

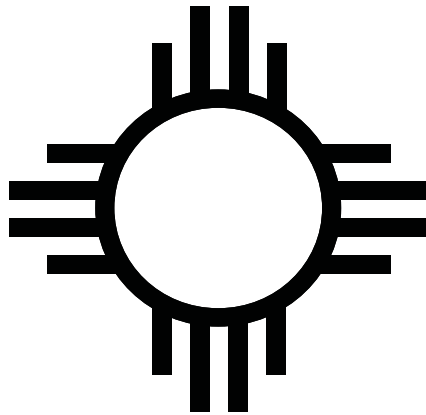
**NEW
MEXICO
REGISTER**



Volume XX
Issue Number 19
October 15, 2009

New Mexico Register

Volume XX, Issue Number 19
October 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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Administrative Law Division
Santa Fe, New Mexico
2009

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New Mexico Register

Volume XX, Number 19

October 15, 2009

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

Notice of Hearing

The New Mexico Department of Agriculture (NMDA) will hold one public hearing to address a change to the Seed Standards and Classifications, 21.18.4 NMAC. NMDA is proposing to change the Seed Certification Agency from the New Mexico Crop Improvement Association to New Mexico State University Seed Certification.

In addition, the hearing will address proposed changes to the Fees for Lists, Documents and Services, 21.1.2 NMAC. NMDA is proposing changes to fee structures relevant to state and federal phytosanitary certificates, and other documents issued by NMDA.

The hearing will be held at the New Mexico Department of Agriculture conference room, located at 3190 South Espina (corner of Gregg and Espina), Las Cruces, New Mexico, beginning at 3:00 p.m. on November 9, 2009.

Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m. on November 9, 2009. Written statements, inquiries, or requests for copies of the proposed rule changes relevant to the name change for the Seed Certification Agency should be directed to Tim Darden, Feed, Seed, & Fertilizer Section, (575) 646-3107, and proposed rule changes relevant to the state and federal phytosanitary fees should be directed to Brad Lewis, Entomology and Nursery Industry Section, New Mexico Department of Agriculture, Las Cruces, New Mexico 88003 or at (575) 646-3207.

NEW MEXICO STATE INVESTMENT COUNCIL

NEW MEXICO STATE INVESTMENT COUNCIL NOTICE OF PUBLIC HEARING ON PROPOSED RULE CHANGE

The New Mexico State Investment Council will hold a public hearing on the proposed repeal concerning Severance Tax Permanent Fund Certificate of Deposit Investment Policy, 2.60.18 NMAC, filed as SIC Rule 93-4.

The hearing will be held at:

Office of the Governor

490 Old Santa Fe Trail
4th Floor, Cabinet Room
Santa Fe, NM 87501
Tuesday, October 27, 2009
9:00 am

Copies of the proposed rule change may be obtained at the New Mexico State Investment Council website <http://www.sic.state.nm.us/> or by contacting Rosalyn Nguyen, Associate General Counsel at: (505) 476-9514.

Comments on the proposed rule change may be submitted in writing to Rosalyn Nguyen, New Mexico State Investment Council, 41 Plaza La Prensa, Santa Fe, NM 87507 by 4:00 pm MT or presented orally at the hearing.

If any interested person has a disability and 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 Rosalyn Nguyen at (505) 476-9514 or rosalyn.nguyen@state.nm.us, five (5) days prior to the meeting.

NEW MEXICO MEDICAL BOARD

NEW MEXICO MEDICAL BOARD

Notice

The New Mexico Medical Board will convene a regular Board Meeting on Thursday, November 12, 2009 at 8:30 a.m. and Friday, November 13, 2009 at 8:30 a.m. in the Conference Room, 2055 S. Pacheco, Building 400, Santa Fe, New Mexico. A Public Rule Hearing will be held on Friday, November 13, 2009 at 9:00 a.m. The Board will reconvene after the Hearing to take action on the proposed rules. The Board may enter into Executive Session during the meeting to discuss licensing or limited personnel issues.

The purpose of the Rule Hearing is to consider amending 16.10.9 NMAC (Fees) and filing the new rule 16.10.20 NMAC (Polysomnographic Technologists: Licensure and Practice Requirements).

Changes to Part 9 will provide information on the fees for the Polysomnographic Technologists.

Copies of the proposed rules will be available on October 12th on request from the Board office at the address listed above, by phone (505) 476-7220, or on the Internet at www.nmmb@state.nm.us.

Persons desiring to present their views on the proposed amendments may

appear in person at said time and place or may submit written comments no later than 5:00 p.m., November 6, 2009, to the board office, 2055 S. Pacheco, Building 400, Santa Fe, NM, 87505.

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

NEW MEXICO MUSEUM BOARD OF REGENTS

Public Rule Hearing

Notice is hereby given that the Museum of New Mexico Board of Regents will convene a public hearing at 1:30 p. m. on Friday, October 30, 2009 in the Old Senate Chambers, Room 238 in the Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM 87501. The purpose of the hearing is to consider repeal and replacement and proposed fee increases in Title 4, Chapter 51, Part 5, *Cultural Resources Museum of New Mexico, Archaeological Records Repository and Cultural Resource Information System*. Draft copies of the proposed rules can be obtained by contacting the ARMS at The Laboratory of Anthropology, P. O. Box 2087, Santa Fe, New Mexico 87504-2087, or by calling the ARMS at 505-476-1275, or from the New Mexico Archeological Council's web page at www.nmacweb.org. Persons may present their views on the proposed rules through testimony at the hearing or in writing. All written comments must be received by October 30, or e-mailed to cordelia.snow@state.nm.us on or before October 30, 2009. The hearing officer will prepare a report and recommended decision to the Museum of New Mexico Board of Regents. The Museum Board of Regents will consider adoption of the final rules during its regular meeting November 19, 2009. Persons with a disability who require special assistance to attend or participate in the hearing, may contact the ARMS at 505-476-1275 at least one week prior to the hearing.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on November 17, 2009, from 8:00 a.m. to 12:00pm. The purpose of the public hearing will be to obtain input on the following rules:

Rule Number	Rule Name	Proposed Action
11.2.31 NMAC	Labor and Workers’ Compensation, Job Training: Apprenticeship Assistance	New Rule
6.33.2 NMAC	Primary and Secondary Education, Educational Standards - Vocational Education: Establishment of Academic and Technical Standards	Repeal 6 NMAC 8.4.1 and replace with 6.33.2 NMAC

Interested individuals may testify at the public hearing or submit written comments to Marcia Knight, New Mexico Public Education Department 300 Don Gaspar, Santa Fe, New Mexico 87501 or (marcia.knight@state.nm.us) (telefax (505) 827-1820).

Written comments must be received no later than 5 p.m. on November 17, 2009. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department’s website (<http://ped.state.nm.us/>) or obtained from Marcia Knight at the address listed above, or by phone (505) 827-1802. The proposed rules will be made available at least thirty days prior to the hearings.

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

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on November 18, 2009, from 2 p.m. to 4:00 p.m.. The purpose of the public hearing will be to obtain input on the following rule:

Rule Number	Rule Name	Proposed Action
6.30.11 NMAC	ACADEMIC PROFICIENCY AND ATTENDANCE TIED TO INSTRUCTION PERMITS	Adopt new rule to establish requirements in 2011 for demonstrating 9 th grade math & reading proficiency and meeting school attendance standards prior to receiving an MVD driving permit.

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Ms. Mary Deets, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (MaryH.Deets@state.nm.us) (505) 827-6641 (telefax (505) 827-6681). Information regarding the exact time and location of the auxiliary hearing will be posted on the Public Education Department’s website (<http://ped.state.nm.us/>) at least thirty days prior to the hearing.

Written comments must be received no later than 5:00 pm on November 18, 2009. However, the submission of written comments as soon as possible is encouraged.

The proposed rulemaking actions may be accessed on the Department’s website (<http://ped.state.nm.us/>) or obtained from Mary Deets, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (MaryH.Deets@state.nm.us) (505) 827-6641 (telefax (505) 827-6681). The proposed rules will be made available at least thirty days prior to the hearings.

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

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

NOTICE OF P.E.R.A. RULEMAKING

The Public Employees Retirement Association ("PERA") will consider changes to its rules promulgated under the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act and the Volunteer Firefighters Retirement Act, including implementation of statutory amendments to the Public Employees Retirement Act and the Volunteer Firefighters Retirement Act. Changes are proposed for the following Rules:

- 2.80.100 NMAC General Provisions of Contributions
- 2.80.500 NMAC Remittance of Contributions
- 2.80.600 NMAC Service Credit and Purchase of Service Credit
- 2.80.700 NMAC Normal Retirement
- 2.80.900 NMAC Pre-Retirement Survivor Pensions
- 2.80.1000 NMAC Disability Retirement Benefits
- 2.80.1100 NMAC Retired Members

- 2.80.2100 NMAC Member Contributions
- 2.83.500 NMAC Member Contributions
- 2.83.800 NMAC Survivor Pension
- 2.83.1100 NMAC Retired Members
- 2.83.1200 NMAC Remittance of Contributions
- 2.84.500 NMAC Member Contributions
- 2.84.800 NMAC Survivor Pension
- 2.84.1100 NMAC Retired Members
- 2.84.1200 NMAC Remittance of Contributions
- 2.87.100 NMAC Volunteer Firefighters General Provisions

Copies of the draft rules are available for inspection in PERA's Office of General Counsel. Hard copies of the draft rules may be purchased for \$3.00. Written comments, inquiries or requests for copies should be directed to PERA's Office of General Counsel, P.O. Box 2123, Santa Fe, New Mexico, 87504-2123, (505) 476-9353 or 1-800-342-3422. Written comments or requests for copies may be submitted electronically to: judy.olson@state.nm.us. To be considered, written comments, arguments, views or relevant data should

be submitted by 5:00 p.m. November 6, 2009. The PERA Board will review and consider all written comments addressing the proposed rule changes.

A formal rulemaking hearing will be held on November 10, 2009 at 9:00 a.m. in the PERA Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico. Oral comments will be taken at the public hearing. Final action on the rules will occur at the monthly meeting of the PERA Board on November 19, 2009, which will be held at 9:00 a.m. in PERA Board Room (33 La Prensa, Santa Fe). All interested parties are requested to attend. Lobbyists must comply with the Lobbyist Regulation Act, NMSA 1978, Section 2-11-1 et. seq. (1997), which applies to rulemaking proceedings.

Individuals with a disability who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing may contact Jane Clifford at (505) 476-9305 or toll free at 1-800-342-3422 seven days prior to the hearing or as soon as possible.

**NEW MEXICO PUBLIC REGULATION COMMISSION
TRANSPORTATION DIVISION**

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF ADOPTION)
OF PROPOSED AMENDMENTS) Case No. 09-00192-TR-P
TO THE COMMISSION'S MOTOR)
TRANSPORTATION RULES)
_____)**

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission ("NMPRC" or "Commission") proposes to initiate a rulemaking docket to consider amending the Commission's financial responsibility rule. This matter comes before the Commission upon the Motion to Initiate Rulemaking ("Motion") that was filed in this case on June 1, 2009 by the Commission's Transportation Division Staff ("Staff"); whereupon, having reviewed the record and being duly advised,

THE COMMISSION FINDS AND CONCLUDES:

1. The Commission has jurisdiction over motor carrier companies in the State of New Mexico. N.M. Const., Art. XI, Section 2, NMSA 1978 Section 65-1-1, *et seq.* The proposed new rule would be adopted under the authority granted the Commission by the New Mexico Constitution, art. XI, Section 2, the Public Regulation Commission Act (*see* NMSA 1978, Section 8-8-4 and 8-8-15), the State Rules Act, NMSA 1978, Section 14-4-2(C), and the Motor Carrier Act, NMSA 1978, Section 65-2A-1, *et seq.*
2. At a recent Commission Open Meeting, the Commission, upon hearing that the Commission's rule pertaining to financial responsibility for motor carriers of passengers is different from the rule actually enforced in the field by the Motor Transportation Division of the Department of Public Safety ("MTD"), directed Staff to meet with MTD to resolve the problem.
3. In its Motion, Staff states that it met with MTD and learned that MTD relies on NMSA 1978 Section 65-3-4 of the Motor Carrier Safety Act, NMSA 1978 Section 65-3-1 through Section 65-3-13, for authority to promulgate rules on financial responsibility.¹ Staff states that the MTD has incorporated by reference the federal rule 49 C.F.R Part 387[.33] pertaining to minimum levels of financial responsibility applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees as 18.2.3.10 NMAC.

¹ NMSA 1978 Section 65-3-4 provides: “[t]he secretary is directed to adopt in accordance with Section 65-1-10 NMSA 1978 necessary rules and regulations under the Motor Carrier Safety Act [65-3-1 to 65-3-13 NMSA 1978] as they apply to motor carrier safety. Such rules and regulations shall not be inconsistent with or more stringent than applicable federal safety standards.”

4. The current minimum limits contained in 49 C.F.R 387.33 are:

- a) \$5,000,000 for any vehicle with a seating capacity of 16 passengers or more
- b) \$1,500,000 for any vehicle with a seating capacity of 15 passengers or less

5. Under the Motor Carrier Act, NMSA 1978 Section 65-2A-1 to Section 65-2A-40 (“Act”), the Commission shall, among other things, establish minimum requirements for financial responsibility of intrastate common motor carriers of persons and adopt rules prescribing the form and amount of minimum financial responsibility. See, NMSA 1978 Section 65-2A-4.A(2) and NMSA 1978 Section 65-2A-18.

