO shall be permitted under the following conditions: Any horse to which DMSO has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of DMSO shall be administered in such dosage amount that the official test sample shall not exceed 10,000 nanograms per milliliter of urine, or its blood equivalent.

(q) **Flucort:** The use of flumethasone shall be permitted under the following conditions: Any horse to which flucort has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of flumethasone shall be administered in such dosage amount that the official test sample shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

(r) **Isoxsuprine:** The use of isoxsuprine shall be permitted under the following conditions: Any horse to which isoxsuprine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of isoxsuprine shall be administered in such dosage amount that the official test sample shall not exceed 1000 nanograms per milliliter of urine, or its blood equivalent.

(s) **Methocarbamol:** The use of methocarbamol shall be permitted under the following conditions: Any horse to which methocarbamol has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of methocarbamol shall be administered in

such dosage amount that the official test sample shall not exceed 1000 nanograms per milliliter of urine, or its blood equivalent.

(t) Naproxen: The use of naproxen shall be permitted under the following conditions: Any horse to which naproxen has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of naproxen shall be administered in such dosage amount that the official test sample shall not exceed 5000 nanograms per milliliter of urine, or its blood equivalent.

(u) Pentoxifylline: The use of pentoxifylline shall be permitted under the following conditions: Any horse to which pentoxifylline has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of pentoxifylline shall be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of urine, or its blood equivalent.

(v) Pyrilamine: The use of pyrilamine shall be permitted under the following conditions: Any horse to which pyrilamine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of pyrilamine shall be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of urine, or its blood equivalent.

(w) Triamcinalone: The use of triamcinalone shall be permitted under the following conditions: Any horse to which triamcinalone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of triamcinalone shall be administered in such dosage amount that the official test sample shall not exceed 2 nanograms per milliliter of urine, or its blood equivalent.

(x) Ulcer medications, i.e., cimethidine, sucralfate, rantidine: The use of ulcer medications shall be permitted until further notice.

D. P E N A L T Y RECOMMENDATIONS (in the absence of mitigating circumstances).

(1) A written warning for one

positive test within a 12-month period in the following levels:

(a) 5.1 micrograms per milliliter to 9.9 micrograms per milliliter in one drug of phenylbutazone or oxyphenbutazone; or

(b) 1.1 microgram per milliliter to 1.3 microgram per milliliter of flunixin; or

(c) 1.1 microgram per milliliter to 1.3 microgram per milliliter of meclofenamic acid;

(d) 50.0 to 60.0 nanograms per milliliter of ketoprofen.

(2) A fine for one positive test within a 12-month period in the following levels:

(a) \$200 for 10.0 micrograms per milliliter and above for combined total amount of phenylbutazone and oxyphenbutazone; or

(b) \$200 for more than 1.3 micrograms per milliliter of flunixin; or

(c) \$200 for more than 1.3 micrograms per milliliter of meclofenamic acid; or

(d) \$300 for 5.1 micrograms per milliliter or more of either phenylbutazone or oxyphenbutazone in combination with 1.3 micrograms or more of either flunixin or meclofenamic acid; or

(e) \$200 for 5.6 to 5.9 micrograms per milliliter in one drug of phenylbutazone, or oxyphenbutazone, and 1.1 to 1.2 micrograms per milliliter of flunixin or meclofenamic acid;

(f) \$200 for more than 60.0 nanograms per milliliter of ketoprofen.

(3) The penalties for a second violation within a twelve-month period are as follows:

(a) a second violation of Paragraph (1) of this subsection shall be a fine of \$200;

(b) a second violation of Paragraphs 2(a), 2(b), or 2(c) of this subsection shall be a fine of \$400;

(c) a second violation of Paragraph 2(d) of this subsection shall be a fine of \$600;

(d) a second violation of Paragraph 2(e) of this subsection shall be a fine of \$400;

(e) a second violation of Paragraph 2(f) of this subsection shall be a fine of \$400.

(4) The penalties for a third violation within a twelve-month period are as follows:

(a) a third violation of Paragraph (1) of this subsection shall be a fine of \$400;

(b) a third violation of Paragraphs 2(a), 2(b), or 2(c) of this subsection shall be a \$400 fine, disqualification, and loss of purse;

(c) a third violation of Paragraph 2(d) of this subsection shall be a fine of \$900, disqualification, and loss of purse;

(d) a third violation of Paragraph 2(e) of this subsection shall be a fine of \$900, disqualification, and loss of purse;

(e) a third violation of Paragraph 2(f) of this subsection shall be a fine of \$900,

disqualification, and loss of purse.

(5) The penalties for a fourth violation within a twelve-month period are as follows:

(a) a fourth violation of Paragraph (1) of this subsection shall be a fine of \$400, disqualification, and loss of purse;

(b) a fourth violation of Paragraphs 2(a), 2(b), or 2(c) of this subsection shall be a fine of \$1,000, loss of purse, disqualification, and a thirty day suspension;

(c) a fourth violation of Paragraph 2(d) of this subsection shall be a fine of \$1,500, loss of purse, disqualification, and a thirty-day suspension;

(d) a fourth violation of Paragraph 2(e) of this subsection shall be a fine of \$1,500, loss of purse, disqualification, and a thirty-day suspension;

(e) a fourth violation of Paragraph 2(f) of this subsection shall be a fine of \$1,500, loss of purse, disqualification, and a thirty-day suspension.

(6) For the fifth violation within a 12 month period of Paragraph (1) of this subsection shall be a fine of \$1,000, loss of purse, disqualification, and a thirty day suspension.