6. The current limits promulgated by the Commission under the Act are found at 18.3.3.10 NMAC and are as follows:

- a) \$3,500,000 for any vehicle with a seating capacity of 40 persons or more, excluding the driver;
- b) \$2,000,000 for any vehicle with a seating capacity of 16 to 39 persons, excluding the driver; and
- c) \$1,000,000 for any vehicle with a seating capacity of 15 persons or less, excluding the driver.

7. Staff believes that minimum financial responsibility limits for identical vehicle seating capacities between the MTD and the Commission are necessary to avoid confusion to the public and that the Commission’s current financial responsibility limits could be too low, indicating that the Commission should consider raising such limits to those adopted by MTD.

8. Staff therefore requests that the Commission issue an order opening a rulemaking docket to consider amending the Commission’s financial responsibility rule, 18.3.3 NMAC, and for such other relief as the Commission deems proper.

9. A new rule should be promulgated to establish financial responsibility minimum limits consistent with those adopted by the MTD.

10. The proposed rule would apply to all motor carriers of passengers holding certificates, permits or warrants issued by the Commission.

11. The purpose of the proposed rule would be to establish minimum financial responsibility limits promulgated by the Commission under the Act that would be more consistent with such limits established by the MTD in order to avoid confusion of the public and ensure adequate minimum financial responsibility limits, especially for vehicles with a seating capacity of 16 or more persons, excluding the driver.

12. This Notice of Proposed Rulemaking should constitute due and lawful notice to all potentially interested parties.

13. All interested persons should be afforded the opportunity to receive notice of and to comment upon the attached Proposed Rule.

14. A copy of the proposed rule to be considered for promulgation is attached hereto as Exhibit “A.” Additional copies of the proposed rule can be obtained from:

Mr. Ron X. Montoya
Records Management

Bureau

PERA Building
1120 Paseo de Peralta
Santa Fe, New Mexico

87501

Telephone: (505) 827-

6970.

15. Commission Rule 1.2.3.7(B), “Ex Parte Communications”, draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as “ex parte communications”. In order to assure compliance with 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds such date should be December 18, 2009. The setting of that record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission’s proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

IT IS THEREFORE ORDERED:

A. A rulemaking proceeding should be, and hereby is, instituted in this proceeding.

B. The Commission seeks comment from all interested persons concerning whether the proposed rule, attached as an Exhibit “A” to this Order, should be adopted.

C. This *Notice of Proposed Rulemaking* shall constitute due and lawful notice to all potentially interested persons.

D. Any person wishing to comment on the proposed rule may do so by submitting written comments no later than November 11, 2009. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be provided in a format consistent with that of the New Mexico Administrative Code (“NMAC”).

E. The record in this case shall close on the earlier of the date of a Final Order in this case or December 18, 2009.

F. All pleadings, including comments, shall bear the caption and case number set out on the first page of this Notice. Comments on the Proposed Rule shall be filed with the Commission’s Records Division, at the address set out herein at ¶ 12.

G. A public hearing on the proposed rule, to be held before the Commission, shall be held beginning at **1:00 P.M. on November 19, 2009** at the offices of the Commission, at the following location:

**4th Floor Hearing Room
PERA Building
1120 Paseo de Peralta
Santa Fe, New Mexico 87501
Tel. (505) 827-4500**

H. All persons attending the hearing should be prepared to address the issues set forth herein. Interested persons should contact the Commission to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the Hearing should contact Ms. Cecilia Rios at 827-6947 at least 48 hours prior to the commencement of the Hearing.

I. Pursuant to NMSA 1978, Section 8-8-15(B), this *Notice of Proposed*

Rulemaking, including Exhibit "A", shall be published at least once at least thirty days prior to the hearing date in the NEW MEXICO REGISTER and two newspapers of general circulation in the State of New Mexico and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice and to all motor carrier companies subject to the jurisdiction of the Commission. Copies of this *Notice of Proposed Rulemaking* shall be provided promptly by e-mail or by facsimile transmission to any persons who have so requested.

J. Affidavits attesting to the publication of this *Notice of Proposed Rulemaking* as described above shall be filed in this docket.

K. This Notice shall be posted on the Commission's official Web site.

L. Copies of any forthcoming final order adopting a new rule shall be mailed, along with a copy of the new rule, to all affected motor carrier companies, all commentors in this case, and all individuals requesting such copies.

M. This *Notice of Proposed Rulemaking* is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 1st day of October, 2009.

NEW MEXICO PUBLIC REGULATION COMMISSION

SANDY JONES, CHAIRMAN

DAVID W. KING, VICE CHAIRMAN

JASON MARKS, COMMISSIONER

JEROME D. BLOCK, COMMISSIONER

CAROL K. SLOAN, COMMISSIONER

Exhibit "A"

**TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS
PART 3 FINANCIAL RESPONSIBILITY
18.3.3.10 MINIMUM LIMITS OF PUBLIC LIABILITY INSURANCE:**

A. Motor carriers of persons providing service in vehicles with a seating capacity of forty(40) sixteen (16) persons or

more, excluding the driver, must maintain a combined single-limit public liability insurance policy of at least ~~three million five hundred thousand dollars (\$3,500,000)~~ five million dollars (\$5,000,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.

~~B. Motor carriers of persons that provide providing service in vehicles with a seating capacity of sixteen (16) to thirty-nine (39) fifteen (15) persons or less, excluding the driver, must maintain a combined single-limit public liability insurance policy of at least two million dollars (\$2,000,000) one million, five hundred thousand dollars (\$1,500,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.~~

~~C. Household goods carriers must maintain a combined single-limit public liability insurance policy of at least one million five hundred thousand dollars (\$1,500,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.~~

~~[B.] B. Motor carriers of persons providing service in vehicles with a seating capacity of fifteen (15) persons or less, excluding the driver, must maintain a combined single-limit public liability insurance policy of at least one million dollars (\$1,000,000) one million five hundred thousand dollars (\$1,500,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.~~

C. Household goods carriers must maintain a combined single-limit public liability insurance policy of at least one million five hundred thousand dollars (\$1,500,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.

~~[E.] D. Towing services, repossession services, and motor carriers of property must maintain a combined single-limit public liability insurance policy of at least seven hundred and fifty thousand dollars (\$750,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.~~

~~[F.] E. Motor carriers of property transporting hazardous matter in intrastate commerce in New Mexico must maintain the minimum levels of financial responsibility required by 49 CFR 387.9 for interstate commerce.~~

~~[G.] E. Incidental carriers must maintain a combined single limit public liability policy amount of at least two hundred and fifty thousand dollars (\$250,000) per occurrence for bodily injury to or death of all persons injured or killed and property damage.~~

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

**STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES
DIVISION**

**of the
Regulation and Licensing Department**

NOTICE OF PUBLIC HEARING

A Public Hearing on proposed amendments to 14.5.2 NMAC, Sections 7 and 19; 14.6.3 NMAC, Section 10; 14.6.5 NMAC, 14.6.6, Section 11C- will be held, **FROM 9:00 A.M. TO 12:00 NOON**, at the following locations:

* **November 16, 2009 - ALBUQUERQUE, NM** - CID Conference Room: 5200 Oakland Avenue, NE

* **November 17, 2009 - SANTA FE, NM** - CID Conference Room, 2550 Cerrillos Road, 3rd Floor, Santa Fe

* **November 18, 2009 - LAS CRUCES, NM** - CID Conference Room, 505 So. Main St., Suite 150

Copies of the draft rule will be available at the Construction Industries Division offices beginning November 2, 2009.

You are invited to attend and express your opinion on these proposed rules changes. If you cannot attend the meeting, you may send your written comments to the Construction Industries Division, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504, Attention: Public Comments. FAX (505) 476-4685. All comments must be received no later than 5:00 p.m., November 13, 2009.

If you require special accommodations to attend the hearing, please notify the Division by phone, email or fax, of such needs no later than November 1, 2009. Telephone: 505-476-4700. Email: [www.rld@state.nm.us/cid](mailto:rld@state.nm.us/cid) Fax No. 505-476-4685.

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION BOARD OF FINANCE

Explanatory paragraph: This is an amendment to 2.61.6 NMAC, Sections 8, 9 and 10, effective 10-15-09. The amendments in Section 8 set out below clarify the definitions of certain words or phrases, which amendments are noted by underline and strike-out. Section 9 and 10 are set out in full, which the amendments noted by underline and strike-out.

2.61.6.8 [INTERPRETION] INTERPRETATION OF AUTHORIZING LANGUAGE:

A. In accordance with New Mexico law, bond proceed expenditures shall not be made for purposes other than those specified in an appropriation and any other relevant law, and must meet the definition of capital expenditure unless otherwise authorized by law. It is crucial to determine whether the purpose for a draw request falls within an appropriation's permitted use. The following provides general direction and clarification in the interpretation of authorizing language. Agencies may also refer to the Uniform Statute and Rule Construction Act, 12-2A NMSA 1978 for guidance.

(2) Standard appropriation language - appropriation language uses certain verbs routinely to anticipate how appropriations will be applied. In order for agencies to be able to make draw requests with certainty based on frequently used verbs or combinations thereof, the following are the board's interpretations of frequently used verbs in authorizing language.

(f) Equip or equip improvements - supply tools, furnishing and other implements that are of a permanent or non-depletable nature and are reasonably necessary in the use of the building or other asset for its intended purpose; for example: wood chips and shade structures for playgrounds; used interchangeably with "furnish" (however the nouns "equipment" and "furniture" have different meanings, the former referring to mechanical, technological or recreational items, while the latter is generally limited to objects necessary to make a room comfortable).~~[-for example: wood chips and shade structures for playgrounds.]~~

(j) Furniture - see ["equip"] "furnish".

(l) Improve - enhance the quality or function of something; ~~used interchangeably with~~ encompasses "construct", "equip",

"remodel", "renovate" and "upgrade"; may include items such as the purchase of books and desks for a library.

[2.61.6.8 NMAC - N, 02-28-02; A, 01-15-09; A, 10-15-09]

2.61.6.9 PAYMENT OF CAPITAL PROJECT EXPENSES, DRAW REQUEST PROCEDURES:

A. The recipient of bond proceeds is the governmental entity that will carry-out the completion of the project. In many cases, the agency named to receive the appropriation will also be the entity responsible for the project. In other cases, the named agency will be an intermediate agency that is expected to make a grant to a local government entity to carry out the completion of the project. Either an intermediate agency may make a draw request to the board on behalf of a local government entity as recipient, or an agency itself as recipient may make the request directly to the board, unless otherwise approved by the board director.

(1) Documentation to support draw requests from agency:

(a) one draw request form for each project (1 original and 2 copies);

(b) proof of payment - notarized certification from an authorized signatory that expenditures are valid or actual receipts;

(c) ACH transfer information;

(d) evidence that conditions have been satisfied if applicable;

(e) certification that the statements made in the original certification and questionnaire remain true, including use of facility.

(2) Intermediate agencies typically submitting draw requests to the board on behalf of local entity recipients: environment department, department of transportation, Indian affairs department, local government division, public education department, higher education department and aging and long term services department:

(a) one draw request form for each project (1 original and 2 copies);

(b) proof of payment - a notarized certification from an authorized signatory that expenditures are valid or actual receipts;

(c) ACH transfer information;

(d) evidence that conditions have been satisfied if applicable;

(e) certification that the statements made in the original certification and questionnaire remain true, including use of facility.

B. Frequency - draw requests are due in the board of finance office by 3:00 p.m. on the [†;] 10th and 20th day of each month or by 9:00 a.m. the next

business day if the [†;] 10th or 20th falls on a weekend or holiday (the "draw request deadline"). Draw requests submitted on or before the draw request deadline will result in funds available six business days after the draw request deadline.

C. The minimum draw request amount per project shall be \$1,500 unless it is the final draw request or otherwise recommended by the intermediate agency.

D. State executive agencies may request a direct payment to a contractor or other entity.

(1) The agency must submit the payment voucher to department of finance and administration financial control division six business days after the board of finance deadline unless notified by board of finance of processing delay due to additional information or legal review being required.

(2) If a direct payment to a contractor or other entity is requested and the agency mails the payment directly to the payee or transfers the funds electronically via ACH, the agency must send state treasurer's office a copy of the warrant or a copy of the ACH no later than two business days after the payment has been made.

[2.61.6.9 NMAC - N, 02-28-02; A, 01-15-09; A, 10-15-09]

2.61.6.10 ART IN PUBLIC PLACES (AIPP) ACT:

A. A portion of appropriations for construction and major renovations shall be set aside for the acquisition or commissioning of works of art to be used in, upon or around public buildings.

(1) "Appropriations for construction and major renovations" include appropriations for that purpose to any public entity from severance tax bonds, general obligation bonds, or supplemental severance tax bonds, both taxable and tax-exempt.

(2) Under the AIPP Act, all agencies shall set aside the lesser of \$200,000 or one percent of the amount appropriated for new construction or major renovation (exceeding \$100,000) to use for art in, upon or around the building being constructed or renovated. In addition, an amount of money equal to the lesser of \$200,000 or one percent of the amount appropriated for new construction or major renovations of auxiliary buildings, as defined in the AIPP Act, shall be accounted for separately and expended for acquisition and installation of art for existing public buildings, as defined.