(7) A positive test of two permitted non-steroidal anti-inflammatory drugs found at twice the allowable level or more for two drugs shall carry the penalties of a class IV drug positive for the trainer and attending veterinarian. Additional violations shall carry the same penalties as additional violations of a class IV drug for the trainer and the attending veterinarian.

E. M E D I C A L LABELING:

(1) No person on association ground where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with this subsection.

(2) Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following: the name of the product; the name, address and telephone number of the veterinarian prescribing or dispensing the product; the name of each patient (horse) for whom the product is intended/prescribed; the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed

product; the name of the person (trainer) to whom the product was dispensed.

(3) Any drug, medication or paraphernalia determined to be confiscated contraband that is found on association premises which a licensed trainer occupies or has the right to occupy, or in that trainer's personal property or effects or vehicle in that trainer's care, custody or control, and is required to be tested by the official laboratory, will require payment of all costs for testing to be borne by the trainer upon final decision.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001; A, 07/15/2002; A, 08/15/2002; A, 09/29/2006; A, 10/31/2006; A, 08/30/2007; A, 01/31/2008; A, 03/01/2009; A, 06/15/09; A, 06/30/09; A, 09/15/09]

NEW MEXICO RACING COMMISSION

This is an amendment to 15.2.7 NMAC Section 3, effective 09/15/09.

15.2.7.3 STATUTORY

AUTHORITY: Section [~~60-1-3~~] 60-1A-1 through 60-1A-4 NMSA 1978 created the state racing commission and delegated its powers for the promulgation of rules for holding, or engaging in, horse race meetings in the state of New Mexico; mandates the commission regulate the pari mutuel system of wagering; Section[~~60-1-10~~] 60-1A-15 NMSA 1978 provides that within the enclosure where any horse races are conducted, either as live on-track horse races or as horse races simulcast, and where the licensee has been licensed to use the pari mutuel method of system of wagering on races, the pari mutuel system is lawful, but only within the enclosure where races are conducted; and Section [~~60-1-25~~] 60-1A-16 NMSA 1978 and Section [~~60-1-25.1~~] 60-1A-17 NMSA 1978 allow the racing commission to permit interstate and intrastate simulcasting of races and common pooling.

[15.2.7.3 NMAC - Rp, 15 NMAC 2.7.3, 03/15/2001; A, 09/15/09]

NEW MEXICO RACING COMMISSION

This is an amendment to 16.47.1 NMAC Sections 3, 8 and 10, effective 09/15/09.

16.47.1.3 STATUTORY

AUTHORITY: Section [~~60-1-5~~] 60-1A-5 through 60-1A-11, NMSA 1978 provides that all persons engaged in racing, or operating a horse racing meeting, and

persons operating concession for or under authority of any licensee or employed by the concessionaire shall be licensed by the state racing commission.

[16.47.1.3 NMAC - Rp, 16 NMAC 47.1.3, 03/15/2001; A, 09/15/09]

16.47.1.8 GENERAL PROVISIONS:

A. LICENSES REQUIRED: A person as defined by Subsection P, Paragraph (7) of 15.2.1.7 NMAC shall not participate in pari mutuel racing under the jurisdiction of the commission, or be employed by an association who is a gaming operator, without a valid license issued by the commission.

(1) License categories shall include the following and others as may be established by the commission: **GROUP A** - racing participants eligible for an optional annual or triennial year license to include owners, trainers, veterinarians, jockeys, and stable name registrations. **GROUP B** - associations, racing professionals, concession operators, contractors, and managerial racing officials. **GROUP C** - supervisory racing officials. **GROUP D** - persons employed by the association, or employed by a person or concern contracting with the association, to provide a service or commodity, which requires their presence in a restricted area, or anywhere on association grounds while pari mutuel wagering is being conducted. **GROUP E** - racetrack employees and authorized agents.

(2) Persons required to be licensed shall submit a completed application on forms furnished by the commission and accompanied by the required fee. The following fees are assessed for the issuance of the specified licenses. In addition to license fees listed herein, \$20.00 is assessed for each identification picture and badge.

Announcer	\$55.00
Assistant General Manager	\$80.00
Assistant Racing Secretary	\$15.00
Association	\$80.00
Auditor, Official	\$55.00
Authorized Agent	\$ 5.00
Clerk of Scales	\$15.00
Clocker	\$15.00
Club, Racetrack	\$80.00
Concession Employee	\$ 5.00
Concession Operator	\$80.00
Custodian of Jockey Room	\$15.00
Director or Corporate Officer	\$80.00
Director of Operations	\$55.00
Director of Racing	\$55.00
Exercise Person	\$15.00
General Manager	\$80.00
Groom	\$ 5.00
Horseman's Bookkeeper	\$15.00
Identifier (Horse)	\$15.00
Janitor	\$ 5.00
Jockey (3 year)	\$100.00
Jockey (1 year)	\$80.00
Jockey (Apprentice) (3 year)	\$100.00
Jockey Apprentice) (1 year)	\$80.00
Jockey Agent	\$55.00
Jockey Valet	\$ 5.00
Laborer	\$ 5.00
Official Personnel (specify position)	\$ 5.00
Official Veterinarian (3 year)	\$100.00
Official Veterinarian (1 year)	\$80.00
Outrider	\$15.00
Owner (3 year)	\$100.00
Owner (1 year)	\$80.00
Paddock Judge	\$15.00

Pari Mutuel Employee	\$ 5.00
Pari Mutuel Manager	\$55.00
Placing Judge	\$15.00
Photo Employee	\$ 5.00
Plater	\$80.00
Pony Person	\$ 5.00
Private Barns	\$ 80.00
Racing Secretary-Handicapper	\$55.00
Security Chief	\$55.00
Security Staff	\$ 5.00
Simulcast Company Employee	\$ 5.00
Simulcast Coordinator	\$55.00
Simulcast Operator	\$80.00
Special Event, 1 or 2 day	\$100.00
Stable Name (3 year)	\$100.00
Stable Name (1 year)	\$80.00
Stable Superintendent	\$55.00
Starter	\$55.00
Starter Assistant	\$15.00
Ticket Seller (Admissions)	\$ 5.00
Timer	\$15.00
Totalisator Employee	\$ 5.00
Totalisator Operator	\$80.00
Track Maintenance, Employee	\$ 5.00
Track Physician	\$80.00
Track Superintendent	\$55.00
Trainer (3 year)	\$100.00
Trainer (1 year)	\$80.00
Trainer Assistant	\$15.00
Veterinarian Assistant	\$15.00
Veterinarian, Practicing (3 year)	\$100.00
Veterinarian, Practicing (1 year)	\$80.00
Veterinarian, Racing (3 year)	\$100.00
Veterinarian, Racing (1 year)	\$80.00
Watchman	\$ 5.00

(3) License applicants may be required to furnish to the commission a set(s) of fingerprints and a recent photograph and may be required to be re-fingerprinted or re-photographed periodically as determined by the commission. The requirements for fingerprints may be fulfilled by submission of prints or verification of such, accepted by a member jurisdiction of the racing commissioners' international, and obtained within two years for annual licenses and four years for three-year licenses. License applicants for owner, trainer or jockey will only need to be fingerprinted upon first application, or if there is a break of three years or more in license continuity. If the commission determines it is necessary, reprinting will be undertaken on the basis of alleged criminal activity on the part of the owner, trainer or jockey.

(4) License applicants for groom, watchman, exercise and pony persons must submit to a drug (controlled substances) and alcohol-screening test when making application for license.

B. MULTI-STATE LICENSING INFORMATION: Applicants may be permitted to submit an association of racing commissioners international, inc. (RCI) or north American pari mutuel regulators association (NAPRA) multi-state license information form and RCI fingerprint card and thereby obtain a criminal records check that can be used in other jurisdictions.

C. AGE REQUIREMENT:

(1) Applicants for licensing, except owners, must be a minimum of 14 years of age, but no one under the age of 16 may be licensed as a pony person or exercise person and no one under the age of 18 may be licensed as an authorized agent or jockey agent.

(2) A licensee must be a minimum of 14 years of age to handle a horse in the paddock.

D. CONSENT TO INVESTIGATION: The filing of an application for license shall authorize the commission and the board to investigate criminal and employment records, to engage in interviews to determine applicant's character and qualifications, and to verify information provided by the applicant.

E. CONSENT TO SEARCH AND SEIZURE: By acceptance of a license, a licensee consents to search and inspection by the commission or its agents and to the seizure of any prohibited medication, drugs, paraphernalia or devices in accordance with state and federal law.

F. APPROVAL OR RECOMMENDATIONS BY STEWARDS: The commission may designate categories of licenses, which shall require stewards' prior approval or recommendation. Prior approval will include exercise riders, pony riders, and apprentice

jockeys.

G. EMPLOYER RESPONSIBILITY:

(1) The employment of any unlicensed person under the jurisdiction of the commission is prohibited.

(2) Every employer shall report the discharge of any licensed employee in writing to the stewards, including the person's name and occupation.

H. EMPLOYER ENDORSEMENT OF LICENSE APPLICATIONS: The license application of an employee must be signed by the employer.

I. FINANCIAL RESPONSIBILITY:

(1) All persons engaged in racing shall maintain financial responsibility in matters pertaining to racing and the Parental Responsibility Act.

(2) Any person licensed by the commission may file a financial responsibility complaint against another licensee. Any financial responsibility complaint against a licensee shall be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to be due in connection with his/her operations as a licensee. A judgment from a civil court, which has been issued within one year of the date of the complaint, may be honored by the stewards as long as at least the defendant is a licensee.

J. LICENSE REFUSAL: The commission may refuse to issue a license and give the applicant the option of withdrawal of an application without prejudice. If an applicant is refused, the applicant may reapply for a license.

K. LICENSE DENIAL:
(1) The commission may formally deny an application in accordance with these rules.

(2) An application denied, if requested by the applicant, shall be reported in writing to the applicant denied stating the reasons for denial, and the date when a reapplication may be submitted.

(3) An application denied may be reported to the association of racing commissioners international, inc. and north American pari mutuel regulators association whereby other racing jurisdictions shall be advised.

L. GROUNDS FOR REFUSAL, DENIAL, SUSPENSION, OR REVOCATION OF LICENSE:

(1) The commission may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, if the applicant:

(a) has been convicted of a felony;
(b) has been convicted of violating any law regarding gambling or a controlled dangerous substance;

(c) who is unqualified, by

experience or otherwise, to perform the activities for which a license is required, or who fails to pass an examination prescribed by the commission;

(d) has failed to disclose or falsely states any information required in the application;

(e) has been found in violation of rules governing racing in this state or other jurisdictions;

(f) has been or is currently excluded from association grounds by a recognized racing jurisdiction;

(g) has had a license denied, suspended, or revoked by any racing jurisdiction;

(h) is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of a race meeting; interfering with the orderly conduct of a race meeting shall include, but is not limited to, disruptive or intemperate behavior or behavior which exposes others to danger anywhere on the racetrack grounds; the fact that the race meet was not actually interrupted is not a defense to the imposition of discipline under this rule;

(i) demonstrates a lack of financial responsibility by accumulating unpaid obligations, defaulting on obligations or issuing drafts or checks that are dishonored, or payment refused; for the purpose of this sub-section, non-compliance with the Parental Responsibility Act shall be considered grounds for refusal, denial, suspension, or revocation of a license; the application, or license as applicable, shall be reinstated if within thirty (30) days of the date of the notice, the applicant provides the commission with a certified statement from the department that he/she is in compliance with a judgment and order for support;

(j) is ineligible for employment pursuant to federal or state law concerning age or citizenship.