B. The board's role in administering the AIPP Act is as follows.

(1) After each bond issue, the board submits a list of approved projects to

the arts division of the department of cultural affairs, which administers the AIPP fund. The arts division determines which projects the AIPP Act applies to and advises the board accordingly. Based on that determination, the board sets aside the requisite amount from each applicable project in a separate AIPP pooled fund for each bond issue.

(2) When the arts division of the department of cultural affairs is ready to purchase or commission art, the office submits a draw request to the board which then makes the disbursement out of the AIPP project.

C. Frequency - Draw requests are due in the board of finance office by 3:00 p.m. on the [1st] 10th and 20th day of each month or by 9:00 a.m. the next business day if the [1st] 10th or 20th falls on a weekend or holiday (the "draw request deadline"). Draw requests submitted on or before the draw request deadline will result in funds available six business days after the draw request deadline.

[2.61.6.10 NMAC - N, 02-28-02; A, 01-15-09; A, 10-15-09]

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

This is an amendment to 2.110.2 NMAC, Sections 7, 10, 11, 16, 17, 19, 20 and 26, effective 10-15-2009.

2.110.2.7 DEFINITIONS:

A. "Asset management" is a systematic process of maintaining, upgrading, and operating physical assets cost-effectively. It combines engineering principles with sound business practices and economic theory, and it provides tools to facilitate a more organized, logical approach to decision making. It is a planning process that ensures the most value from each asset with a plan to rehabilitate and replace them when necessary. An accurate and up-to-date asset management plan will help communities comply with the Government Accounting Standards Board's Statement #34 (GASB 34), an accounting standard for publicly owned systems.

B. "Council" means the New Mexico community development council.

C. "Department" means the department of finance and administration.

D. "Division" means the local government division.

E. "Low and moderate income person" is a member of a household whose income would qualify as "very low income" under the Section 8 housing assistance payments program. Section 8 limits are based on 50 percent of the county median income. Similarly, CDBG moderate

income is based on Section 8 "lower income" limits, which are generally tied to 80 percent of the county median income.

F. "CDBG" means the small cities community development block grant program.

G. "Rural" means a county with a population of less than 25,000 and an incorporated municipality with a population of less than 3,000.

H. "Program income" means amounts earned by a unit of general local government or its sub recipient that were generated from the use of CDBG funds.

~~I. "Slum area" as used in the Community Development Law (3-60-1 to 3-60-37 NMSA 1978) means an area in which there is a predominance of buildings or other improvements which are found by the local governing body by reason of 1) dilapidation, 2) deterioration, 3) age, or 4) obsolescence, 5) inadequate provision for ventilation, light, air, sanitation or open spaces, 6) overcrowding, 7) the existence of conditions which endanger life or property, or 8) any combination of such factors, to contribute to either ill health, the transmission of disease, infant mortality, juvenile delinquency or crime, and to be detrimental to the public health, safety, morals or welfare.~~

~~J. "Blighted area" as used in the Community Development Law (3-60-1 to 3-60-37 NMSA 1978) means an area, other than a slum area, which is found by the local governing body by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty low layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivisions or obsolete platting, or the existence of conditions which endanger life or property, or any combination of such factors to substantially impair or arrest the sound growth of the municipality, retard the provision of housing accommodations or constitute an economic or social liability and is a menace to the public health, safety, morals or welfare in its present conditions and use.]~~

I. "Slum area" pursuant to the Metropolitan Redevelopment Act, Section 3-60A-4 NMSA 1978 (as amended), means: "an area within the area of operation in which numerous buildings, improvements and structures, whether residential or nonresidential, which, by reason of its dilapidation, deterioration, age, obsolescence or inadequate provision for ventilation, light, air, sanitation or open spaces, high density of population, overcrowding or the

existence of conditions that endanger life or property by fire or other causes, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime and is detrimental to the public health, safety, morals or welfare."

J. "Blighted area" pursuant to the Metropolitan Redevelopment Act, Section 30-A-4 NMSA 1978 (as amended), means: "an area within the area of operation other than a slum area that, because of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or lack of adequate housing facilities in the area or obsolete or impractical planning and platting or an area where a significant number of commercial or mercantile businesses have closed or significantly reduced their operations due to the economic losses or loss of profit due to operating in the area, low levels of commercial or industrial activity or redevelopment or any combination of such factors, substantially impairs or arrests the sound growth and economic health and well-being of a municipality or locale within a municipality or an area that retards the provisions of housing accommodations or constitutes an economic or social burden and is a menace to the public health, safety, morals or welfare in its present condition and use."

K. "Units of local government": Any incorporated municipality or county.

L. "Councils of governments": A regional association of municipalities, counties and special districts formed to provide planning and other services to its member organization.

M. "Water association": Political subdivisions of the state organized under Section 3-29-1 through Section 3-29-20, NMSA 1978, the "Sanitary Projects Act" or Section 73-21-1 through Section 73-21-55, NMSA 1978, the "Water and Sanitation District Act".

N. Land Grant/Merced (political subdivision of the state organized under Section 49-1-1 through 49-1-23, NMSA 1978, Land Grants General Provisions.

O. "Set-aside": means a portion of all CDBG funding received by the CDBG program that is annually allocated by the CDBG program and the council to be used only for certain set-aside categories that are chosen by the CDBG program and the council.

[2.110.2.7 NMAC - Rp 2 NMAC 110.2.7, 08-30-01, 12-14-06; A, 09-28-07; A, 10-15-09]

2.110.2.10 ELIGIBLE APPLICANTS

A. All counties, incorporated municipalities, and New Mexico mortgage finance authority (MFA) are eligible to apply except: the city of Albuquerque, the city of Farmington, the city of Las Cruces, the city of Santa Fe and the city of Rio Rancho who cannot apply since they receive funding directly from the department of housing and urban development (Title I, Section 106) as entitlement cities.

B. Other entities such as water associations, sanitation districts, land grants, public nonprofit groups, council of governments, mutual domestic water consumer associates, etc., cannot apply directly for assistance, other than planning grants.

C. However, these entities may be involved in the execution of an approved CDBG project if the eligible applicant chooses to operate the program through such an entity under a contractual agreement.

D. Indian pueblos and tribes receive funding directly from the department of housing and urban development (Title I, Section 107). Native American tribes are encouraged to submit applications to the Albuquerque HUD Office of Native American Programs, 201 3rd St., N.W., Suite 1830, Albuquerque, New Mexico 87102-3368, (505) 346-6923.

[2.110.2.10 NMAC - Rp 2 NMAC 110.2.10, 08-30-01; A, 08-13-04 A, 09-28-07; A, 09-30-08, A, 10-15-09]

2.110.2.11 ELIGIBLE ACTIVITIES/CATEGORIES

A. Applicants may apply for funding assistance under the following categories:

- (1) community infrastructure;
- (2) housing;
- (3) public facility capital outlay;
- (4) economic development;
- (5) emergency;
- (6) colonias;
- (7) planning.

B. Eligible activities under each of the categories are listed below.

C. Community infrastructure: Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition
- (2) construction or rehabilitation of the following:
 - (a) water systems;
 - (b) sewer systems;
 - (c) municipal utilities;

- (d) roads;
- (e) streets;
- (f) highways;
- (g) curbs;
- (h) gutters;
- (i) sidewalks;
- (j) storm sewers;
- (k) street lighting;
- (l) traffic control devices;
- (m) parking facilities;
- (n) solid waste disposal facilities.

D. Housing: Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition;
- (2) rehabilitation;
- (3) clearance;
- (4) demolition and removal of privately-owned or acquired property for use or resale in the provision of assisted housing;
- (5) provision of public facilities to increase housing opportunities;
- (6) financing the repair, rehabilitation and in some cases reconstruction of privately-owned residential or other properties through either loan or grant programs;
- (7) certain types of housing modernization;
- (8) temporary relocation assistance;
- (9) code enforcement;
- (10) historic preservation activities;
- (11) not to exceed fifty thousand dollars (\$50,000) in CDBG funds per home can be used on home rehabilitation/repair activities.

E. Public facility capital outlay: Eligible activities may include, but are not limited to, such items as:

- (1) real property acquisition;
- (2) construction or improvement of community centers;
- (3) senior citizen centers;
- (4) nonresidential centers for the handicapped such as sheltered workshops;
- (5) other community facilities designed to provide health, social, recreational or similar community services for residents.

F. Economic development: The economic development category is established to assist communities in the promotion of economic development and is described in detail in Section 26.

G. Emergency: The emergency fund provides funding for emergency projects which address life threatening situations resulting from disasters or imminent threats to health and safety.

- (1) Applications under this category will be accepted throughout the year.
- (2) Application shall include written verification and adequate

documentation by a state agency and with the applicant's assessment of the life threatening situation and shall be submitted no later than 18 months from the certification by the applicant and documentation of the need for the emergency project.

(3) An applicant for emergency funding must verify that it does not have sufficient local resources to address the life threatening condition; and that other federal or state resources have been explored and are unavailable to alleviate the emergency.

H. Planning: In addition to municipalities and counties, water associations, including water and sanitation districts, and land grants as defined in Section 2.110.2.7, Subsection M; are eligible to apply directly for planning grants only. Planning grant assistance from the CDBG program, which is available only to a municipality or county, must be used for a comprehensive plan if the applicant does not have a current comprehensive plan (not older than five years from the date of application). A comprehensive plan must be adopted by ordinance, and it must include as a minimum the following elements;

(1) elements:

- (a) land use; including (i) an analysis and mapping of existing land patterns and an inventory of the amount, type and intensity of uses by land category, as well as an analysis of effects of various land use patterns on greenhouse gas emissions; (ii) an analysis of trends in the supply and demand of land by land use category, including a projection of the distribution, location and extent of future land uses by land use category over a twenty-year period; (iii) goals, objectives and policies that address maintaining a broad variety of land uses, including the range of uses existing when the plan is adopted or amended; and (iv) specific actions and incentives that the contracting agency may use to promote planned development, reduction in greenhouse gas emissions, or otherwise encourage certain identified development patterns and the locations where such development patterns should be encouraged;

(b) housing; including (i) an analysis of existing housing supply and demand, analysis of greenhouse gas emissions from the housing sector, and forecasted housing needs; (ii) goals, objectives and policies for the improvement of housing quality, variety and affordability, for reduction of greenhouse gas emissions, and for provision of adequate sites for housing and housing opportunities for all segments of the community; and (iii) a description of the actions that will be taken to implement housing goals, objectives and policies; and (iv) must comply with the affordable housing act.

(c) transportation; including (i) description and assessment of the location,

type, capacity and condition of existing transportation facilities, such as freeways, arterial and collector streets, mass transit or other modes of transportation as may be appropriate, and analysis of greenhouse gas emissions from the transportation sector; (ii) goals, objectives and policies for encouraging safe, convenient, efficient and economical transportation, including mass transit and facilities for bicyclists and pedestrians, for reduction of greenhouse gas emissions, and a description of proposed levels of service and funding mechanisms; and (iii) a description and assessment of proposed location, type and capacity of proposed transportation facilities designed to implement transportation goals, objectives and policies and a description of funding mechanisms that will be used to fund proposed transportation improvements;

(d) infrastructure; including (i) a description and assessment of the location, type, capacity and condition of existing infrastructure, including emergency services, sewage, drainage, local utilities and other types of facilities; (ii) goals, objectives and policies for promoting the efficient provision of infrastructure, including a description of proposed levels of service; and (iii) a description and assessment of proposed facility expansion and improvements designed to support planned uses and implement infrastructure goals, objectives and policies;

(e) economic development; including (i) a description of existing job composition and trends by industry and location characteristics, such as access to transportation or proximity to natural or human resources, that influence the economic development potential of the contracting agency, and analysis of greenhouse gas emissions from the commercial and industrial sectors; (ii) goals, objectives and policies for promoting economic development, and for reduction of greenhouse gas emissions; and (iii) a description of the actions that the contracting agency will take to implement economic development goals, objectives and policies;

(f) water; including (i) description and assessment of the sources of water supply; (ii) the demand for water by residential, commercial, institutional, industrial and recreational sectors; (iii) assessment of the water unaccounted for water losses due to leaks, theft or other reasons; (iv) goals, objectives and policies for promoting the efficient use of water and for managing periods of drought; and (v) an analysis of the demand for water that will result from future growth projected in the plan, when added to existing uses, and how the demand for water that will result from future projected growth will be served by current water supplies, water conservation, water reuse or a plan to obtain additional water supplies or increase

water use efficiencies;

(g) hazards; , including (i) an analysis of the risks of hazards such as wildfire, floods, extreme weather conditions, accidents, and terrorism; (ii) goals, objectives and policies for hazard mitigation; and (iii) a description of the actions that will be taken to mitigate hazards;

(h) implementation; a compilation of the plan's goals, objectives, policies, standards or guidelines, along with specific actions to be completed in a stated sequence, which start with adoption of the comprehensive plan by ordinance;

(2) development of additional elements of a comprehensive plan may include, but are not limited to:

(a) drainage;

(b) parks, recreation and open space;

(c) tourism;

(d) growth management;

(e) fiscal impact analysis;

(f) intergovernmental cooperation;

(g) social services;

(h) historic preservation;

(i) asset management plan;

(3) if the entity has a current comprehensive plan (not older than five years from the date of application), it may apply for funding assistance for any of the following:

(a) data gathering analysis and special studies;

(b) base mapping, aerial photography, geographic information systems, or global positioning satellite studies;

(c) improvement of infrastructure capital improvement plans and individual project plans;

(d) development of codes and ordinances, that further refine the implementation of the comprehensive plan;

(e) climate change mitigation and adaptation plan;

(f) preliminary engineering report (according to USDA/RUS guidelines);

(g) related citizen participation or strategic planning process; or

(h) other functional or comprehensive planning activities;

(i) asset management plan;

(j) regionalization of infrastructure and service delivery.

(4) applicants may apply for funding assistance throughout the year as long as funds are available.

~~[(5) preliminary engineering reports must follow USDA/RUS guidelines.]~~

I. Colonias:

(1) The colonias category is established in the amount of 10% of the annual CDBG allocation for specific activities including water, sewer and housing improvements, which are the three conditions which qualify communities for

designation to be carried out in areas along the U.S. - Mexican border.

(2) Eligible applicants for the colonias set aside are municipalities and counties located within 150 miles of the U.S. - Mexico border.

(3) Colonias must be designated by the municipality or county in which it is located. The designation must be on the basis of objective criteria, including:

(a) lack of potable water supply;

or

(b) lack of adequate sewage systems; or

(c) lack of decent, safe and sanitary housing; and

(d) must have been in existence as a colonia prior to November, 1990.

(4) Appropriate documentation to substantiate these conditions must be provided along with the application for funding.

[2.110.2.11 NMAC - Rp 2 NMAC 110.2.11, 08-30-01; A, 08-13-04; A, 08-15-05; A, 12-14-06; A, 09-28-07; A, 10-15-09]

2.110.2.16 P R O G R A M REQUIREMENTS Section B:

Each CDBG application must meet at least one of the three national objectives, low and moderate income benefit, prevention or elimination of slums or blight or urgent need, which are herein described.

A. Low and moderate income benefit - An activity identified as principally benefiting (51%) persons of low and moderate income will be considered eligible only if it meets one of the criteria below:

(1) the activity must be carried out in a neighborhood or area consisting predominantly of persons of low and moderate income and provide services to such persons;

(2) the activity must involve facilities designed for use by a specific group of people or clientele predominantly of low and moderate income; or

(3) the activity must add or improve permanent residential structures which will be occupied by low and moderate income households upon completion; or

(4) the activity must involve creating or retaining jobs, the majority of which must be for persons of low and moderate income.

(5) the above can be substantiated with data from:

(a) the most recent low and moderate income data from the U.S. census (see attachment [E] A).

(b) a special survey conducted using HUD approved methodology;

(c) income eligibility requirements consistent with HUD approved income limits.

B. Prevention or

elimination of slums or blight - An activity identified as aiding in the prevention or elimination of a slum or blighted area must meet all of the following five criteria.

(1) The area must be designated by the applicant and must meet a definition of a slum, blighted, deteriorated or deteriorating area under state or local law (see definitions section of [regulations] 2.110.2 NMAC).

~~[(a) For the purpose of meeting this criterion, it is not necessary to follow the formal procedures under state law for designating a slum or blighted area. However, the definition of slum, blighted, etc. must be incorporated in state or local law.~~

~~_____ (b) There must be a substantial number of deteriorated or deteriorating buildings or public improvements throughout the area.~~

~~(2) As a "safe harbor," HUD will consider this criterion to have been met if either of the following conditions prevail in the area:~~

~~_____ (a) at least one quarter of all the buildings in the area must be in a state of deterioration, since state law does not specifically indicate the percentage of deteriorated or deteriorating buildings required to qualify the area;~~

~~_____ (b) or, public improvements throughout the area are in a general state of deterioration; and~~

~~_____ (c) it is insufficient for only one type of public improvement, such as the sewer system, to be in a state of deterioration; rather, the public improvements taken as a whole must clearly exhibit signs of deterioration.]~~

~~(2) The area must exhibit at least one of the following physical signs of blight or decay.~~

~~_____ (a) The area shall possess a substantial number of deteriorated or deteriorating buildings throughout; meaning at least one quarter of all the buildings in the area must be in a state of deterioration.~~

~~_____ (b) The area shall possess public improvements throughout the area which must be in a general state of deterioration. For example, it would be insufficient for only one type of public improvement, such as the sewer system, to be in a state of deterioration; rather, the public improvements taken as a whole must clearly exhibit signs of deterioration.~~

~~(3) Documentation must be maintained by the applicant on the boundaries of the area and the condition which qualified [it as a slum] the area at the time of its designation.~~

~~(4) The activity must address one or more of the conditions which contributed to the deterioration of the area.~~

~~(5) To comply with this objective on a spot basis outside of a slum or blighted area the proposed activity must be designated~~

to eliminate, specific conditions of blight or physical decay.

~~[(6)] The proposed activity must be limited to:~~

~~_____ [(a) acquisition;~~
~~_____ (b) clearance;~~
~~_____ (c) relocation;~~
~~_____ (d) historic preservation;~~
~~_____ (e) and rehabilitation of buildings;~~
~~_____ (f) but, only to the extent necessary~~

~~to eliminate specific conditions detrimental to public health and safety]~~

~~(a) acquisition and clearance of blighted properties;~~

~~(b) renovation and reuse of abandoned, historic properties;~~

~~(c) commercial revitalization through façade improvements;~~

~~(d) removal of environmental contamination on property to enable it to be redeveloped.~~

C. Urgent need - An activity identified as meeting community development needs having a particular urgency will be considered only if the applicant certifies the following:

(1) that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health and welfare of the community;

(2) that the condition(s) to be alleviated is of recent origin, i.e., it developed or became critical within 18 months preceding the certification by the applicant;

(3) that the applicant is unable to finance the activity on its own and other sources of funding are not available;

(4) in addition, verification of the urgency of the need must be provided with written documentation by the appropriate state agency.

[2.110.2.16 NMAC - Rp 2 NMAC 110.2.16, 08-30-01; A, 10-15-09]

2.110.2.17 APPLICATION REQUIREMENTS

A. Number of applications - All eligible applicants may submit one application for CDBG funding assistance in the infrastructure, housing, public facility capital outlay, or colonias categories.

(1) Planning applicants may submit at anytime an additional application for funding and shall not exceed fifty thousand dollars (\$50,000).

(2) Applicants in the economic development [;] or emergency may be submitted at any time and shall not exceed five hundred thousand dollars (\$500,000), subject to funding availability.

(3) Counties may submit multiple applications for planning grants for water associations.

(4) Planning, economic development and emergency applications may be submitted, at anytime, even if the

applicant has not completed other CDBG projects.

B. Single purpose application -An application for CDBG funding must be limited to a project specific activity or set of activities which address a particular need in a designated target area of a unit of local government. The target area may not be the entire municipality or county.

C. Joint applications - Joint applications will be allowed when two or more eligible applicants within reasonable proximity of each other wish to address a common problem.

(1) One community will be designated to serve as the lead applicant and will be subject to administrative requirements and to the application limit requirements.

(2) However, other parties to the joint application may submit another application.

(3) Joint applications must satisfy certain federal criteria and must receive division approval prior to submitting an application for funding assistance.

(4) It should be noted that satisfying the required criteria, which is available from the division upon request, may take a significant period of time.

D. Application requirements for the following minimum requirements apply to all applications for CDBG funding:

(1) applications must involve a project that will be fully functional on a stand-alone basis once awarded CDBG and other committed funds have been expended and;

(2) projects shall be completed within twenty-four months of an award of funding;

(3) applications may not exceed \$500,000;

(4) if the applicant, after conducting the required public hearing, determines that the previous year's CDBG unfunded application is still a priority, the applicant must submit the original along with a current year's resolution, updated project budget and schedule and any other information required by division staff.

E. Threshold requirements - To encourage timely completion of projects and to maximize participation the following threshold requirements shall be met prior to the application deadline.

(1) All projects for the eligible activities in the categories listed in Subsections C, D, E, and I of 2.110.2.11 NMAC must be completed at the time of application. (certificate of occupancy or certification of operation must be in place).

(2) All audit and monitoring findings, for CDBG projects, must be resolved.

(3) The current fiscal operating

budget for any local public body as defined in Section 6-6-1 NMSA 1978 (as amended) applying for CDBG funds must be approved.

(4) The local government division financial management bureau will verify that financial quarterly/ monthly reports are current before CDBG applications deadline.

~~[(5) The following set aside categories are exempt from threshold requirement: planning, economic development, and emergency.]~~

(5) The local government division, budget and finance bureau, shall report the applicant's most current audit filing with the state auditor office for all applicants that are counties and municipalities. They determine compliance with the budget certification rule, 2.2.3 NMAC. The CDC will take into consideration whether the counties or municipalities are in compliance with the budget certification rule.

(6) The set aside categories are exempt from threshold requirements set forth in Subsection E of 2.110.2.17 NMAC: planning, economic development, and emergency categories.

F. Matching requirements - In order to assist the council in making funding resources go further and to ensure there is a local investment in applications submitted to the council for funding consideration, the following will be required.

(1) Rural applicants must provide, at a minimum, a 5% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(2) Non-rural applicants must provide, at a minimum, a 10% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(3) Consistent with 2.110.2 NMAC, all applications in the economic development category must provide at least one private dollar for each dollar of CDBG funds requested.

(4) Local funds expended by eligible applicants for engineering, architectural design or environmental reviews prior to project approval can be applied towards the required match.

(5) Applicants may request a waiver of the matching requirement from the council if documentation can be provided which demonstrates the absence of local resources to meet the required match. Criteria used to recommend approval/disapproval will be as follows:

(a) the required match must exceed 5% of the applicant's general fund budget;

(b) the required match must equal or exceed the non-earmarked balance of funds in the applicant's budget.

G. Other funding commitments - If other funding is necessary to make a proposed project feasible, funding

commitments or commitments subject to CDBG approval, must be in place and letters of commitments from the funding agency must be submitted with the application.

H. Water conservation and drought commitments - In order to make the state's water supplies go further and to ensure proper levels of preparations are taken locally for periodic droughts, the following is encouraged.

(1) Applicants develop, adopt and submit to the state engineer a comprehensive water conservation ordinance.

(2) Applicants develop, adopt and submit to the state engineer a drought management plan.

(3) The ordinance and plan shall be accompanied by a program for its implementation.

(a) in developing a water conservation ordinance pursuant to this section: applicants shall adopt ordinances and codes to encourage water conservation measures; they shall identify and implement best management practices in their operations to improve conservation of the resources; and

(b) applicants shall consider and incorporate into its plan if appropriate, at least the following:

(i) water-efficient fixtures and appliances, including toilets, urinals, showerheads and faucets;

(ii) low-water-use landscaping and efficient irrigation;

(iii) water-efficient commercial and industrial water-use processes;

(iv) water reuse systems for both potable and non-potable water;

(v) distribution system leak repair;

(vi) dissemination of information regarding water-use efficiency measures, including public education programs and demonstrations of water-saving techniques;

(vii) water rate structures establishing rates or revenues that support the long term operation, maintenance, repair, and replacement of the system or facility and are designed to encourage water-use efficiency and reuse in a fiscally responsible manner and

(viii) incentives to implement water-use efficiency techniques, including rebates to customers or others, to encourage the installation of water-use efficiency and reuse measures.

(c) the council shall encourage the applicant to submit a copy of its water conservation plan with applications for construction of any facility.

I. Asset management - In order to support the long term operation, maintenance, repair and replacement of system facilities, infrastructure, public

facilities, or other eligible activities the following will be required.

~~(1) [In order to ensure water and wastewater infrastructure is managed within a strategic framework driven by program and service deliver needs, communities that implement a rate analysis based upon an asset management program will be credited in the application process for their achievement. The model for the asset management program is the EPA publication "Asset Management: A Handbook for Small Water Systems (EPA 816-R-03-0160 September 2003).]~~
In order to ensure water and wastewater infrastructure is managed within a strategic framework driven by program and service delivery needs, communities that implement an asset management program and use that approach as the basis for their rate analysis will be credited in the application process for their achievement. The model for the asset management program is the international infrastructure asset management model, adopted by EPA. This approach includes five core components, which are as follows:

(a) current state of the assets: an asset inventory that includes the following at a minimum: asset name, asset location, asset condition, useful life, and an estimate of replacement value;

(b) level of service: a description of what the utility wishes to provide its customers;

(c) criticality: an evaluation of which assets are critical to the sustained operation of the utility;

(d) life cycle costing: at a minimum, a capital improvement plan that describes the replacement of assets and some consideration of operation and maintenance of the assets;

(e) financing plan: a description of the funding sources that will be used to pay for the capital and operational needs of the utility.

(2) For community infrastructure and public facilities, or other eligible activities an asset management plan will be required to be submitted at the time of application [(EPA 816-R-03-0160 September 2003)]. The approach will follow the same five components described in Subparagraphs (a) - (e) of Paragraph (1) of Subsection I of 2.110.2.17 NMAC above.

[2.110.2.17 NMAC - Rp 2 NMAC 110.2.17, 08-30-01; A, 08-13-04; A, 08-15-05; A, 12-14-06; A, 09-28-07; A, 09-30-08; A, 10-15-09]

2.110.2.19 APPLICATION REVIEW AND EVALUATION PROCESS

A. Upon receipt of applications, division staff will review them for eligibility, completeness, feasibility, and compliance and to ensure that all other funding necessary to make the project

functional is in place. Applications that are found to be incomplete, ineligible, or not feasible or do not have other funding necessary to make the project functional, will be returned to the applicant and will not be considered for funding.