(2) A license suspension or revocation shall be reported in writing to the applicant and the association of racing commissioners international, inc., whereby other racing jurisdictions shall be advised.

(3) Any license denied, suspended or revoked by the commission pursuant to these rules shall state the time period for the effect of its ruling. When the action is taken for a misdemeanor or felony conviction, the time period shall be the period of the licensee's or applicant's imprisonment; or if not imprisoned, the period of probation, deferral, unless the person can satisfy the commission of sufficient rehabilitation. This rule shall also apply to licensees who voluntarily turn in their license because of, or in anticipation of, a conviction.

M. DURATION OF LICENSE:

(1) All annual licenses, with the

exception of the authorized agent, issued by the commission expire one year from the last day of the month issued. All triennial licenses expire three years from the last day of the month issued.

(2) A license is valid only under the condition that the licensee remains eligible to hold such license.

N. CHANGES IN APPLICATION INFORMATION:

(1) During the period for which a license has been issued, the licensee shall report to the commission changes in information provided on the license applications as to current legal name, marital status, permanent address, criminal convictions, license suspension of 10 days or more and license revocations in other jurisdictions.

(2) A child or spouse pass, a change in current legal name, or badge replacement, requires a completed application and payment of a photo badge fee.

O. TEMPORARY LICENSES:

(1) The commission may establish provisions for temporary licenses, or may permit applicants to participate in racing pending action on an application. No person may engage in horse racing or be employed on the licensee's premises unless he has been licensed by the commission with the exception of casino employees and also food concession employees who work in non-restricted areas.

(2) The commission may grant an association, who is not conducting a live horse race meeting, a grace period of thirty (30) days to obtain the required licenses for its simulcast employees. An association shall provide to the commission each month, an employment roster for all simulcast employees.

P. MORE THAN ONE LICENSE: More than one license to participate in horse racing may be granted except when prohibited by these rules due to a potential conflict of interest.

Q. CONFLICT OF INTEREST:

(1) The commission may refuse, deny, suspend or revoke the license of a person whose spouse holds a license and which the commission or stewards find to be a conflict of interest.

(2) A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official with respect to that race.

(3) A person who is licensed as an owner or trainer in a horse registered for racing at a race meeting in this jurisdiction shall not be employed or licensed as a jockey, apprentice jockey; jockey agent; racing official; assistant starter; track maintenance supervisor; jockey room custodian; valet; outrider; racing chemist, testing laboratory

employee, or security personnel.

R. LICENSE PRESENTATION:

(1) A person must present an appropriate license or other authorization issued by the commission to enter a restricted area. The commission may issue authorization to the spouse or child of a licensed owner, trainer or jockey to enter a restricted area.

(2) The stewards may require visible display of a license while the licensee is engaged in the duty for which he/she is licensed and on the association grounds unless the licensee is mounted on a horse.

(3) A license may only be used by the person to whom it is issued.

S. TEMPORARY ACCESS AUTHORITY: Track security may authorize unlicensed persons temporary access to restricted areas. Such person shall be identified and their purpose and credentials verified and approved in writing by track security. Such authorization or credential may only be used by the person to whom it is issued.

T. KNOWLEDGE OF RULES: A licensee shall be knowledgeable of the rules of the commission; and by acceptance of the license, agrees to abide by the rules.

U. PROTECTION OF HORSES:

(1) Each person licensed by the commission shall do all that is reasonable and within his/her power and scope of duty to guard against and prevent the administration of any drug, medication or other substance, including permissible medication in excess of the maximum allowable level, to any horse entered or to be entered in an official workout or race, as prohibited by these rules.

(2) No licensee or other person under the jurisdiction of the commission shall subject or permit any animal under his/her control, custody or supervision to be subjected to or to incur any form of cruelty, mistreatment, neglect or abuse or abandon, injure, maim or kill or administer any noxious substance to or deprive any animal of necessary care or sustenance, shelter or veterinary care.

V. RESTRICTIONS: Beginning one hour before post time, the use of cellular telephones will be prohibited in the paddock and the racetrack surface until the last race is official. Cellular telephone use will also be prohibited behind the starting gate during racing hours. The association shall be responsible for posting notices of the prohibition in these restricted areas.

[16.47.1.8 NMAC - Rp, 16 NMAC 47.1.8, 03/15/2001, A, 08/30/2001; A, 11/15/2001; A, 12/14/2001; A, 02/14/2002; A, 11/14/2002; A, 03/31/2003; A, 07/15/2003; A, 09/29/2006; A, 03/30/2007; A, 08/14/2008; A, 06/15/09; A, 09/15/09]

16.47.1.10 TRAINERS ELIGIBILITY.

A. ELIGIBILITY.
(1) An applicant for a license as trainer or assistant trainer must be at least 18 years of age; be qualified, as determined by the stewards or other commission designee, by reason of experience, background and knowledge of racing; a trainer's license from another jurisdiction, having been issued within a 24 month period by the commission, may be accepted as evidence of experience and qualifications; evidence of qualifications may require passing one or more of the following: a written examination; an interview or oral examination; a demonstration of practical skills in a barn test given by a committee of trainers appointed by the New Mexico Horsemen's Association, witnessed by a steward and approved by the commission.