B. Applications will be forwarded to appropriate state agencies for technical review and comment. Review agencies may include, but are not limited to, the environment department, department of transportation, department of health, state engineer's office, state agency on aging, economic development department, state fire marshal and governor's commission on disability.

C. Applicants will be allowed to make presentations to the council and division staff at an official council hearing. Testimony related to the application will be presented by an official or designee of the applying entity who may be assisted by technical staff.

D. Division staff will receive comments from state agencies regarding specific projects.

E. The council and division have developed the following rating criteria for evaluation of CDBG applications submitted for funding in the following categories: infrastructure, housing, public facility, capital outlay and colonias application categories. For infrastructure, housing, public facility, capital outlay and colonia application categories, the following nine (9) criteria are used to score the application. In addition, for colonias applications, the applicant needs to fulfill the four conditions in Subsection G of 2.110.2.19 NMAC.

(1) Description and need - (5 points) extent to which the project is needed. The more severe the need as documented in the application, the higher the score. It is only necessary to answer the questions on the application that pertain to the appropriate application category and do not answer questions on the application that pertain to other categories.

(2) Benefit to low and moderate and appropriateness - (20 points) extent to which the CDBG application:

(a) documents the number and percentage of low and moderate income beneficiaries, also include race and gender; or

(b) addresses the prevention or removal of slum or blighting conditions; or

(c) addresses conditions which pose a serious and immediate threat to the health and welfare of the community (for emergency applications only).

(3) Leveraging - (15 points) extent to which federal, state, and local resources, in addition to the required match, are being used by the applicant for the proposed project. The greater the leveraging, in

addition to the required match, the higher the score.

(4) Citizen participation - (10 points) extent to which the applicant:

(a) has provided opportunities for public participation in the identification of community development needs;

(b) pledges opportunities for active citizen participation during the project, where applicable; and;

(c) pledges opportunities for active citizen participation in the implementation of the project, where applicable.

(5) Planning - (10 points) extent to which the applicant:

(a) (3) points: Applicant has adopted a local (ICIP), which has qualified for publication in the most recent local (ICIP) published prior to the CDBG application deadline.

(b) (3) points: The proposed project has qualified for publication in the most recent ICIP prior to the CDBG application deadline and applicant has selected CDBG as one of its possible funding sources.

(c) 1 point: Degree to which applicant's proposed project shows consistency with applicant's comprehensive plan.

(d) 1 point: Adopting a drought contingency plan, setting in place various drought management stages and accompanying restrictions on water use.

(e) 1 point: Adopting a water conservation ordinance, setting in place various methods for conserving potable water.

(f) 1 point: Implementing a water conservation ordinance, accompanied by evidence of exercising at least two various methods for conserving potable water.

(6) Feasibility/readiness - (20 points) extent to which the project is technically and economically feasible and ready to be implemented. Examples of actions that can be taken prior to submission of the application to receive maximum points are:

(a) necessary real property or easements acquired; (5)

(b) professional services contract executed; (5)

(c) completed plans, specifications, bid documents, or preliminary engineering reports; (5)

(d) complete the environmental review process (5).

(7) Cost benefit - (10 points) number of direct beneficiaries of the project compared to the amount of funds requested. The higher the number of beneficiaries compared to the amount of funds requested, the higher the score.

(8) User fees and revenues - (10 points) ~~What best demonstrates the rates or revenues that support the long~~

~~term operation, maintenance, repair, and replacement of the system or facility?~~

~~(a) Rates developed by asset management as presented by the New Mexico Tech, environmental finance center (EFC). (10 points)~~

~~(b) rates developed by a rate analysis, excluding asset management or allowance for replacement of reserve funds. (5 points)~~

~~(c) rates developed by other. (1 point)]~~

~~(a) attendance at an asset management training within the last three years that includes the five core components set forth in Subsection I of 2.110.2.17 NMAC (1 point)~~

~~(b) development of an asset management plan that includes some, but not all, of the five core components (2 points)~~

~~(c) development of a complete asset management plan with all five core components (5 points)~~

~~(d) rates developed based on asset management, using the five core components (10 points)~~

~~(e) rates developed by a rate analysis, excluding asset management or allowance for replacement of reserve funds (2 points)~~

~~(f) rates developed by other. (1 point).~~

(9) Non-funded applicants - (10 points) - Applicants that were not funded in the prior year.

F. Planning criteria category

(1) Consistency (25 points): Document the degree to which the proposed planning project is consistent with the [applicants] applicant's current version of its comprehensive plan, its infrastructure capital improvement plan, and its planning region's consolidated plan, or its planning documents or studies.

(2) Appropriateness (25 points): Describe the impact the proposed project will have on at least one of the three national objectives of the CDBG program, i.e.,

(a) documents the number and percentage of low and moderate income beneficiaries, also include race and gender; or

(b) addresses the prevention or removal of slum or blighting conditions; or

(c) addresses conditions which pose a serious and immediate threat to the health and welfare of the community (for emergency applications only).

(3) Public involvement (25 points): Describe how the planning process will involve citizens in the preliminary identification of community needs, in the development and active participation in the planning process, and in the implementation of the plan, including a minimum of one public hearing with proper notice in

accordance with law.

(4) Implementation strategy (25 points): Describe the local commitment of resources to the planning process; commitment to adopt the plan, either by resolution, rule, policy or ordinance; and commitment to use the results of the planning process in the decision making process.

G. Colonias criteria category - When submitting a colonias category application, the applicant shall provide documentation to substantiate that a majority of the following conditions exist in the project area:

- (1) lack of potable water; or
- (2) lack of an adequate sewage system; or
- (3) lack of safe, sanitary housing; and
- (4) source documentation must also be provided of colonias designation.

H. Economic development rating criteria is included in Section 2.110.2.26.

I. Site visits will be conducted as needed during the life time of the project to verify or review information presented.

J. Division staff will present its recommendations in high, medium and low groupings to the council at least seven days prior to the allocation meeting.

K. Because emergency, economic development, and rural planning projects are received throughout the year, formal staff rating may not be necessary if all other federal and state requirements are met and other applications are not competing for funding assistance.

[2.110.2.19 NMAC - Rp 2 NMAC 110.2.19, 08-30-01; A, 08-13-04; A, 12-14-06; A, 09-28-07; A, 09-30-08; A, 10-15-09]

2.110.2.20 SELECTION OF CDBG GRANTEES BY CDC

A. The council will review staff recommendations and make funding decisions in an open public meeting.

B. In making its final determination, the council will consider the past performance of the applicant in administering active CDBG projects.

C. The council may adjust the scope and dollar amount of projects to bring the project within available funding, to enable the council to fund additional projects or for purposes of consistency.

D. The council will also consider the applicant's presence at the hearings, the applicant's presentation at the hearings, the council summary of the project application, and the current economic and environmental conditions.

E. The council may deviate from staff recommendations, if the council by majority vote determines and substantiates

that any of the following conditions apply:

(1) IN ORDER NOT TO FUND A PROJECT RECOMMENDED BY STAFF - other funding sources for the project are available or minimum application requirements were not met or other applications were deemed to be a priority or the application was not well conceived.

(2) IN ORDER TO FUND A PROJECT NOT RECOMMENDED BY STAFF -

(a) the health and safety of area residents is at stake;

(b) funding committed to the project from other sources may be jeopardized;

(c) significant economic benefits will be realized if the project is implemented;

(d) the need for the project is critical.

F. The council will make funding determinations by a majority vote.

G. The council may waive or adjust any state-imposed rule or requirement relative to project selection and administration of the CDBG program as long as the waiver will not result in violation of state or federal statutes or regulations or penalize other applicants.

H. At the yearly allocation hearing, if the council sets aside amount of funding for emergency, economic development or planning, the council may at any time during the calendar year, transfer funds from the economic development, planning and emergency [~~setsides~~] set-aside if there is limited demand for funding in these categories. The transferred funds or any reversions from previously approved projects may be used to fund projects which were submitted for funding previously.

[2.110.2.20 NMAC - Rp 2 NMAC 110.2.20, 08-30-01; A, 08-13-04; A, 09-28-07; A, 10-15-09]

2.110.2.26 ECONOMIC DEVELOPMENT PROGRAM

GUIDELINES: Within the context of the CDBG program and for purposes of meeting its goals and objectives, economic development can typically be defined as improving a community's economic base by using private and public investments that provide expanded business activity, jobs, personal income and increased local revenues in a defined geographic area.

A. Goals and objectives: The state's CDBG economic development goals and objectives include:

(1) creating or retaining jobs for low- and moderate-income persons;

(2) preventing or eliminating slums and blight;

(3) meeting urgent needs;

(4) creating or retaining businesses owned by community residents;

(5) assisting businesses that

provide goods or services needed by, and affordable to low - and moderate-income residents;

(6) providing technical assistance to promote any of the activities under Subsection A, Paragraphs (1) through (5) above.

B. Eligible activities: CDBG eligible activities authorized under Sections 570.200, 570.201, 570.202, 570.203, 570.204, 570.482 and 570.483 of 24 CFR Part 570 of the federal rules and regulations governing the community development block grant program and directly affecting the creation or retention of employment opportunities, the majority of which are made available to low and moderate income persons, may include activities which are carried out by public, private nonprofit, or private for-profit entities when such activities are appropriate.

(1) To meet the needs and objectives of the community economic development plan, a project may include; acquisition of real property, construction, reconstruction rehabilitation, or installation of public facilities, site improvements, and utilities, and commercial or industrial buildings or structures and other commercial or industrial real property improvements and planning.

(2) Grantees and nonprofit subrecipients may carry out for the purpose of economic development, a wide range of activities such as those listed in Section 570.203.

(3) The for-profit businesses, however, may carry out only the activities listed in that section and rehabilitation activities listed in Section 570.202.

C. Financing policies and techniques: The New Mexico CDBG program, as a development tool, can provide flexibility and take greater risks in its lending policies and financing techniques. For example, the program may:

(1) offer a negotiated period for repayment of principal and interest;

(2) take greater risk than banks are traditionally prepared to take, provided substantial economic development benefits will result if the loan is granted;

(3) leverage capital by reducing risk for commercial lenders and by taking a subordinate;

(4) security/collateral position;

(5) provide more favorable rates and terms than are generally available through conventional sources.

D. Project requirements: Project requirements for eligible CDBG economic development assistance include, but are not limited to:

(1) specific employment commitments for low and moderate income residents, generally with no more than \$15,000 in CDBG funds being used for each

job created or retained;

(2) at least 51% of the jobs created/retained must be held or made available to persons of low to moderate income persons;

(3) within six (6) months of completion of the project, the grantee is required to report to LGD, documentation to reflect the total number of jobs created;

(4) a firm commitment for private financial participation in carrying out the proposed project, contingent on award of CDBG funding only, must be included with the application;

(5) a minimum leveraging ratio of 1 new private investment dollars to 1 CDBG dollar is required, {additional leveraging will enhance a project's competitiveness};

(6) an "appropriate" determination that there is a well documented need for CDBG assistance to make the project financing feasible and that the level of assistance requested is commensurate with the public benefits expected to be derived from the economic development project;

(7) evidence of project feasibility including a business plan which contains financial statements, project pro forma (cash flow projections) and specific source and intended use of all funds or assets used in the project;

(8) generally, projects that directly assist in the relocation of a business or industry from one community to another, intrastate or interstate, will be disqualified;

(9) prior to submission of an application, applicants should thoroughly review the credit worthiness of the proposed borrower and should obtain appropriate credit reports, audited financial statements, tax returns and verify collateral.

E. Program income:

The community development council has adopted a policy of strongly encouraging and, when possible, requiring applicants in the economic development category to return program income to the state for use in fostering critical economic development opportunities that occur throughout the state. By pooling program income at the state level more of an impact can be made on the overall economic conditions of the state. The Housing and Urban Rural Recovery Act which amended the Housing and Community Development Act of 1974, provides, relative to economic development, specifically the following:

(1) states may require program income to be returned to the state but local governments must be allowed to keep program income when used for the same activity which generated the income (104(i)2);

(2) if the applicant intends to retain program income, a program income utilization plan must be submitted with the application for approval.

F. Application cycle:

Applications for economic development can be made at any time, and the division staff have thirty days to review [the] them.

G. Pre-application conference: It is recommended that a preapplication conference be held prior to the submission of the final application to insure that all elements are adequately addressed. The preapplication conference will also provide an opportunity to review any new federal guidelines that may be issued which relate to economic development activities. Contact the LGD, economic development representative for information. More detailed and extensive financial and project data may be required depending on the specific project. In addition, meeting the national objective to benefit low and moderate income requires documentation certifying that the majority of the jobs go to low and moderate income persons or the majority of jobs are considered available to them. Please contact the local government division for a copy of the HUD guidelines.

H. APPLICATION REQUIREMENTS: (These must be included along with the regular CDBG application, and should be submitted in lieu of question #2 in the regular application.)

(1) Economic development plan:

The applicant must submit as an attachment to the application a short (5 page maximum) description of its plan for encouraging local economic development. The plan, incorporating references to the proposed project, should include a discussion of the following elements

(a) **Need** - What are the community's underlying economic problems? Need might include recent major industry shutdowns or extended layoffs, substantial increases in population without a corresponding increase in job opportunities, substantial population decreases due to lack of available or appropriate job opportunities, a lack of industrial diversification, the existence of large numbers of workers in the area with obsolete skills or skills for which there is no current demand, or other problems unique to the applicant's community.