(2) Applicants not previously licensed as a trainer shall be required to pass a written/oral examination, demonstrate practical skills, and submit at least two written statements as to the character and qualifications of the applicant, and documentation of having completed a six month apprenticeship under the direct supervision of a licensed trainer or assistant trainer.

(a) Applicants failing the first written/oral examination must wait thirty (30) days before retaking the trainer's test.

(b) Applicants failing the second written/oral examination must wait sixty (60) days before retaking the trainer's test.

(c) Applicants failing the third written/oral examination must wait one (1) year before retaking the trainer's test.

B. ABSOLUTE INSURER.

(1) The trainer is the absolute insurer of the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug or medication, or other prohibited substance in such horses. A positive test for a prohibited drug or medication or other prohibited substance or the presence of permitted medication in excess of maximum allowable levels as reported by a commission-approved laboratory is prima facie evidence of a violation of this rule. The trainer is absolutely responsible regardless of the acts of third parties.

(2) A trainer must prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

(3) A trainer whose horse has been claimed remains the absolute insurer for the race in which the horse is claimed.

C. OTHER RESPONSIBILITY. A trainer is responsible for:

(1) the condition and contents

of stalls, tack rooms, feed rooms, sleeping rooms and other areas which have been assigned by the association;

(2) maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(3) ensuring that fire prevention rules are strictly observed in the assigned stable area;

(4) providing a list to the chief of security of the trainer's employees on association grounds and any other area under the jurisdiction of the commission; the list shall include each employee's name, occupation, social security number, and occupational license number; the chief of security shall be notified by the trainer, in writing, within 24 hours of any change;

(5) the proper identity, custody, care, health, condition, and safety of horses in his/her charge;

(6) disclosure of the true and entire ownership of each horse in his/her care, custody or control; any change in ownership must be reported immediately to, and approved by, the stewards and recorded by the racing secretary;

(7) training all horses owned wholly or in part by him/her which are participating at the race meeting; registering with the racing secretary each horse in his/her charge within 24 hours of the horse's arrival on association grounds;

(8) immediately notify the stewards and commission veterinarian of all out-of-state certified horses on **Salix®**;

(9) having each horse in his/her care that is racing, or is stabled on association grounds, tested for equine infectious anemia (EIA) and for filing evidence of such negative test results with the racing secretary as required by the commission;

(10) using the services of those veterinarians licensed by the commission to attend horses that are on association grounds;

(11) immediately reporting the alteration in the sex of a horse in his/her care to the horse identifier and the racing secretary, whose office shall note such alteration on the certificate of registration;

(12) promptly reporting to the racing secretary and the official veterinarian any horse on which a posterior digital neurectomy (heel nerving) is performed and ensuring that such fact is designated on its certificate of registration;

(13) promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge;

(14) promptly reporting the death of any horse in his/her care on association grounds to the stewards and the official veterinarian and compliance with the rules in Subsection C of 15.2.6.12 NMAC governing post-mortem examinations;

(15) maintaining a knowledge of

the medication record and status of all horses in his/her care;

(16) immediately reporting to the stewards and the official veterinarian if he/she knows, or has cause to believe, that a horse in his/her custody, care or control has received any prohibited drugs or medication;

(17) representing an owner in making entries and scratches and in all other matters pertaining to racing; horses entered as to eligibility and weight or other allowances claimed;

(18) horses entered as to eligibility and weight or other allowances claimed;

(19) ensuring the fitness of a horse to perform creditably at the distance entered;

(20) ensuring that his/her horses are properly shod, bandaged, and equipped; toe grabs with a height greater than ~~four millimeters worn on the front shoes of quarter horses and~~ two millimeters worn on the front shoes of thoroughbred horses while racing are prohibited; the horse shall be scratched and the trainer may be subject to fine.

(21) ensuring that his/her horses are properly bandaged, and equipped; and no jockey, apprentice jockey, exercise person or any person mounted on a horse shall ride, breeze, exercise, gallop or workout a horse on the grounds of a facility under the jurisdiction of the commission unless the hose is equipped with a nylon rein or a safety rein; a safety rein is a rein with a wire or nylon cord stitched into the traditional leather rein during the manufacturing process and the safety cord is attached to the bit with a metal clasp;

(22) presenting his/her horse in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered;

(23) personally attending to his/her horses in the paddock and supervising the saddling thereof, unless excused by the stewards;

(24) instructing the jockey to give his/her best effort during a race and that each horse shall be ridden to win;

(25) attending the collection of urine or blood sample from the horse in his/her charge or delegating a licensed employee or the owner of the horse to do so;

(26) notifying horse owners upon the revocation or suspension of his/her trainer's license; upon application by the owner, the stewards may approve the transfer of such horses to the care of another licensed trainer, and upon such approved transfer, such horses may be entered to race.

D. ASSISTANT TRAINERS.

(1) A trainer may employ an assistant trainer, who shall be equally responsible with the employing trainer for the condition of the horses in their care. The name of the assistant trainer shall be shown

on the official program along with that of the employing trainer.

(2) Qualifications for obtaining an assistant trainer's license shall be prescribed by the stewards and the commission may include those requirements prescribed in Subsection A, Paragraph (1) of 16.47.1.10 NMAC.

(3) An assistant trainer shall assume the same duties and responsibilities as imposed on the licensed trainer.

(4) The trainer shall be jointly responsible for the assistant trainer's compliance with the rules governing racing.