(b) **Goals** - What is the community attempting to accomplish through its overall economic development program (not just that activity for which CDBG funding is sought)? Goals might include trying to preserve existing businesses or industries, attempting to encourage community growth, attempting to foster industrial diversification, revitalizing the central business district, or creating complementary industries which would provide jobs in the off-season for workers now only seasonally employed.

(c) **Resources** - What public and private resources, both financial and technical, does the community have available to it to help carry out its economic development program? Resources may

be of a wide variety. For example, does the community have a local development corporation or similar body? Has any agency organization assigned staff member(s) to work on economic development activities for a major portion of their time? Has the financial community demonstrated its willingness to participate in development activities? Is there an adequate available labor force to meet the demands of new or expanding businesses and industries? Does the community have some unique development advantages, e.g., location, transportation facilities, industrial park or other plant sites, available raw materials, abundant power supplies, employee training capabilities, a locally-administered revolving loan fund to assist growing businesses or industries, technical assistance programs to help business persons deal with marketing, management, or financial planning problems.

(d) **Strategy** - What strategy is the community using to pursue its economic development goals? Strategy might include a description of the specific activities that have been identified as components of the community's strategy for encouraging local economic development. For example, which has been assigned first, second, and third priority? How much will each cost? What funding sources have been identified for each? What can or will the local government do to support those activities?

(e) **Results** - What actions has the community already undertaken to implement its economic development plan? What sources of funding were used? What were the results? Results might include a discussion of actions the community has taken to encourage development. For example, has it offered property tax reductions to new or expanding industries? Has it formed a local development corporation or prepared industrial or tourism promotion packages? What results have been achieved? How many new jobs have been created or existing jobs retained? How many new firms have begun operations in the community? How many existing firms have undertaken expansion activities?

(2) Hiring and training plan:

(a) Applicants must establish procedures for the project to ensure preferential recruitment, hiring, and training of local workers, particularly those of low and moderate income.

(b) In the event of a grant award, the applicant's commitment to the hiring plan will be considered binding and will be incorporated by reference in the grant agreement between the local governing body and the local government division.

(3) Private sector commitments:

(a) Applicants must provide evidence of firm commitments of financial resources from the private sector.

(b) Such commitments should be binding, contingent only upon receipt of CDBG funds.

(c) Investments made or costs incurred prior to the grant application are not eligible for use as matching funds or leverage but should be referenced as related to the total project, if applicable.

(4) Public sector commitments:

(a) If public sector resources are to be involved in the proposed economic development project, applicants must demonstrate evidence of a firm commitment of public funds or other resources.

(b) Such commitments should be binding, contingent only upon receipt of CDBG funds to the project.

(c) Evidence may include resolutions or ordinances passed by the local governing body and other appropriate local groups.

(5) Use of CDBG funds for economic development loans (if applicable):

(a) Any project that includes a loan should provide an explanation of the proposed interest rate, terms and rationale for the proposed financing structure.

(b) Any loan made by a local governing body with CDBG funds as a part of an approved CDBG economic development project must be adequately secured.

(c) Subordinated loans may be made when justifiable and appropriate.

(d) The applicant must include a detailed description of the proposed use of program income. (principal and interest). Applicants are encouraged to designate program income to be returned to the state for future economic development [set-aside-eligible] set-aside eligible activities.

(6) Viability of assisted enterprises: Any for-profit entity to be assisted with CDBG funds must document that without participation of CDBG funds the proposed activity would not be feasible and that after receipt of CDBG assistance the enterprise will be viable and self-sustaining. All applicants proposing an economic development activity shall submit the following for any entity to be assisted with CDBG funds.

(a) a business plan which consists of at least a description of the history of the firm, background, and experience of the principals, organizational structure, a description of its major products or services, market area and market share, goals, and planned expansions or changes in operations; the plan should also describe the impact the CDBG project, if funded, would have on the firm's activities;

(b) a three-year to five-year operating plan forecast (profit and loss projection); applicants may use U.S. small business administration (SBA) forms or equivalent;

(c) a monthly cash flow analysis, SBA forms or equivalent.

(d) for any existing business, the two most recent year-end financial statements, including an income statement and balance sheet.

I. RATING CRITERIA:

The selection criteria in the rating and ranking system will give priority to projects which firmly demonstrate the following: need, appropriateness, impact, and benefit to low and moderate income persons. These factors are discussed below and are intended to provide additional information. Since each application will be a unique response to particular community-specific needs, there are no "right" or "wrong" activities or solutions. The ranking of "appropriateness" (and later, of "impact") will necessarily be in part subjective, with the division taking into account not only how well each applicant addresses the problems it has defined, but also how its problems and responses compare with those of other applicants. Responses may vary considerably depending upon the size and location of the community and the type of project proposed.

(1) NEED - (200 points) - In analyzing an applicant's need for a project, the division will use statistical information provided by the New Mexico department of labor and the U.S. bureau of the census which is uniformly available for all thirty-three (33) counties. Since similar data is not accumulated at the municipal level, cities and towns will be scored with the figures for the county in which they are located. The three factors which will be considered are: the average number of unemployed persons in the county during the last calendar year; the percent of unemployment (average) in the county during the last calendar year; long-term unemployment (measured by average unemployment rates in the county for the last five calendar years).

(a) The data will be calculated and each applicant assigned a relative score.

(b) The division will consider assigning a different score in exceptional cases, where an applicant can conclusively demonstrate that the first two factors used to measure economic need are not reflective of local economic conditions (such as major recent plant closings) and the situation is substantiated by the New Mexico department of labor. A request for consideration of local economic data must be submitted with the CDBG application. The applicant should identify sources of data and define methodologies.

(2) APPROPRIATENESS - (200 points) - Two major factors will be weighted in this ranking category: the soundness of the applicant's economic development plan and the related project for which CDBG funding is sought; the strength of the applicant's hiring and training plan for ensuring that

local residents, particularly those of low and moderate income, will be hired to fill the stated number of jobs created or retained as a result of CDBG-funded activities. These two factors will be ranked as follows:

(a) Plan and program - (140 points) - Some factors which might contribute to the achievement of an "outstanding" score are:

(i) that the applicant has developed a complete, well reasoned, appropriate, and achievable plan for dealing with its total economic development needs, taking into consideration all available public and private resources and local capacity;

(ii) that the local governing body has officially adopted the economic development plan as a matter of public policy;

(iii) that the proposed project for which CDBG funding is sought is an integral part of that plan; (it need not be the first priority item identified in the overall plan if other, more appropriate, resources are available and already being used to meet higher priority items);

(iv) that the applicant has made substantial local efforts to deal with its economic development problems;

(v) that the proposed CDBG project is realistic and workable, and the job savings or creation expected to result from its implementation will occur within a reasonable time following the date of grant award;

(vi) that if income is to be generated by CDBG-funded activities, and retained locally, a plan for the use of that money has been developed and submitted with the application; this plan must include mechanisms established for administration of the funds, (if a revolving loan fund is to be established with program income, procedures must be outlined covering local application processing, time frames, approval, negotiation, pricing, packaging, servicing, etc.);

(vii) that there has been active citizen participation in the development of the economic development plan and in the selection of the CDBG project.

(b) Hiring and training plan - (60 points) - Since a primary goal of CDBG-funded economic development grants is to increase job opportunities for local residents, particularly persons of low and moderate income, it is essential that applicants take every measure to bring about that result. Each applicant must include in its application an employment and training plan to be used in filling jobs created or saved as a result of CDBG activities. Factors which would most likely contribute to the achievement of a high score are:

(i) that the applicant's employment and training plan provides

clear, complete procedures for outreach, recruitment, screening, selection, training, and placement of workers which will ensure maximum access of local residents, particularly persons of low and moderate income, to jobs created or saved by the project;

- (ii) that attention has been given to necessary supportive services for trainees needing them;
- (iii) that a complete training curriculum has been developed and all training resources identified;
- (iv) that responsibility has been assigned for all phases of the training program;
- (v) that a written agreement to follow the plan has been obtained from each firm expected to benefit directly from the program.

(3) **IMPACT** - (200 points) - In weighing the anticipated impact of the applicant's proposed CDBG grant activities on the community's identified problems, the following four factors will be considered and evaluated:

(a) **Leverage** - (50 points) - In preparing its proposed project budget, the applicant is required to identify all sources of funds to be used and the amounts to be contributed by each. To be eligible for consideration, an applicant must provide at least one private non-CDBG dollars for each dollar of CDBG funds requested (a 1:1 ratio). The non-CDBG funds may come from a variety of private sources, such as new investment by a firm to be assisted, bank loans, or local development corporation loans and debentures. Applicants will be ranked against each other. If, for instance, community A has the highest leverage ratio (\$3 of non-CDBG funds for each \$1 of CDBG funds, a 3:1 ratio) and community B has a 1:1 leverage, community A would receive the maximum score and community B and all other applicants would be relatively scored against community A.

(b) **CDBG dollars per job** - (50 points) - The applicant is required to specify the number of permanent full-time jobs to be created or retained as a result of the requested CDBG program. In determining an applicant's score in this category, the total CDBG funds to be used (exclusive of administrative funds) will be divided by the total number of full-time jobs expected to result. NOTE: In evaluating an applicant's job creation projections, the local government division will consider the historical relationships of sales, space, and machines to jobs. It will also look at typical ratios for the industry of which the firm to be assisted is a part. Applicants should be prepared to justify job creation claims which substantially exceed industry norms or \$15,000 per job created or retained.

(c) **Type of jobs** - (50 points) - Although all new or retained jobs provide some measure of economic benefit to the community, full-time, skilled or semi-skilled positions are more desirable for most workers than part-time jobs or those requiring unskilled labor. One objective of CDBG economic development activities is to foster the creation and retention of permanent, full-time employment with growth potential for persons of low and moderate income, which offers those workers an opportunity for advancement in a firm or industry. Applicants are required to indicate the percentage of jobs to be created or retained which are full-time or part-time, skilled, semi skilled, or unskilled.

(d) **Overall economic impact** - (50 points) - The applicant must discuss both the direct and indirect effects the CDBG program is expected to have on the community's economy. Some of the factors which will be considered in evaluating impact are:

- (i) the size of the additional payroll expected to be generated for the jobs created or retained by the program;
- (ii) the total number of jobs to be created or retained;
- (iii) whether the firm to be assisted is a primary industry (producing goods or services mainly to be sold outside the area or state, thereby importing dollars into the community and state);
- (iv) whether local property tax revenues will be significantly increased as a result of the proposed business start-up, expansion, retention, etc.;
- (v) the applicant demonstrating the greatest positive impact will be scored highest; all other applicants will be ranked correspondingly;
- (vi) when applications have been scored in all four categories (leverage, dollars per job, types of jobs, and overall economic impact), those scores will be totaled.

(4) **BENEFIT TO LOW AND MODERATE INCOME PERSONS** - (200 points)

(a) This ranking criterion assesses the extent to which persons of low and moderate income will directly benefit from the expenditure of CDBG grant funds. To determine this score, the number of jobs to be created or retained and made available to low and moderate income persons will be divided by the total number of jobs to be created or retained as a result of the CDBG program.

(b) The highest score will receive up to a maximum of 200 points and all other applicants will be scored accordingly.

(c) To be eligible for consideration a project must demonstrate that it will benefit principally persons of low and moderate income. [2.110.2.26 NMAC - Rp 2 NMAC 110.2.26, 08-30-01; A, 12-14-06; A, 09-28-07; A, 10-15-09]

Attachment to 2.110.2.14 NMAC

**RURAL COUNTIES (EXHIBIT A)
PER 2000 HUD APPROVED U.S. CENSUS DATA**

COUNTY	TOTAL PERSONS
CATRON	3,533
CIBOLA	24,524
COLFAX	13,767
DE BACA	2,168
GUADALUPE	4,154
HARDING	810
HIDALGO	5,847
LINCOLN	19,192
LOS ALAMOS	18,251
LUNA	24,746

MORA	5,122
QUAY	9,969
ROOSEVELT	17,249
SIERRA	13,005
SOCORRO	17,501
TORRANCE	16,377
UNION	4,158

**URBAN COUNTIES
PER 2000 HUD APPROVED U.S. CENSUS DATA**

COUNTY	TOTAL PERSONS
BERNALILLO	106,749
CHAVES	60,089
CURRY	43,855
DONA ANA	97,616
EDDY	50,905
GRANT	30,399
LEA	53,708
McKINLEY	73,940
OTERO	61,059
RIO ARRIBA	40,729
SANDOVAL	37,912
SAN JUAN	112,593
SAN MIGUEL	28,735
SANTA FE	66,588
TAOS	29,681
VALENCIA	64,781

**RURAL MUNICIPALITIES
PER 2000 HUD APPROVED U.S. CENSUS DATA**

MUNICIPALITIES	TOTAL PERSONS
ANGEL FIRE	1,018
ARTESIA	10,860
AZTEC	6,078
BAYARD	2,553
BELEN	6,643
BERNALILLO	6,503
BLOOMFIELD	6,144
BOSQUE FARMS	3,781
CAPITAN	1,453
CARRIZOZO	988
CAUSEY	43
CHAMA	1,319
CIMARRON	927
CLAYTON	2,523
CLOUDCROFT	779
COLUMBUS	1,790
CORONA	253
CORRALES	7,430
CUBA	639
DEMING	13,986
DES MOINES	253
DEXTER	1,181

DORA	127
EAGLE NEST	298
EDGEWOOD	2,024
ELEPHANT BUTTE	1,140
ELIDA	185
ENCINO	90
ESPANOLA	9,664
ESTANCIA	1,038
EUNICE	2,569

**RURAL MUNICIPALITIES
PER 2000 HUD APPROVED U.S. CENSUS DATA**

MUNICIPALITIES	TOTAL PERSONS
FLOYD	79
FOLSOM	96
FORT SUMNER	1,160
GALLUP	19,504
GRADY	80
GRANTS	8,329
GRENVILLE	22
HAGERMAN	1,155
HATCH	1,665
HOPE	1,329
HOUSE	56
HURLEY	1,468
JAL	2,020
JEMEZ SPRINGS	429
LAKE ARTHUR	400
LAS VEGAS	13,874
LOGAN	1,065
LORDSBURG	3,296
LOS ALAMOS	11,822
LOS LUNAS	9,994
LOS RANCHOS DE ALBUQUERQUE	4,951
LOVING	1,327
LOVINGTON	9,307
MAGDALENA	940
MAXWELL	274
MELROSE	736
MESILLA	2,266
MILAN	1,911
MORIARTY	1,738
MOSQUERO	148
MOUNTAINAIR	1,136

**RURAL MUNICIPALITIES
PER 2000 HUD APPROVED U.S. CENSUS DATA**

MUNICIPALITIES	TOTAL PERSONS
PECOS	1,507
PORTALES	10,143
QUESTA	1,880
RATON	7,061
RED RIVER	517
RESERVE	472
ROY	316

RUIDOSO	7,581
RUIDOSO DOWNS	1,806
SAN JON	286
SAN YSIDRO	159
SANTA CLARA	1,927
SANTA ROSA	2,250
SILVER CITY	10,195
SOCORRO	8,445
SPRINGER	1,252
SUNLAND PARK	13,271
TAOS	4,621
TAOS SKI VALLEY	90
TATUM	717
TEXICO	1,059
TIJERAS	414
T OR C	7,029
TUCUMCARI	5,879
TULAROSA	2,828
VAUGHN	599
VIRDEN	135
WAGON MOUND	365
WILLARD	239
WILLIAMSBURG	490

**URBAN MUNICIPALITIES
PER 2000 HUD APPROVED U.S. CENSUS DATA**

MUNICIPALITIES	TOTAL PERSONS
ALAMOGORDO	34,966
CARLSBAD	25,287
CLOVIS	31,940
FARMINGTON	37,104
HOBBS	27,522
ROSWELL	44,261

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

16 NMAC 11.2, Certified Nurse Midwives (filed 10-18-1996) is hereby repealed and replaced by 16.11.2 NMAC, Certified Nurse Midwives, effective 10-15-2009.

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

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 11 MIDWIVES
PART 2 CERTIFIED NURSE MIDWIVES**

16.11.2.1 ISSUING AGENCY: New Mexico Department of Health.
[16.11.2.1 NMAC - Rp, 16 NMAC 11.2.1, 10/15/09]

16.11.2.2 SCOPE: This rule applies to any person seeking to practice or currently practicing as a certified nurse-midwife in the state of New Mexico.
[16.11.2.2 NMAC - Rp, 16 NMAC 11.2.2, 10/15/09]

16.11.2.3 STATUTORY AUTHORITY: This rule is authorized by Sections 9-7-6 (E), 24-1-3 (R) and 24-1-4.1 NMSA 1978.
[16.11.2.3 NMAC - Rp, 16 NMAC 11.2.3, 10/15/09]

16.11.2.4 DURATION: Permanent.
[16.11.2.4 NMAC - Rp, 16.NMAC 11.2.4, 10/15/09]

16.11.2.5 EFFECTIVE DATE: 10/15/09, unless a later date is cited at the end of a section.
[16.11.2.5 NMAC - Rp, 16 NMAC 11.2.5, 10/15/09]

16.11.2.6 OBJECTIVE: This rule governs the licensure and practice of certified nurse-midwives (CNMs) in New Mexico.
[16.11.2.6 NMAC - Rp, 16 NMAC 11.2.6, 10/15/09]

16.11.2.7 DEFINITIONS:
A. "ACNM" means the American college of nurse-midwives.
B. "Board" means the certified nurse-midwifery advisory board established under these rules.
C. "Certified nurse-midwife (CNM)" means an individual educated in the two disciplines of nursing and midwifery, who is certified by the ACNM or its designee.

D. "CNM license" means a document issued by the department identifying a legal privilege and authorization to practice within the scope of this rule.

E. "Contact hour" means 50-60 minutes of an organized learning

experience or two hours of planned and supervised clinical practice relevant to CNM practice, approved by one of the following:

- (1) accreditation council for continuing medical education (ACCME);
- (2) ACNM;
- (3) American college of obstetricians and gynecologists (ACOG);
- (4) American academy of physician assistants (AAPA);
- (5) American academy of nurse practitioners (AANP); or
- (6) nurse practitioners in women's health (NPWH).
- (7) other clinician-level continuing education accrediting agencies approved by the department.

F. "Continuance" means the adjournment or postponement of a trial or other proceeding to a future date.

G. "Department" means the department of health.

H. "Division" means the public health division.

I. "Incompetence" means a failure to possess and apply the knowledge, skill or care that is ordinarily possessed and exercised by CNMs or as defined by the ACNM "core competencies for basic midwifery practice".

J. "Midwife" means a responsible and accountable professional who works in partnership with women to give the necessary support, care and advice during pregnancy, labor and the postpartum period, to conduct births on the midwife's own responsibility and to provide care for the newborn and the infant. Midwifery practice as conducted by the CNM is the independent management of women's health care, focusing particularly on common primary care issues, family planning and the gynecologic needs of women, pregnancy, childbirth, the postpartum period and the care of the newborn. The CNM practices within a health care system that provides for consultation, collaborative management or referral as indicated by the health status of the client. A CNM practices in accordance with the ACNM "standards for the practice of midwifery".

K. "Peer review" means the assessment and evaluation of CNM practice by other CNMs or other health care providers to measure compliance with established institutional or legal standards. In the peer review process, a CNM's practice undergoes scrutiny for the purpose of professional self-regulation. All participants in the peer review process have the opportunity to enhance professional knowledge and skills.

L. "Primary care" means the provision of integrated, accessible health care services by clinicians who are accountable for addressing the large majority of presenting health care needs, developing

sustained partnerships with clients, and practicing within the context of family and community.

M. "Quality assurance" means monitoring structural, procedural and outcome indicators as they relate to accepted standards.

N. "Quality improvement" means modifying the process for providing care in order to improve outcomes. Modifications are based upon the measurement of parameters such as evidence-based best practices, patient satisfaction, clinical outcomes, population-specific care, appropriate use of technology and resources, and access to care

O. "Valid CNM-client relationship" means a relationship that assures safe prescribing of a dangerous drug by a CNM to an individual. Such a relationship includes:

- (1) the CNM has sufficient information to assure that the dangerous drug is indicated and necessary for treatment of a condition;

- (2) the CNM has sufficient information to assure that the dangerous drug is not contraindicated for the individual;

- (3) the CNM provides the individual with appropriate information on the proper dosage, route, frequency and duration of the drug treatment;

- (4) the CNM informs the individual of possible untoward effects and side effects of the treatment;

- (5) the CNM provides for care in the event of an untoward effect or a side effect that requires care;

- (6) the CNM provides for client education regarding the condition and its treatment to secure treatment compliance and preventive self-care;

- (7) the CNM provides for appropriate follow-up care, including further testing, treatment and/or education; and

- (8) the CNM documents, at minimum, the indication, drug and dosage in a health record for the individual.

[16.11.2.7 NMAC - Rp, 16 NMAC 11.2.7, 10/15/09]

16.11.2.8 DOCUMENTS INCORPORATED BY REFERENCE:

A. ACNM "core competencies for basic midwifery practice", available to download at <http://www.midwife.org/display.cfm?id=484>.

B. ACNM "standards for the practice of midwifery", available to download at <http://www.midwife.org/display.cfm?id=485>.

C. "ACNM home birth practice handbook", available to purchase at <http://www.shopacnm.com/>.

[16.11.2.8 NMAC - N, 10/15/09]

16.11.2.9 LICENSURE:

A. Licensure requirements: A CNM licensed in New Mexico shall hold a license that meets the New Mexico board of nursing's requirement to practice as a registered nurse in New Mexico and shall hold current certification by ACNM or its designee. The department may deny licensure to a CNM whose midwifery or nursing license has been subject to disciplinary action in any jurisdiction. A CNM license is not transferable.

B. Initial licensure.

(1) An applicant for licensure to practice as a CNM in New Mexico shall submit to the department:

- (a) a completed application;

- (b) proof of holding a valid license that meets the New Mexico board of nursing's requirement to practice as a registered nurse in New Mexico;

- (c) proof of current certification by ACNM or its designee;

- (d) the fee designated in Subsection E of this section.

(2) An initial CNM license may be issued at any time upon submission and verification of the materials required in Paragraph (1) of this subsection and shall expire on the expiration date of the license that satisfies the New Mexico board of nursing's requirement to practice as a registered nurse in New Mexico. A CNM license shall be valid for a maximum of two years.

C. Licensure renewal.

(1) A CNM's renewed license shall expire on the date of expiration of the license that satisfies the New Mexico board of nursing's requirements for practicing as a registered nurse in New Mexico.

(2) An applicant for licensure renewal shall submit to the department:

- (a) a completed application, postmarked or electronically submitted at least 15 calendar days before the expiration of her CNM license;

- (b) proof of holding a valid license that meets the requirement of the New Mexico board of nursing to practice as a registered nurse in New Mexico for the period the renewed CNM license will cover;

- (c) proof of current certification by ACNM or its designee;

- (d) proof of having met the continuing quality assurance and continuing education requirements in Paragraphs (3) and (4) of this subsection; and

- (e) the fee designated in Subsection E of this section; an additional fee shall be charged for applications received later than 15 calendar days before the expiration date.

(3) Continuing education: proof of a minimum of 30 contact hours completed during the two years preceding renewal is required for license renewal. Fifteen of the contact hours shall be pharmacology-related. The following options, subject to

audit and approval by the department, may be accepted in place of continuing education contact hours:

(a) preparation and presentation of a nurse-midwifery topic that has received contact hour approval by any of the organizations listed in Subsection E of 16.11.2..7 NMAC, will count for twice the number of contact hours for which the presentation is approved; the same presentation cannot be credited more than once;

(b) sole or primary authorship of one nurse-midwifery related article published in a department-approved professional medical or midwifery journal per licensure period;

(c) completion of a formal university or college course directly related to nurse-midwifery practice. Each university or college unit shall be credited as 15 hours of continuing education; and

(d) acting as primary preceptor for a nurse-midwifery or certified midwifery student; each 10 hours of precepting shall be credited as one continuing education hour; verification shall be provided by an ACNM accredited nurse-midwifery education program.

(4) Quality management: documentation of participation during the preceding two years in a system of quality management meeting the approval of the department is required for license renewal. Quality management includes peer review, quality assurance and quality improvement as defined in 16.11.2..7.

D. Reinstatement of a lapsed CNM license.

(1) The requirements for reinstatement of a CNM license that has lapsed within the four previous years are the same as those for license renewal, listed in Subparagraphs (a) through (e) of Paragraph (2) of Subsection C of this section, except that the application may be submitted at any time within the four years of the license's lapsing, and the fee designated in Subsection E of this section.

(2) An applicant for CNM licensure whose license has lapsed more than four years prior may apply for license reinstatement or may apply for a new CNM license.

E. Fees: the department shall charge applicants the following fees for licensure services:

(1) two hundred dollars (\$200) for initial licensure;

(2) one hundred dollars (\$100) for license renewal;

(3) fifty dollars (\$50.00) additional for renewing a license when the complete application is not postmarked or electronically submitted at least 15 calendar days before the current license's expiration date;

(4) fifty dollars (\$50.00) additional for reinstatement of a lapsed license;

(5) twenty dollars (20.00) for verifying licenses by FAX or letter;

(6) twenty dollars (\$20.00) for replacing a lost license card; and

(7) thirty dollars (\$30.00) for replacing a license certificate (8 ½" x 11" size).

F. Change of address: a CNM shall report a change of address or phone number to the department within 30 days.

[16.11.2.9 NMAC - Rp, 16 NMAC 11.2.8, 10/15/09]

16.11.2.10 PRACTICE OF THE CERTIFIED NURSE-MIDWIFE:

A. Scope of practice: midwifery practice as conducted by a CNM is the independent management of women's health care, focusing particularly on common primary care issues, family planning and the gynecologic needs of women, pregnancy, childbirth, the postpartum period, the care of the newborn, and treatment of male partners of female clients for sexually transmitted diseases. A CNM independently prescribes, distributes and administers dangerous drugs and devices appropriate to a client's condition. A CNM practices within a health care system that provides for consultation, collaborative management or referral as indicated by the health status of the client. A CNM practices in accordance with the ACNM "standards for the practice of midwifery". Practice guidelines for home births should be informed by the "ACNM home birth practice handbook"

B. Prescriptive authority.

(1) Dangerous drugs are prescription drugs other than a controlled substance which have been determined by law to be unsafe for self-administration and which are enumerated in the New Mexico Drug, Device and Cosmetic Act (Section 26-1-1 NMSA 1978).