E. SUBSTITUTE TRAINERS.

(1) If any licensed trainer is prevented from performing his duties or is absent from the track where he is participating, the stewards shall be immediately notified, and at the same time, a substitute trainer or assistant trainer, acceptable to the stewards, shall be appointed. The stewards shall be advised when the regular trainer resumes his duties.

(2) A substitute trainer must accept responsibility for the horses in writing and be approved by the stewards.

(3) A substitute trainer and the absent trainer shall be jointly responsible as absolute insurers of the condition of their horses entered in an official workout or race pursuant to Subsection B, Paragraphs (1), (2) and (3) of 16.47.1.10 NMAC. [16.47.1.10 NMAC - Rp, 16 NMAC 47.1.10, 03/15/2001; A, 11/15/2001; A, 03/30/2007; A, 08/30/2007; A, 06/30/09; A, 09/15/09]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.6.5 NMAC, Sections 25, 27 and 34 effective 9/15/09.

3.6.5.25 SALES RATIO STUDY:

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

B. ~~[The sales ratio study compares the values of property determined for property taxation purposes by each county assessor for the year in which the study is prepared with values of the same property as established by sales prices of the same property sold during the year preceding the study. For example, the 1976 sales ratio study compares the values for property taxation purposes of property shown on the counties' 1976 tax schedule with sales of that property which occurred in 1975.]~~ The sales ratio study shall compare the last assessed

value of property prior to the sale of that property, not including any limitation on an increase in value pursuant to Section 7-36-21.2 NMSA 1978, to the sales price of the same property. For example, the 2009 sales ratio study compares the value of property determined by the county assessor for 2008, not including the limitation on increases in value pursuant to Section 7-36-21.2 NMSA 1978, to the sales price of the same property, which sold in 2008.

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

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

[3/23/83, 12/29/94, 8/31/96; 3.6.5.25 NMAC - Rn, 3 NMAC 6.5.25, 4/30/01; A, 9/15/09]

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

A. APPLICATION FORM FOR VALUATION AS AGRICULTURAL LAND:

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

- (a) description of the land;
- (b) the use of the land during the year preceding the year for which the application is made;
- (c) whether the land was held for speculative land subdivision and sale or has been subdivided;
- (d) whether the land was used for commercial purposes of a nonagricultural character;
- (e) whether the land was used for recreational purposes and if so, how; and
- (f) whether the land was leased and if so, who was the lessee, did he report

livestock for valuation and what was the lessee's use of the property.

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

[A-] B. AGRICULTURAL PROPERTY - BURDEN OF DEMONSTRATING USE ON OWNER:

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

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

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

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

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

(b) the use of the land met the requirements for payment or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government; or

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

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

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

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

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

agricultural use of the land.

~~[(3)]~~ (4) A homesite is not land used for agricultural purposes and is not to be valued as agricultural land pursuant to Section 7-36-20 NMSA 1978. A "homesite" as that term is used in ~~[Section 3-6-5-27 NMAC]~~ this section is the site used primarily as a residence, together with any appurtenant lands used for purposes related to residing on the site. It is more than the boundary of the foundation of an improvement used as a residence and includes land on which yards, swimming pools, tennis courts and similar nonagricultural facilities are located but does not include land on which agricultural facilities such as barns, pig pens, corrals, bunk houses, farm equipment sheds and outbuildings are located. A homesite shall be presumed to be a minimum of one acre, unless the property owner establishes that a portion of the acre allocated to classification as homesite is actually used for agricultural purposes under the conditions of this section. A homesite can exceed one acre if nonagricultural facilities extend beyond one acre.

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

~~[(5)]~~ (6) When use of the land changes such that it is no longer used primarily for agricultural purposes, the owner of the land must report the change in use to the county assessor in which the land is located. A report by the owner that land classified as land used primarily for agricultural purposes in the preceding property tax year is not used primarily for agricultural purposes in the current property tax year rebuts the presumptions in Subsection A of Section 7-36-20 NMSA 1978. If subsequently use of the land again becomes primarily agricultural, the owner must apply for classification of the land as land used primarily for agricultural purposes.

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

~~[B-] C. AGRICULTURAL LAND - MINIMUM SIZE:~~ Tracts or

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

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

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

(3) the purchase price paid;

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

(5) whether the property has been divided, without regard to whether such division was made pursuant to county or municipality subdivision regulations;

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

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

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

~~[C-] D. AGRICULTURAL PRODUCTS DEFINED:~~ The phrase "agricultural products" as it is used in Section 7-36-20 NMSA 1978 and ~~[Parts 1 through 7 of Chapter 3-6 NMAC]~~ regulations under the Property Tax Code means plants, crops, trees, forest products, orchard crops, livestock, captive deer or elk, wool, mohair, hides, pelts, poultry, fish, dairy products and honey.

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

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

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

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

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

(c) the reasonable value of unpaid labor of the operator or the farm family; less

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

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

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

(b) The division by order may determine annual income from various classes of agricultural land based on the

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

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

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

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

preceding the tax year in which it is to be used.

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

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

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

(2) Pursuant to Section 7-36-20 NMSA 1978, the division may issue an order dividing the land into specific agricultural land classes. If such an order is issued, it will be in accordance with the methods of classification contained in Subsection E of Section 3.6.5.27 NMAC. If such an order is not issued for a particular county or part of a county, the county assessor shall follow Subsection E of Section 3.6.5.27 NMAC in classifying agricultural land in the county.]

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

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

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

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

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

[4] (3) All lands that were previously irrigated or dryland meeting the preceding classifications but which are now participating in any of the various crop retirement programs such as the soil bank or acreage set-aside program sponsored by the United States department of agriculture are

still to be classified as irrigated or dryland until the program expires from the subject land and clear evidence is shown that a change in land use is occurring, unless there has been a sale of the water rights, the use of which permitted irrigation.

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

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

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

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

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

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

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

ascertained as well as other water costs. Many areas are subject to charges related to reclamation and drainage; information on such charges must be obtained.

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

~~(5) The minimum carrying capacity of grazing land will be established in an order of the division by the number of animal units per section (conventionally 640 acres) that the grazing land will support under accepted management practices. The assessor can allocate acreage per animal unit for land parcels that are less than 640 acres as long as the allocation is proportionate and meets the criteria of Subsection C "agricultural land-minimum size" herein. In establishing carrying capacity, the division shall adhere to the definition of livestock in Subsection C of Section 7-35-2 NMSA 1978, as well as utilize the animal unit equivalencies recognized by and information obtained from livestock industry representatives, the bureau of land management, the natural resources conservation service, the forest service, agricultural departments of state universities and the state and federal departments of agriculture shall be used. The division will consider drought and natural conditions which would tend to reduce the carrying capacity of grazing land. The division may establish in each county one or more carrying capacities based on different natural conditions within the county. Economic conditions, such as the market price of livestock, are not taken into consideration in determining carrying capacity of grazing land. The order is issued before the last day of the year preceding the tax year in which it is to be used.~~

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

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

of these improvements shall be added to the value of the land.

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

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

- ~~(a) description of the land;~~
- ~~(b) the use of the land during the year preceding the year for which the application is made;~~
- ~~(c) whether the land was held for speculative land subdivision and sale or has been subdivided;~~
- ~~(d) whether the land was used for commercial purposes of a nonagricultural character;~~
- ~~(e) whether the land was used for recreational purposes and if so, how; and~~
- ~~(f) whether the land was leased and if so, who was the lessee, did he own livestock and what was the lessee's use of the property.~~

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

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

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

- (1) captive deer shall be valued and taxed as sheep; and
- (2) captive elk shall be valued and taxed as cattle.

[J.] ~~LAWFUL TAKING OF GAME:~~

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

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

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

~~(4) Land is used for the lawful~~

taking of game if the landowner actively participates in the lawful taking of game on the landowner's land or authorizes others to use the landowner's land for the lawful taking of game.

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

[3/23/83, 12/29/94, 8/31/96, 12/31/97; 3.6.5.27 NMAC - Rn & A, 3 NMAC 6.5.27, 4/30/01; A, 8/15/06; A, 9/15/09]

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

A. OIL & GAS PIPELINES - VALUATION METHOD:

(1) All pipelines, tanks, sales meters and plants as defined in Section 7-36-27 NMSA 1978 which are used in the processing, gathering, transmission, storage, measurement or distribution of oil, natural gas, carbon dioxide, or liquid hydrocarbons are valued by the division or county assessors in accordance with the valuation methods found in Section 7-36-27 NMSA 1978 and Section 3.6.5.34 NMAC.

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

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

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

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

~~(d)~~(a) Functional obsolescence is the loss in value ~~[due to]~~ that is caused by functional inadequacies or deficiencies caused by factors within the property, and is a loss in value that is

in addition to a loss in value attributable to physical depreciation.

~~(e)~~(b) Economic obsolescence is the loss in value that is caused by unfavorable economic influences or factors outside the property, and is a loss in value that is in addition to a loss in value attributable to physical depreciation.

~~(f)~~(c) Requests for economic or functional obsolescence must be made at the time the annual report is filed. The request must be supported with sufficient documentation, and must be based on a situation present at least six (6) months prior to January 1 of the tax year. In addition to other information that may be required pursuant to this section, an economic or functional obsolescence factor must be provided together with documentation to support and demonstrate how the factor was arrived at. Such documentation shall consist of objective evidence demonstrating functional or economic obsolescence such as comparisons to a documented industry standard, to a close competitor or to an engineer's or appraiser's valuation, or any other comparable objective evidence of functional or economic obsolescence. ~~[Failure to provide documentation or proof satisfactory to the director will result in denial of an obsolescence adjustment.]~~

(d) If requested by the taxpayer, the department shall provide guidance to a taxpayer as to the documents necessary to support a request for obsolescence for a pipeline, customer distribution pipeline, large industrial sales meter, tank or plant as defined in Section 7-36-27 NMSA 1978. Upon request, the department shall name, in addition to the other information required by this section, any specific documentation that would support a request for obsolescence. Such specific documentation may include:

(i) a report of audited or FASB writedowns;

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

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

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

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

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

and transportation alternatives; and

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

(e) The department shall provide guidance to a taxpayer as to documents necessary to support a request for obsolescence for a pipeline that may be in addition to any documents specified in Subparagraph (d) of this paragraph. Upon request, the department shall name, in addition to the other information required by this section, any specific documentation that would support a request for obsolescence. Such specific documentation may include:

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

(ii) current reserve estimates and projections;

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

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

(v) a statement of actual throughput for the past five years of operation; and

(vi) transportation contracts.

(f) In reviewing a request for obsolescence pursuant to Section 7-36-27 NMSA 1978, the department shall determine whether a taxpayer has provided documentation sufficient to establish a reduction in taxable value for functional obsolescence or economic obsolescence. If the department determines the documentation is not sufficient because the taxpayer failed to submit documents required by Subparagraph (c) of this paragraph, the department shall inform the taxpayer of that failure in a notice provided by April 1 or thirty days after the return is filed but no later than April 15 of the tax year. If the taxpayer does not file the report by March 15 of the property tax year, the department shall not be required to furnish a timely notice of deficiency by April 15 of the property tax year. In the case of properties regulated by the federal energy regulatory commission, the notice of deficiency shall be provided to the taxpayer within fifteen days after the filing of the report. Such notice shall list the specific documents that the department would require to support the requested reduction for functional obsolescence or economic obsolescence.