(a) A CNM may independently prescribe, distribute or administer dangerous drugs and devices appropriate to a client's condition.

(b) A CNM who prescribes, distributes or administers a dangerous drug or device shall do so in accordance with the New Mexico Drug, Device and Cosmetic Act.

(2) Controlled substances are drugs contained in schedules I-V of the Controlled Substances Act (Section 30-31-1 NMSA 1978). The criteria for being contained in any of the schedules of the Controlled Substances Act include that the drug has potential for abuse, or that the drug may lead to physical dependence or psychological dependence, or both.

(a) A CNM shall not prescribe nor distribute controlled substances in schedule I

of the Controlled Substances Act.

(b) A CNM shall not prescribe, distribute or administer controlled substances in schedules II-V unless she is registered with the New Mexico board of pharmacy and the United States drug enforcement administration to prescribe, distribute and administer controlled substances.

(c) A CNM who chooses to prescribe, distribute or administer controlled substances in schedules II-V of the Controlled Substances Act shall first register with the New Mexico board of pharmacy and the United States drug enforcement administration.

(d) A CNM who prescribes, distributes or administers a controlled substance in schedules II-V of the Controlled Substances Act shall do so in accordance with the Controlled Substances Act.

(3) An individual employed as a CNM by the United States military, the United States veterans administration or the United States public health service and operating in the official capacity of that employment who is prescribing, distributing and administering controlled substances under that facility's United States drug enforcement administration registration is exempt from the provisions of Paragraph (2) of this subsection.

(4) Prescription pads: a CNM may prescribe by telephone, by written prescription or by e-mail. A CNM prescription shall have the CNM's name, office address and telephone number printed on it. In the event that a CNM is writing a prescription printed with the names of more than one CNM, the name of the CNM writing the individual prescription shall be indicated. The name and address of the client, the date of the prescription, the name and quantity of the drug prescribed, and directions for use shall be included on a prescription.

(5) Labeling: when distributing a drug, a CNM shall label it with the client's name, the date, instructions for use, and the CNM's name, address and telephone number.

(6) Except in emergencies, CNMs shall not prescribe controlled substances for themselves, members of their households or immediate family members.

C. Other rules: a CNM shall fulfill the requirements of all relevant department rules including:

(1) "Bureau of Vital Records and Health Statistics," 7.2.2 NMAC;

(2) "Control of Disease and Conditions of Public Health Significance," 7.4.3 NMAC;

(3) "Newborn Genetic Screening," 7.30.6 NMAC;

(4) "Prevention of Infant Blindness," 7.30.7 NMAC.

D. Limitation of physician liability: any consultative relationship

between a CNM and a physician shall not by itself provide the basis for finding a physician liable for any acts or omissions of the CNM.

[16.11.2.10 NMAC - Rp, 16 NMAC 11.2.9, 10/15/09]

16.11.2.11 LICENSE DENIAL, SUSPENSION OR REVOCATION; DISCIPLINARY ACTION:

The department may deny, revoke or suspend any license held or applied for or reprimand or place a license on probation on the grounds stated in this rule pursuant to Section 24-1-3(R) NMSA 1978.

A. Grounds for action.

(1) Incompetence. Charges of incompetence may be based upon a single act of incompetence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence. Conduct of such a character that could have resulted in harm to the client or to the public from the act or omission or series of acts or omissions constitutes incompetence, whether or not actual harm resulted.

(2) Unprofessional conduct. For purposes of this rule "unprofessional conduct" includes, but is not limited to, the following:

(a) verbally or physically abusing a client;

(b) engaging in sexual contact with or toward a client;

(c) abandonment of a client;

(d) engaging in the practice of midwifery when judgment or physical ability is impaired by alcohol or drugs or controlled substances;

(e) practice which is beyond the scope of licensure;

(f) dissemination of a client's health information or treatment plan to individuals not entitled to such information and where such information is protected by law from disclosure;

(g) falsifying or altering client records for the purpose of reflecting incorrect or incomplete information;

(h) obtaining or attempting to obtain any fee for client services for one's self or for another through fraud, misrepresentation, or deceit;

(i) aiding, abetting, assisting or hiring an individual to violate any duly promulgated rule of the department;

(j) failure to follow established procedure and documentation regarding controlled substances;

(k) failure to make or keep accurate, intelligible entries in records as required by the ACNM "standards for the practice of midwifery";

(l) obtaining or attempting to obtain a license to practice certified nurse midwifery for one's self or for another

through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the licensure by examination or endorsement process, or relicensure process;

(m) practicing midwifery in New Mexico without a valid New Mexico license or permit, or aiding, abetting or assisting another to practice midwifery without a valid New Mexico license;

(n) delegation of midwifery assessment, evaluation, judgment or medication administration to non-licensed persons; or

(o) failure to provide information requested by the department pursuant to this rule within ten (10) business days of receiving the request.

(3) Failure to comply with the New Mexico Parental Responsibility Act, Section 40-5A-1 through 40-5A-13, NMSA 1978.

(4) Dereliction of any duty imposed by law.

(5) Conviction of a felony.

(6) Failure to report in writing to the division, a complaint or claim that has been made against the CNM's practice as a registered, certified or licensed health care provider in any jurisdiction, including as a registered nurse. Such notification shall include the credentialing jurisdiction and the location, time and content of the complaint or claim. It shall be made within ten (10) business days of the CNM becoming aware of the complaint or claim.

(7) Conduct resulting in the suspension or revocation of a registration, license or certification to perform as a health care provider.

(8) Failure to report a midwife or CNM who appears to have violated the rule for the practice of licensed or certified nurse midwifery. Anyone reporting an alleged violation of this rule shall be immune from liability unless the person acted in bad faith or with malicious purpose.

(9) Violation of any of the provisions of this rule.

B. Disciplinary proceedings: disciplinary proceedings shall be conducted in accordance with the Uniform Licensing Act (ULA) (Section 61-1-1, NMSA 1978).

(1) Filing of a complaint.

(a) A written complaint must be filed with the division before a disciplinary proceeding can be initiated.

(i) A complaint is an allegation of (a) wrongful act(s) or omission(s).

(ii) A complaint may include knowledge of a judgment or settlement against a licensee.

(b) A written complaint may be filed by any person, including a member of the board.

(2) Investigation of a complaint.

(a) All complaints alleging a violation of the rules adopted by the department shall be investigated to determine whether a violation of applicable law or rule has occurred.

(b) The investigation may result in a notice of contemplated action (NCA) being issued by the department if a violation exists or a dismissal of the complaint because no actionable violation exists.

(3) Notice of contemplated action.

(a) The NCA shall be drafted by the department.

(b) The director of the division, or his designee shall sign all NCAs.

(c) The NCAs shall contain written information in accordance with the requirements of the ULA and shall be served on the licensee in accordance with the ULA.

(4) Request for a hearing, notice of hearing and request for continuance.

(a) Every licensee shall be afforded notice and an opportunity to be heard.

(b) Within 20 days of receiving the NCA, a licensee may request a hearing in writing by certified mail. The department shall notify the licensee of the time and place of hearing within 20 days of receipt of the request. The hearing shall be held no more than 60 nor less than 15 days from the date of service of the notice of hearing. However, if the ULA designates time requirements different from the above stated time requirements, the ULA time requirements shall prevail. The department shall notify the licensee of these prevailing time requirements when it sends the NCA.

(c) Once a hearing has been scheduled, if a request for a continuance is made it shall be presented to the department's hearing officer, in writing, at least 10 days prior to the scheduled hearing. The hearing officer may approve or deny the request.

(d) If a person fails to appear after requesting a hearing, the department may proceed to consider the matter and make a decision.

(e) If no request for a hearing is made within the time and manner stated in the NCA, the department may take the action contemplated in the NCA. Such action shall be final.

(5) Administrative hearing.

(a) All hearings shall be conducted by a hearing officer designated by the secretary or authorized representative of the department. The hearing officer shall have authority to rule on all nondispositive motions.

(b) All hearings before the department shall be conducted in the same manner as a hearing in a court of law with the exception that the rules of evidence may be relaxed in the hearing pursuant to the ULA.

(i) Hearsay evidence is admissible if it is of a kind commonly relied

upon by reasonable prudent people in the conduct of serious affairs.

(ii) Disciplinary action against a CNM license must not be based solely on hearsay evidence.

(c) The hearing officer may take testimony, examine witnesses and direct a continuance of any case.

(d) The hearing officer shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books, documents or records pertinent to the matter of a case before the department.

(e) The hearing officer shall issue a report and recommended finding to the department secretary.

(f) Decision of the department: the secretary of the department shall render a final administrative determination after reviewing the report and recommended findings issued by the hearing officer. Copies of the written decision shall be mailed via certified mail to the licensee in accordance with the ULA, placed in the CNM's licensure file. A copy of the written decision shall be mailed to the authority(ies) that license(s) the CNM as a registered nurse if the decision is to uphold the disciplinary action.

C. Reinstatement of a suspended or revoked license.

(1) Individuals who request reinstatement of their license or who request that their probation be lifted or altered shall provide the department with substantial evidence to support their request. This evidence must be in the form of notarized written reports or sworn written testimony from individuals who have personal knowledge of the individual's activities and progress during the period of probation, suspension or revocation.

(2) Requests for reinstatement of a revoked license shall not be considered by the department prior to the expiration of one year from the date of the order of revocation. The date of the order of revocation or suspension is the controlling date, unless otherwise specified in the order.

(3) Requests for reinstatement of a suspended license shall be considered at such time as provided by the department in the order of suspension.

(4) Reinstatement of a suspended license requires proof of meeting the renewal requirements as set forth in this rule, any remedial education, supervised practice or other condition specified in the order for suspension required by the department and payment of the reinstatement of current or lapsed license fee.

(5) Reinstatement of a revoked license requires proof of meeting the renewal requirements set forth in this rule and payment of the reinstatement of current or lapsed license fee.

[16.11.2.11 NMAC - Rp, 16 NMAC 11.2.11,

10/15/09]

16.11.2.12 ADVISORY BOARD:
The department shall appoint a CNM advisory board to make recommendations to the department regarding the regulation of CNMs.

A. The board may be comprised of:

(1) three New Mexico licensed CNMs, at least one of whom is actively practicing midwifery;

(2) one New Mexico licensed midwife who is actively practicing midwifery;

(3) two consumer members;

(4) one actively practicing board certified obstetrician-gynecologist physician; and

(5) one representative of the department.

B. Board members other than the department representative shall be appointed for staggered terms up to three years in length. Board members shall serve on a voluntary basis without compensation. They shall not serve for more than two consecutive terms. The department representative shall not be subject to term limits.

C. The board shall meet a minimum of two times a year when called by the director of the division.

D. The board members may submit requests for reimbursement of in-state travel and per diem for attending board meetings in accordance with department of finance administration rules.

E. Any member failing to attend two consecutive board meetings without good cause and an excused absence prior to the meetings shall be deemed to have resigned from the board.

[16.11.2.12 NMAC - Rp, 16 NMAC 11.2.10, 10/15/09]

16.11.2.13 SEVERABILITY:
If any part or application of these rules is determined to be illegal, the remainder of these rules shall not be affected.

[16.11.2.13 NMAC - Rp, 16 NMAC 11.2.12, 10/15/09]

HISTORY OF 16.11.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records-state records center and archives.

DPHW 67-24, Nurse Midwife Regulations For New Mexico, filed 12/12/67.

HSSD 76-2, Nurse Midwife Regulations For New Mexico, filed 1/20/76.

HED-80-6 (HSD), Regulations Governing the Practice of Certified Nurse Midwives, filed 10/17/80.

DOH 91-06 (PHD), Regulations Governing the Practice of Certified Nurse Midwives,

filed 11/04/91.

History of Repealed Material:

16 NMAC 11.2, Certified Nurse Midwives (filed 10-18-96) repealed 10/15/09.

Other History:

DOH 91-06 (PHD), Regulations Governing the Practice of Certified Nurse Midwives (filed 11/04/91) was renumbered into first version of the New Mexico Administrative Code as 16 NMAC 11.2, Certified Nurse Midwives, effective 10/31/96.

16 NMAC 11.2, Certified Nurse Midwives (filed 10/18/96) was replaced by 16.11.2 NMAC Certified Nurse Midwives, effective 10/15/09.

End of Adopted Rules Section

Other Material Related to Administrative Law

**NEW MEXICO BOARD
OF EXAMINERS FOR
ARCHITECTS****New Mexico Board of Examiners for
Architects**

PO Box 509
Santa Fe, NM
505-982-2869

Regular Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, November 6, 2009. The meeting will be held in the Conference Room of the Board office, #5 Calle Medico, Ste. C in Santa Fe beginning at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 982-2869 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

**End of Other Related Material
Section**

Submittal Deadlines and Publication Dates 2009

Volume XX	Submittal Deadline	Publication Date
Issue Number 16	August 17	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	November 2	November 13
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

Submittal Deadlines and Publication Dates 2010

Volume XXI	Submittal Deadline	Publication Date
Issue Number 1	January 4	January 15
Issue Number 2	January 19	January 29
Issue Number 3	February 1	February 12
Issue Number 4	February 15	February 26
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	August 2	August 16
Issue Number 16	August 17	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 18	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 30