(g) If a taxpayer is notified of a

deficiency pursuant to Subparagraph (f) of this paragraph, the taxpayer shall have ten days to correct the deficiency. The department will determine whether the documentation timely submitted by the taxpayer adequately supports the taxpayer's request for obsolescence and cures the deficiency. The department's final valuation of the taxpayer's property will reflect the department's approval or denial of the taxpayer's request for obsolescence.

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

A = Pipe size in inches

B = Miles of pipe

C = Inch miles

D = Total tangible property cost less depreciation (all sizes)

E = \$ Per inch mile

F = Inch miles of pipe in taxing jurisdiction

G = \$ Value of pipe in taxing jurisdiction

(i) $A \times B = C$

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

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

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

[(3)] (4) SALES METERS.

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

SCHEDULE

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

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

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

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

(iii) TYPE III - sales meters with a capacity greater than 950 cubic feet per hour at one-half inch differential and those meters providing industrial service with an installed cost including the associated regulator, appurtenances and devices of less than two thousand five hundred dollars (\$2,500.00).

[(4)] (5) CONSTRUCTION WORK IN PROGRESS.

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

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

(i) total construction work in progress;

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

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

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

B. OIL & GAS PIPELINES - NONPIPELINE

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

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

Residential housing, office buildings, warehouses and other real property excluded from the definitions of property found in Subsection B of Section 7-36-27 NMSA 1978 but used in the conduct of the pipeline or public utility business are valued in accordance with the method stated in Section 7-36-15 NMSA 1978 and regulations thereunder. The term "pipeline" as defined in Paragraph (5) of Subsection B of Section 7-36-27 NMSA 1978 does

not include rights of way, easements and other fractional interests in real property. Therefore, the value of those interests is not included in the valuation determined under [Section 3-6-5-27 NMAC] this section.

[3/23/83, 8/19/85, 12/29/94, 8/31/96; 3.6.5.34 NMAC - Rn & A, 3 NMAC 6.5.34, 4/30/01; A, 9/15/09]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.6.6 NMAC, Sections 12 and 13, effective 9/15/09.

3.6.6.12 VETERAN EXEMPTION

A. ~~[SPECIAL BENEFIT ASSESSMENTS AND CERTAIN TAXES - VETERAN EXEMPTION]~~

~~INAPPLICABLE:~~ The veteran's exemption is not effective against impositions or levies of taxes on specific classes of property outside the Property Tax Code and special benefit assessments authorized by laws outside the Property Tax Code, such as conservancy district assessments.]

PROPERTY TAXES AUTHORIZED BY LAWS OUTSIDE THE PROPERTY TAX CODE AND SPECIAL BENEFIT ASSESSMENTS:

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

B. APPLICATION OF VETERAN EXEMPTION - GENERAL:

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

(2) Military relationship.

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

misconduct.

(b) Any veteran who did not serve at least ninety (90) days at any time during any period in which the military forces were engaged in armed conflict is not entitled to the exemption; except that a person who would otherwise be entitled to the status as a veteran except for failure to have served in the armed forces continuously for ninety days is considered to have met that qualification if the person served for less than ninety days and the reason for not having served for that period was a discharge brought about by service-connected disablement.

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

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

(4) Veteran's interest in property.

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

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

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

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

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

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

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

(5) Surviving spouse.

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

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

(c) A surviving spouse of an eligible veteran is not, if a subsequent marriage is annulled, entitled to the exemption [~~because annulment restores him or her to the status he or she held before marriage~~].

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

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

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

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

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

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

D. ARMED CONFLICTS PRIOR TO WORLD WAR I: The following are recognized as armed conflicts prior to World War I:

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

(2) Punitive expedition into Mexico in 1916.

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

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

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

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

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

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

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

[3/23/83, 12/29/94, 8/31/96; 3.6.6.12 NMAC - Rn & A, 3 NMAC 6.6.12, 4/30/01; A, 9/15/09]

3.6.6.13 DISABLED VETERAN EXEMPTION

A. PROPERTY TAXES AUTHORIZED BY LAWS OUTSIDE THE PROPERTY TAX CODE AND SPECIAL BENEFIT ASSESSMENTS.

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

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

C. SURVIVING SPOUSE.

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

(2) After the disabled veteran's

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

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

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

D. CONTINUOUSLY OCCUPIES PRINCIPAL PLACE OF RESIDENCE. Subsection B of Section 7-37-5.1 NMSA 1978 provides for an exemption from property tax of a disabled veteran's principal place of residence when it is occupied by the disabled veteran. Subsection C of Section 7-37-5.1 NMSA 1978 allows the surviving spouse of a disabled veteran to claim the exemption is the surviving spouse continues to occupy the property continuously as the surviving spouse's principal place of residence. "Principal place of residence" means the dwelling owned and occupied by the disabled veteran and so much of the land surrounding it, not to exceed five acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multidwelling or a multipurpose building and a part of the land upon which it is built. "Occupy the property continuously" means that the individual is physically present in the residence for a total of 185 days or more in aggregate during the prior year and is domiciled in New Mexico as of January 1 of the property tax year for which the exemption is claimed. The definition of "domicile" in Subsections C and D of 3.3.1.9 NMAC is incorporated herein by reference. [3.6.6.13 NMAC - N, 9/15/09]

End of Adopted Rules Section

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